

School Board

Access to District Public Records 1

Full access to the District's *public records* is available to any person as provided in the Illinois Freedom of Information Act (FOIA), this policy, and implementing procedures. The Superintendent or designee shall: (1) provide the Board with sufficient information and data to permit the Board to monitor the District's compliance with FOIA and this policy, and (2) report any FOIA requests during the Board's regular meetings along with the status of the District's response. 2

Freedom of Information Officer 3

The Superintendent shall serve as the District's Freedom of Information Officer and assumes all the duties and powers of that office as provided in FOIA and this policy. The Superintendent may delegate these duties and powers to one or more designees, but the delegation shall not relieve the Superintendent of the responsibility for the action that was delegated. ~~The Superintendent or designee(s) shall report any FOIA requests and the status of the District's response to the Board at each regular Board meeting.~~

Definition 4

The District's *public records* are defined as records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary ~~materials~~ material pertaining to the transaction of public business, regardless of physical form or characteristics,

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¹ The Illinois Freedom of Information Act (FOIA) governs the subject matter in this policy (5 ILCS 140/). School districts are required to make public records available to any person for inspection or copying, unless they fall within an exception (5 ILCS 140/3(a)). The f/ns only discuss sections of FOIA that are relevant to school districts. State law does not explicitly require boards to adopt a policy on access to their records. However, a board policy is the logical instrument to memorialize the actions that are required to implement FOIA. The laws limiting the disclosure of employee evaluations are discussed in f/n 7.

Any person denied access to a public record may request a review by the Ill. Public Access Counselor (PAC) established in the office of the Attorney General (5 ILCS 140/9.5). As a result of the review, the PAC may issue an opinion binding on the requester and public body. IASB reports on the opinions relevant to school districts on its website at Recent Decisions.

² This sentence allows a board to monitor the district's compliance with FOIA. This is an important duty as illustrated by FOIA's provision stating: "It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible." The School Code requires the FOIA report described in #2 (105 ILCS 5/10-16); it is optional, however, for districts governed by a board of school directors.

³ Each board must designate one or more official(s) or employee(s) to act as its freedom of information officer(s) (5 ILCS 140/3.5) (referred to in the f/ns as FOIA Officer). A board may replace *Superintendent* in this paragraph with another job title, or may replace the paragraph with one of the alternatives below:

Alternative 1: The Board will appoint an employee to serve as the District's Freedom of Information Officer. That appointee assumes all the duties and powers of that office as provided in FOIA and this policy.

Alternative 2: The Superintendent shall appoint an employee, who may be himself or herself, to [continue as with alternative 1].

⁴ The definition is quoted from 5 ILCS 140/2(c). Substitute the following alternative for this paragraph if desired: "The definition of *public records*, for purposes of this policy, is the definition contained in Section 2(c) of FOIA without amendment."

having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of the School District.

Requesting Records 5

A request for inspection and/or copies of public records must be made in writing and may be submitted by personal delivery, mail, telefax, or email directed to the District's Freedom of Information Officer. Individuals making a request are not required to state a reason for the request other than to identify when the request is for a commercial purpose or when requesting a fee waiver.

~~All requests~~ The Superintendent or designee shall instruct District employees to immediately forward any request for inspection and copying ~~shall immediately be forwarded of a public record~~ to the District's Freedom of Information Officer or designee.

Responding to Requests

The Freedom of Information Officer shall approve all requests for public records unless:

1. The requested material does not exist; **6**
2. The requested material is exempt from inspection and copying by the Freedom of Information Act; **7** or
3. Complying with the request would be unduly burdensome. **8**

Within 5 business days after receipt of a request for access to a public record, the Freedom of Information Officer shall comply with or deny the request, unless the time for response is extended as specified in Section 3 of FOIA. **9** The Freedom of Information Officer may extend the time for a response for up to 5 business days from the original due date. **10** If an extension is needed, the Freedom of Information Officer shall: (1) notify the person making the request of the reason for the extension, and (2) either inform the person of the date on which a response will be made, or agree with the person in writing on a compliance period. **11**

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5 This section restates 5 ILCS 140/3(c). Districts may, but are not required, to accept oral requests. Compliance with an oral request may stave off the formal written request and permit more flexibility in the response. Add this option if the district wants to accept oral requests: "Oral requests may be accepted provided personnel are available to handle them." The response to an oral request should be documented. Districts may provide a request form for convenience but may not require its use. See 2:250-E1, *Written Request for District Public Records*.

6 FOIA does not require a public body to create a record (5 ILCS 140/1).

7 5 ILCS 140/7 and 140/7.5 describe numerous explicit exceptions to the presumption that all public records are available for public inspection. Each record is "presumed to be open to inspection or copying" and the district will have "the burden of proving by clear and convincing evidence that it is exempt," (5 ILCS 140/1.2 and 140/11(f)). A person who prevails in a court proceeding to enforce FOIA will be awarded attorney fees; the public body may incur a civil penalty of between \$2,500 and \$5,000 for each occurrence of a willful or intentional violation of FOIA or other action in bad faith (5 ILCS 140/11(i) and (j)). School officials should seek the board attorney's advice concerning the denial of a record request.

Two State laws limit the disclosure of employee personnel evaluations:

1. The Personnel Record Review Act prohibits the disclosure of performance evaluations (820 ILCS 40/11).
2. The School Code prohibits the disclosure of public school teacher, principal, and superintendent performance evaluations except as otherwise provided in the certified employee evaluation laws (105 ILCS 5/24A-7.1).

8 5 ILCS 140/3(g).

9 5 ILCS 140/3(d). Reasons for extensions are addressed at 5 ILCS 140/3(e).

10 5 ILCS 140/3(e).

11 5 ILCS 140/3(f). A board may replace the default paragraph with the following alternative: "The Freedom of Information Officer shall respond to record requests according to the time periods described in Section 3 of FOIA."

~~Notwithstanding the above, the Freedom of Information Officer shall respond~~ The time periods are extended for responding to requests for records made for a commercial purposes and to purpose, requests by a recurrent requester, or voluminous requests, as those terms are defined in Section 2 of FOIA.)according to The time periods for responding to those requests are governed by Sections 3.1-and, 3.2, and 3.6 of FOIA. 12

When responding to a request for a record containing both exempt and non-exempt material, the Freedom of Information Officer shall redact exempt material from the record before complying with the request. 13

Copying Fees 14

Persons making a request for copies of public records must pay any and all applicable ~~copying fee fees~~. The Freedom of Information Officer shall ~~as needed, recommend establish~~ a copying fee schedule that complies with FOIA and this policy and is subject to the Board's review. The fee schedule shall include copying fees and all other fees to the maximum extent they are permitted by FOIA, including without limitation, search and review fees for the Board's approval. responding to a request for a commercial purpose and fees, costs, and personnel hours in connection with responding to a voluminous request.

Copying fees, except when fixed by statute, ~~are~~ shall be reasonably calculated to reimburse the District's actual cost for reproducing and certifying public records and for the use, by any person, of its equipment to copy records. In no case shall the copying fees exceed the maximum fees permitted by FOIA. If the District's actual copying costs are equal to or greater than the maximum fees permitted by FOIA, the Freedom of Information Officer is authorized to use FOIA's maximum fees as the District's fees. No copying ~~fee fees~~ shall be charged for: (1) the first 50 pages of black and white, letter or legal sized copies .No copying fee shall be charged for , or (2) electronic copies other than the actual cost of the recording medium, except if the response is to a voluminous request, as defined in FOIA.

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~~12-A The timelines are extended to respond to a: (1) recurrent requester is (defined in 5 ILCS 140/Sec. 2(g) -The timelines are relaxed for responding to and complying with a ; (2) request from a recurrent requester, provided the district follows the statutory requirements in 5 ILCS 140/3.2. A with a commercial purpose is (defined in 5 ILCS 140/Sec. 2(c-10)- The ; and (3) voluminous request (defined in Sec. 2(h). To use the extended timelines, a district must follow the requirements in Sec. 3.1 for responding to a recurrent requester; Sec. 3.2 for responding to and complying a request with a commercial request are relaxed, provided the district follows the statutory requirements in 5 ILCS 140/3.1 purpose; and Sec. 3.6 (added by P.A. 98-1129) for responding to a voluminous request. See the administrative procedure, 2:250-API, Access to and Copying of District Public Records, for additional information.~~

13 5 ILCS 140/7. Redacting exempt portions is permitted, but not required, except that contractors' employees' addresses, telephone numbers, and social security numbers must be redacted before disclosure (5 ILCS 140/2.10). Reviewing past responses to FOIA requests will promote uniform treatment of requests for similar records.

~~14-5 ILCS 140/6. The statute contains additional limitations on fees, including a prohibition on charging a search or review fee, unless the request is for a commercial purpose. See f/n 16. The fee for black and white, letter or legal sized copies may not exceed 15 cents per page. 5 ILCS 140/6, amended by P.A. 98-1129. The first paragraph's intent is to be efficient and avoid paraphrasing a complex law. The procedure 2:250-API, Access to and Copying of District Public Records, contains a fee schedule identifying the maximum fees permitted.~~

Section 6(a) states: "If a request is *not* a request for a commercial purpose or a voluminous request, a public body may not charge the requester for the costs of any search for and review of the records or other personnel costs associated with reproducing the records." (Emphasis added.) This implies that a search and review fee may be charged when responding to a request for a commercial purpose or a voluminous request. However, Sec. 6(b) states that the search and review fee described in Sec. 6(f) may be charged *only* to someone making a commercial request. Sec. 6(f) contains the maximum amounts that may be charged for search and review but does not explain when they may be charged. The FOIA Officer will need to consult the board attorney concerning fees.

Fees for Responding to a Request for a Commercial Purpose

~~In addition to copying fees, persons making a request for a commercial purpose, as defined in FOIA, must pay a fee of \$10 for each hour spent by personnel in searching for and retrieving the record. However, no fees shall be charged for the first 8 hours spent by personnel in searching for or retrieving a requested record. The District also charges the actual cost of retrieving and transporting public records from an off-site storage facility when the public records are maintained by a third-party storage facility under contract with the District. Whenever the District charges any fees to a requester making a commercial request, the Freedom of Information Officer shall provide the requester with an accounting of all fees, costs, and personnel hours in connection with the request for public records.~~

A fee reduction is available if the request qualifies under Section 6 of FOIA. The Freedom of Information Officer shall set the amount of the reduction taking into consideration the amount of material requested and the cost of copying it. 15

Provision of Copies and Access to Records

~~The inspection and copying of~~ A public record that is the subject of an approved access request ~~is permitted~~ will be available for inspection or copying at the District's administrative office during regular business hours, unless other arrangements are made by the Freedom of Information Officer. 16

Many public records are immediately available from the District's website including, but not limited to, ~~a description of the District and the methods for requesting a public record. the process for requesting a public record. 17~~ The Freedom of Information Officer shall direct a requester to the District's website if a requested record is available there. If the requester is unable to reasonably access the record online, he or she may resubmit the request for the record, stating his or her inability to reasonably access the record online, and the District shall make the requested record available for inspection and copying as otherwise provided in this policy. 18

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15 5 ILCS 140/6(c) makes it mandatory to furnish records "without charge or at a reduced charge" if the request is in the public interest as defined by FOIA. If a board wants to indicate when a reduction is available by paraphrasing the statute, it may substitute the following alternative for the default paragraph:

A fee reduction is available if the person requesting the record states a specific purpose for the request and indicates that a fee reduction is in the public interest by having as its principal purpose the preservation of the general public's health, safety, welfare, or legal rights and is not for the principal purpose of personal or commercial benefit. The Freedom of Information Officer shall set the amount of the reduction, taking into consideration the amount of material requested and the cost of copying it.

16 Public bodies may adopt rules for the times and places where records will be made available (5 ILCS 140/3(h). A board may amend this sentence to reflect other times and/or places where records will be made available.

17 5 ILCS 140/4. A district may reduce FOIA requests by posting records on its website. Many records are required to be web-posted, see 2:250-E2, Immediately Available District Public Records and Web-Posted Reports and Records. If the district does not have a website, change this sentence as follows: "Some public records are available for immediate access including a description of the process for requesting a public record, and a list of all types or categories of records under its control."

For a list of required web-postings, see exhibit 2:250-E2, Immediately Available District Public Records and Web-Posted Reports and Records. Using the district's website is also a convenient way to comply with FOIA's requirement to identify documents that are immediately available (5 ILCS 140/3.5(a). Although not required to be web-posted, a list of all types or categories of records under its control must be prepared and made available (5 ILCS 140/5). See 2:250-API, Access to and Copying of District Public Records.

18 5 ILCS 140/8.5, added by P.A. 98-1129.

Preserving Public Records

Public records, including email messages, shall be preserved and cataloged if: (1) they are evidence of the District's organization, function, policies, procedures, or activities, (2) they contain informational data appropriate for preservation, (3) their retention is required by State or federal law, or (4) they are subject to a retention request by the Board Attorney (e.g., a litigation hold), District auditor, or other individual authorized by the School Board or State or federal law to make such a request. ¹⁹ Unless its retention is required as described in items numbered 3 or 4 above, a public record, as defined by the Illinois Local Records Act, may be destroyed when authorized by the Local Records Commission. ²⁰

LEGAL REF.: 5 ILCS 140/, Illinois Freedom of Information Act.
105 ILCS 5/10-16 and 5/24A-7.1.
820 ILCS 40/11.
820 ILCS 130/5.

CROSS REF.: 2:140 (Communications To and From the Board), 5:150 (Personnel Records),
7:340 (Student Records)

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¹⁹ The Local Records Act, 50 ILCS 205/3, requires the preservation of records described in items #1-3. The preservation of records described in item #3 is also required by the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, and the Ill. School Student Records Act, 105 ILCS 10/, among other laws. An example of a record described in item #4 is a record subject to a *litigation hold* or a document preservation requirement pursuant to Federal Rules of Civil Procedure, Rules 16 and 26.

Categorizing email messages is complicated because two laws apply and the rules differ when a board member is a party. See sample policy 2:140, *Communications To and From the Board*, for a discussion of email between or among board members. When employees or agents are using email for school purposes, the email messages may be *public records*, but will not necessarily be subject to disclosure depending on the topic discussed. FOIA's list of exemptions from disclosure determines whether these emails are subject to disclosure. For exemptions, see 5 ILCS 140/7 and 140/7.5.

Not all email messages between or among employees must be preserved, even if they are *public records* for purposes of FOIA. The definition of *public record* in the Local Records Act, 50 ILCS 205/3, is narrower than its definition in FOIA. Thus, staff email, like all district records, must be retained only when it contains material described in #1-4. While this is a slippery slope without definitive parameters, employee email that is conversational or personal, or contains brainstorming may generally be deleted.

The Prevailing Wage Act (820 ILCS 130/5, amended by P.A.s 98-328 and 98-482) requires contractors, while participating in public works, to keep certified payroll records of all laborers, mechanics, and other workers employed by them on the project and to submit this record no later than the 15th of the month to the public body. The public body in charge of the project must keep the records submitted before 1-1-14 for a period of not less than 3 years. Records submitted on or after 1-1-14 must be kept for a period of 5 years. Records may be retained in paper or electronic format. These records must be made available in accordance with FOIA except that contractors' employees' addresses, telephone numbers, and social security numbers must be redacted before disclosure (5 ILCS 140/2.10).

²⁰ 50 ILCS 205/. Preservation and destruction of documents is covered in 2:250-AP2, *Protocols for Record Preservation and Development of Retention Schedules*. See also the Ill. Secretary of State's website for information on preserving and destroying records, www.cyberdriveillinois.com/departments/archives/records_management/recman.html.

General School Administration

Superintendent 1

Duties and Authority

The Superintendent is the District's executive officer and is responsible for the administration and management of the District schools in accordance with School Board policies and directives, and State and federal law. District management duties include, without limitation, preparing, submitting, publishing, and posting reports and notifications as required by State and federal law. ² The Superintendent is authorized to develop administrative procedures and take other action as needed to implement Board policy and otherwise fulfill his or her responsibilities. The Superintendent may delegate to other District staff members the exercise of any powers and the discharge of any duties imposed upon the Superintendent by Board policies or by Board vote. The delegation of power or duty, however, shall not relieve the Superintendent of responsibility for the action that was delegated. ³

Qualifications

The Superintendent must be of good character and of unquestionable morals and integrity. The Superintendent shall have the experience and the skills necessary to work effectively with the Board, District employees, students, and the community. The Superintendent ~~shall~~ must have and maintain a ~~valid administrative certificate~~ Professional Educator License with ~~the a~~ superintendent endorsement issued by the Illinois State Educator Preparation and Licensure Board. ⁴

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¹ State law controls this policy's content. Unless the district has only one school with fewer than 4 teachers, the board must employ a superintendent (105 ILCS 5/10-21.4). This statute assigns some specific duties to the superintendent including to: (1) make recommendations to the board concerning the budget, building plans, the locations of sites, the selection, retention, and dismissal of teachers and all other employees, the selection of textbooks, instructional material, and courses of study, (2) report to the board, ISBE, and chief administrative official any employee named in an abused child report, and (3) keep or cause to be kept the records and accounts as directed and required by the board, aid in making reports required by the board, and perform such other duties as the board may delegate to him/her. 105 ILCS 5/10-16.7 requires boards to direct, through policy, the superintendent, in his or her charge of the district's administration.

ISBE is required, subject to an annual appropriation by the General Assembly, to establish a new superintendent mentoring program. With limited exceptions, any individual serving as a first-time superintendent in Illinois must participate in the mentoring program for 2 school years (105 ILCS 5/2-3.53b). The ISBE-selected provider will assign a mentor to a new superintendent based on similarity of grade level or type of district, learning needs, and geographical proximity. The mentor must not be required to evaluate the new superintendent on the basis of the mentoring relationship.

² See 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*, for an annotated list of documents and reports that must be posted on the district's website, if the district has a website. While not comprehensive, see the IASB's *Annual School Calendar* for the required reports that do not need web-posting, available on the IASB website, iasb.com/law/.

³ This paragraph strengthens the policy's connection to the IASB's *Foundational Principles of Effective Governance*. It allows the superintendent broad delegation authority even when a policy fails to specifically provide for delegation.

⁴ 105 ILCS 5/21B-20 and 5/21B-25 govern Professional Educator Licenses and superintendent endorsements. See also 23 Ill.Admin.Code §§25.~~355~~ (2019 rule only states the year), 25.360, ~~(through 8-31-2019)~~, 29.100 (Ill. Professional School Leader Standards), and 29.130- (Superintendent Standards).

Evaluation

The Board will evaluate, at least annually, the Superintendent's performance and effectiveness, using standards and objectives developed by the Superintendent and Board that are consistent with the Board's policies and the Superintendent's contract. ⁵ A specific time should be designated for a formal evaluation session with all Board members present. The evaluation should include a discussion of professional strengths as well as performance areas needing improvement.

The Superintendent shall annually present evidence of professional growth through attendance at educational conferences, in-service training, or similar continuing education pursuits. ⁶

Compensation and Benefits ⁷

The Board and the Superintendent shall enter into an employment agreement that conforms to Board policy and State law. This contract shall govern the employment relationship between the Board and the Superintendent. The terms of the Superintendent's employment agreement, when in conflict with this policy, will control.

LEGAL REF.: 105 ILCS 5/10-16.7, 5/10-20.47, 5/10-21.4, 5/10-23.8, ~~5/21-7.1~~, 5/21B-20, 5/21B-25, 5/24-11, and 5/24A-3.
23 Ill.Admin.Code §§1.310, 1.705, and 29.130.

CROSS REF: 2:20 (Powers and Duties of the School Board; Indemnification), 2:130 (Board-Superintendent Relationship), 2:240 (Board Policy Development), 3:10 (Goals and Objectives)

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⁵ 105 ILCS 5/10-16.7 requires a board to evaluate the superintendent. See [The Superintendent Evaluation Process](#) on the IASB website. While greater detail may be added to this paragraph (e.g., a timeline, self-evaluation provision, and discussion requirements), a board must be sure that the policy and the superintendent's contract are consistent.

⁶ The reporting requirements in this paragraph are optional, but school boards must "require evaluators to participate in an in-service training on the evaluation of licensed personnel provided or approved by [ISBE] prior to undertaking any evaluation and at least once during each license renewal cycle," (105 ILCS 5/24A-3).

⁷ According to 105 ILCS 5/10-23.8, a superintendent must be employed under either: (1) a one-year contract, in which case he or she gains and retains tenure rights, or (2) a multi-year performance-based contract, in which case he or she waives all tenure rights but does not lose any previously acquired tenure credit with the district. A multi-year performance-based contract must contain specific student performance and academic improvement goals and indicators; see **Superintendent Performance Contracts**, published by IASB. Residency requirements, if desired, should be included in a superintendent's employment contract.

The employment contract should be *in writing* even though the School Code does not require it to be written. Contact the board attorney for assistance. An administrator who is not working under a written contract is presumed to have a contract of one year's duration. *Schaumburg Community Consolidated School Dist. v. TRS*, 985 N.E.2d 305 (Ill.App.4, 2013)(interpreting 105 ILCS 5/10-23.8a). The Ill. Statute of Frauds may make it impossible to execute an *oral* multi-year administrator contract or to *orally* extend a multi-year written contract (740 ILCS 80/1).

The Open Meetings Act requires all Ill. Municipal Retirement Fund (IMRF) employers, which includes school boards, to: (1) within 6 business days after approving a budget, web-post each employee's total compensation package if it exceeds \$75,000 per year; and (2) at least 6 days before approval, web-post an employee's total compensation package if it is \$150,000 or more (5 ILCS 120/7.3). Conflicting opinions concern whether school districts must comply with these posting requirements for their employees who do not participate in IMRF. Contact the board attorney for advice.

Annually by Oct. 1, each school board must report to ISBE the base salary and benefits of the superintendent, administrators, and teachers it employs (105 ILCS 5/10-20.47). Before this annual reporting to ISBE, the information must be presented at a regular school board meeting and then posted on the district's website, if any.

General School Administration

Administrative Personnel Other Than the Superintendent ¹

Duties and Authority

The School Board establishes District administrative and supervisory positions in accordance with the District's needs and State law. This policy applies to all administrators other than the Superintendent, including without limitation, Building Principals. The general duties and authority of each administrative or supervisory position are approved by the Board, upon the Superintendent's recommendation, and contained in the respective position's job description. ² In the event of a conflict, State law and/or the administrator's employment agreement shall control.

Qualifications

All administrative personnel shall be appropriately certificated licensed and shall meet all applicable requirements contained in State law and Illinois State Board of Education ~~rule~~ rules. ³

Evaluation

The Superintendent or designee shall evaluate all administrative personnel and make employment and salary recommendations to the Board. ⁴

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¹ State or federal law controls this policy's content. 105 ILCS 5/10-23.8a requires each principal, assistant principal, and other school administrator to be employed under either: (1) a one-year contract, in which case he or she gains and retains tenure rights, or (2) a multi-year performance-based contract, in which case he or she waives all tenure rights but does not lose any previously acquired tenure credit with the district. A multi-year performance-based contract must contain specific student performance and academic improvement goals and indicators.

² Job descriptions are advisable, but optional. See policy 5:30, *Hiring Process and Criteria*, for a discussion of job descriptions. An ISBE rule (23 Ill.Admin.Code §1.310) allows *divided service*, meaning that a superintendent or principal may be employed by two school districts or serve in 2 professional capacities provided that full-time equivalency results in a maximum of one full-time position. In districts with an enrollment of 100 or fewer, an individual may serve as superintendent/principal and teach up to ½ day.

³ ~~105 ILCS 5/21 7.1 and its implementing rule 23 Ill.Admin.Code §1.705 contain administrative certificate requirements. 105 ILCS 5/21B-20 and 5/21B-25 govern Professional Educator Licenses and administrative, principal, and chief school business official endorsements. The requirements for supervisory or administrative staff are in 23 Ill.Admin.Code §1.705; the requirements for endorsements are in 23 Ill.Admin.Code Part 25, Subpart E. Standards for Administrative Endorsements are in 23 Ill.Admin.Code Part 29.~~

The following option may be added at the end of this paragraph:

Administrative personnel must reside in the District within a specified period as provided in their ~~applicable~~ initial employment agreement.

State law (105 ILCS 5/24-4.1) prohibiting residency requirements for teachers does not apply to non-instructional personnel, e.g., assistant principals. Owen v. Kankakee School Dist., 632 N.E.2d 1073 (Ill.App.3, 1994). A board may impose residency requirements on a principal or assistant principal only if the individual's initial contract with the district made residency an express condition of employment or continued employment as a principal (105 ILCS 5/10-21.4a). Residency within a district may not be considered in determining a principal's compensation, assignment, or transfer (Id.).

Administrators shall annually present evidence to the Superintendent of professional growth through attendance at educational conferences, additional schooling, in-service training, and Illinois Administrators' Academy courses, or through other means as approved by the Superintendent. 5

Administrative Work Year

The work year for administrators shall be the same as the District's fiscal year, July 1 through June 30, unless otherwise stated in the employment agreement. In addition to legal holidays, administrators shall have vacation periods as approved by the Superintendent. All administrators shall be available for work when their services are necessary. 6

Compensation and Benefits

The Board and each administrator shall enter into an employment agreement that complies with Board policy and State law. 7 The terms of an individual employment contract, when in conflict with this policy, will control.

The Board will consider the Superintendent's recommendations when setting compensation for individual administrators. These recommendations should be presented to the Board no later than the

4 All licensed school district employees must be evaluated (105 ILCS 5/24A-1, 23 Ill.Admin.Code §1.320). Each district must implement a performance evaluation plan for its principals and assistant principals (105 ILCS 5/24A-15, 23 Ill.Admin.Code §50.300). The statutory deadline for evaluating principals and assistant principals depends on whether the individual's employment contract is for one year or multiple years: (1) the evaluation of individuals on a single year contract must take place annually by March 1, and (2) the evaluation of individuals on a multi-year contract must take place by March 1 of the contract's final year (105 ILCS 5/24A-15). Individual contracts may require an earlier deadline. 105 ILCS 5/24A-3 requires that an individual who conducts an evaluation of a teacher, principal, or assistant principal, (1) be prequalified before undertaking any evaluation, and (2) participate in a regularly scheduled retraining program.

5 The professional growth reporting requirements in this paragraph are optional. However, professional development activities are required for license renewal. 105 ILCS 5/21B-45 contains the license renewal process.

A school board must require the administrators who evaluate employees to complete training on the evaluation of licensed personnel that is provided or approved by ISBE (105 ILCS 5/24A-3 and 5/24A-20(a)(4)). Any prequalification process or retraining program developed and used by a school district must, at a minimum, meet the requirements of 23 Ill.Admin.Code Part 50, Subpart E. Administrative personnel must participate in this training (1) before they evaluate, and (2) at least once during each certificate renewal cycle (*Id.*).

6 Legal holidays are provided by 105 ILCS 5/24-2.

7 According to 105 ILCS 5/10-23.8a, a principal, assistant principal, and any other school administrator must be employed under either: (1) a one-year contract, in which case he or she gains and retains tenure rights, or (2) a multi-year performance-based contract, in which case he or she waives all tenure rights but does not lose any previously acquired tenure credit with the district. A multi-year performance-based contract must contain specific student performance and academic improvement goals and indicators.

The employment contract should be in writing even though the School Code does not require it to be written. Contact the board attorney for assistance. An administrator who is not working under a written contract is presumed to have a contract of one year's duration. Schaumburg Community Consolidated School Dist. v. TRS, 985 N.E.2d 305 (Ill.App.4, 2013)(interpreting 105 ILCS 5/10-23.8a). The Ill. Statute of Frauds may make it impossible to execute an oral multi-year administrator contract or to orally extend a multi-year written contract (740 ILCS 80/1).

The Open Meetings Act requires all Ill. Municipal Retirement Fund (IMRF) employers, which includes school boards, to: (1) within 6 business days after approving a budget, web-post each employee's total compensation package if it exceeds \$75,000 per year; and (2) at least 6 days before approval, web-post an employee's total compensation package if it is \$150,000 or more (5 ILCS 120/7.3). Conflicting opinions concern whether school districts must comply with these posting requirements for their employees who do not participate in IMRF. Contact the board attorney for advice.

Annually by Oct. 1, each school board must report to ISBE the base salary and benefits of the superintendent, administrators, and teachers it employs (105 ILCS 5/10-20.47). Before this annual reporting to ISBE, the information must be presented at a regular school board meeting and then posted on the district's website, if any.

March Board meeting or at such earlier time that will allow the Board to consider contract renewal and nonrenewal issues. ⁸

Unless stated otherwise in individual employment contracts, all benefits and leaves of absence available to teaching personnel are available to administrative personnel. ⁹

LEGAL REF: 105 ILCS 5/10-21.4a, ~~5/21-7.1~~ 5/10-23.8a, ~~5/24A-1~~ 5/10-23.8b, ~~5/24A-3~~, ~~5/24A-4~~ 5/21B, and 5/24A. ~~20~~
23 Ill.Admin.Code §§1.310, 1.705, and ~~1.705~~ 50.300; and Parts 25 and 29.

CROSS REF: 3:60 (Administrative Responsibility of the Building Principal), 5:30 (Hiring Process and Criteria), 5:250 (Leaves of Absence)

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

⁸ State law does not address when the board should consider salary issues ~~should be presented to, or considered by, the board.~~ The March deadline was chosen because the ~~contract year is typically July 1 — June 30 and districts need adequate time to consider non-renewals and demotions before giving~~ statutory notice. deadline for reclassification is April 1 of the year in which a principal or assistant principal's contract expires unless the contract provides for an earlier deadline (105 ILCS 5/10-23.8b). Alternatively, the policy could require that recommendations be presented “in a timely manner.”

⁹ State law does not require that administrative and teaching personnel receive identical benefits and leaves of absence, but it does set the minimum in days and type for all certificated personnel. ~~See policy 5:250, Leaves of Absence, for the leaves of absence provided by State law.~~

General School Administration

Administrative Responsibility of the Building Principal ¹

Duties and Authority

The School Board, upon the recommendation of the Superintendent, employs Building Principals as the chief administrators and instructional leaders of their assigned schools, and may employ Assistant Principals. The primary responsibility of a Building Principal is the improvement of instruction. ² Each Building Principal shall perform all duties as described in State law as well as such other duties as specified in his or her employment agreement or as the Superintendent may assign, that are consistent with the Building Principal's education and training. ³

~~The Board and each Building Principal and Assistant Principal shall enter into an employment agreement that conforms to Board policy and State law. The terms of an individual employment contract, when in conflict with this policy, will control.~~

Each Building Principal and Assistant Principal shall complete State law requirements to be a prequalified evaluator before conducting an evaluation of a teacher or assistant principal. ⁴

Evaluation Plan

The Superintendent or designee shall implement an evaluation plan for Principals and Assistant Principals that complies with Section 24A-15 of the School Code and relevant Illinois State Board of

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.

² Required by 105 ILCS 5/10-21.4a.

³ An alternative follows: "...or as agreed upon by the Building Principal and Superintendent."

The principal's duties are generally described in 105 ILCS 5/10-21.4a and 5/24A-15(c-5). However, many other statutes impose additional duties, e.g., 105 ILCS 127/ (requires principals to report to the police any violations of the Controlled Substance Act occurring at specified locations); 105 ILCS 5/10-20.14 (requires reciprocal reporting of criminal offenses committed by students); and 730 ILCS 152/ and 154/ (requires notification to parents/guardians that information about sex offenders and violent offenders against youth is available). The county clerk may appoint high school principals or their designees as deputy registrars to accept voter registrations of eligible students (10 ILCS 5/4-6.2). The Firearm Concealed Carry Act requires a principal to notify the State Police whenever he or she determines that a student (or any person) poses a "clear and present danger to himself, herself or to others" (430 ILCS 66/105, ~~added by P.A. 98-63~~; 405 ILCS 5/6-103.3, amended by P.A. 98-63). Lawyers disagree whether this requirement violates the federal Family Educational Rights and Privacy Act. Contact the board attorney for advice.

⁴ This ~~optional sentence~~ restates ~~State law~~ (105 ILCS 5/24A-3; and 23 Ill.Admin.Code Part 50, Subpart E, Training for Evaluators). ~~Individuals who evaluate teachers, principals, or assistant principals must: (1) be prequalified, and (2) participate in a regularly scheduled retraining program. The prequalification and retraining programs must be either developed or approved by ISBE.~~

105 ILCS 5/24A-5 permits a first-year principal to evaluate a teacher; however, a new 2-year evaluation plan must be established for any tenured teacher who is evaluated by a first-year principal (105 ILCS 5/24A-5, amended by P.A. 98-470).

Anyone who has not previously been a principal in Ill. must participate in ISBE's new principal mentoring program; however, implementation of a principal mentoring program in any given year is dependent upon an appropriation (105 ILCS 5/2-3.53a; 23 Ill.Admin.Code Part 35). Annually by June 1, each superintendent must report to the State Superintendent the expected number of 1st-year and 2nd-year principals along with information specified in 23 Ill.Admin.Code §35.20.

Education rules. 5 Using that plan, the Superintendent or designee shall evaluate each Building Principal and Assistant Principal. 6 The Superintendent or designee may conduct additional evaluations.

Qualifications and Other Terms and Conditions of Employment

Qualifications and other terms and conditions of employment are found in Board policy 3:50, Administrative Personnel Other Than the Superintendent.

LEGAL REF.: 10 ILCS 5/4-6.2.
105 ILCS 5/2-3.53a, 5/10-20.14, 5/10-21.4a, 5/10-23.8a, 5/10-23.8b, and 5/24A-15.
105 ILCS 127/.
23 Ill.Admin.Code Parts 35 and 50, Subpart D.

CROSS REF.: 3:50 (Administrative Personnel Other Than the Superintendent), 5:250 (Leaves of Absence)

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

5 Each district must implement a performance evaluation plan for its principals and assistant principals (105 ILCS 5/24A-15, 23 Ill.Admin.Code §50.300). A board may substitute this alternative for the first sentence: "The Superintendent or designee shall implement a principal and assistant principal evaluation plan that complies with State law." The statutory deadline for evaluating principals and assistant principals depends on whether the individual's employment contract is for one year or multiple years: (1) the evaluation of individuals on a single year contract must take place annually by March 1, and (2) the evaluation of individuals on a multi-year contract must take place by March 1 of the contract's final year (105 ILCS 5/24A-15). Individual contracts may require an earlier deadline.

6 Required by 105 ILCS 5/10-21.4a and 5/24A-15. For a principal who also serves as the district superintendent, the evaluator must be appointed by the school and not be the person whose performance as principal is being evaluated (23 Ill.Admin.Code §50.300). In addition, the evaluator must hold a valid professional educator license endorsed for superintendent issued under Article 21B and have completed the prequalification process and any retraining, as applicable. Add this option if appropriate: "...or, in the absence of the Superintendent or his or her designee, an individual appointed by the School Board who holds a ~~registered Type 75 State administrative certificate~~; valid professional educator license endorsed for superintendent."

~~Implementation of a principal mentoring program in any given year is dependent upon an appropriation sufficient to provide services to all first-year principals (105 ILCS 5/2-3.53a; 23 Ill.Admin.Code Part 35). Sufficient funding is based on the anticipated number of participants and the total amount of the appropriation for the mentoring. Annually by June 1, each superintendent must report to the State Superintendent the expected number of 1st year or 2nd year principals along with information about them (23 Ill.Admin.Code §35.20). Each principal in his or her first year of employment must participate in mentoring activities during years when the program is implemented. If sufficient appropriations exist, principals in their second year of employment may elect to participate in a second year of mentoring if the principal has completed the mentoring program in the previous school year.~~

Operational Services

Insufficient Fund Checks and Debt Recovery

Insufficient Fund Checks ¹

The Superintendent or designee is responsible for collecting up to the maximum fee authorized by State law for returned checks written to the District that are not honored upon presentation to the respective bank or other depository institution for any reason. The Superintendent is authorized to contact the ~~District's Board~~ Attorney whenever necessary to collect the returned check amount, fee, collection costs and expenses, and interest.

Delinquent Debt Recovery ²

The Superintendent is authorized to seek collection of delinquent debt owed the District to the fullest extent of the law. ³

~~To participate in the~~ A Local Debt Recovery Program may be available through the Illinois Office of the Comptroller (IOC) in the future. ~~To participate in it,~~ an intergovernmental agreement (IGA) between the District and the IOC must be in existence. The IGA establishes the terms under which the District may refer a delinquent debt ~~owed it over~~ to the IOC for an offset (deduction). ~~The~~ IOC may execute an offset ~~of, in~~ the amount of the delinquent debt owed to the District, ~~from~~ a future payment that the State makes to an individual or entity responsible for paying the delinquent debt.

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

¹ State law controls this policy's content. 810 ILCS 5/3-806 authorizes a \$25.00 collection fee whenever a check is not honored upon presentation because the individual does not have an account with the bank, the individual does not have sufficient funds in his or her account, or the individual does not have sufficient credit with the bank.

This fee may be considered punitive considering several banks rarely charge this amount for an insufficient funds check. To allow more flexibility for the superintendent and his or her designees to charge the full collection fee of \$25.00, a portion thereof, or none of it, the first sentence states "up to the maximum fee." Boards choosing to allow this flexibility should discuss equal protection issues with the board attorney. As a general rule, any flexibility should be applied with uniform rules to all individuals and/or groups to avoid triggering the Constitution's Equal Protection Clause.

Boards that wish to charge the maximum fee in all circumstances should delete the words *up to* in the first sentence: "The Superintendent or designee is responsible for collecting ~~up to~~ the maximum fee authorized by State law for returned checks written to the District that are not honored upon presentation to the respective bank or other depository institution for any reason."

² This section is optional but because the policy's title refers to debt recovery, at least the first sentence should be retained. The Ill. Office of the Comptroller (IOC) operates an Offset System for collecting debt owed to the State, political subdivisions of the State, and school districts by persons receiving payments from the State. Seeking debt recovery through an offset of a future payment the State makes to a debtor is optional. The requirements in this policy for obtaining an offset are either in statute or the IOC's intergovernmental agreement (IGA) (15 ILCS 405/10.05 and 10.05d, ~~amended by P.A. 97-632~~). The first step to participate is to enter into the IGA with the IOC's office. Contact a Local Debt Recovery Program (LDRP) manager with the IOC to join. Program managers work one-on-one with districts. The LDRP's general number is 312/814-2488 and email is ldrp@mail.ioc.state.il.us. Contact the board attorney for advice and assistance.

While this paragraph is not a prerequisite to participation in the Offset Program, it will help the board's monitoring function by identifying the Program's important components. Moreover, it serves as an element of due process by informing the public and the district's debtors that the district will collect debt through the Offset Program.

³ There are methods other than the IOC's Local Debt Recovery Program to collect delinquent debts owed to the school district, i.e., small claims court, private collection agencies, etc. If the district decides it will not ever seek to enter the IOC's Local Debt Recovery Program, keep the first sentence and delete everything after it.

The Superintendent or designee shall execute the requirements of the IGA. While executing the requirements of the IGA, the Superintendent or designee is responsible, without limitation, for each of the following:

1. Providing a District-wide, uniform, method of notice and due process to the individual or entity against whom a claim for delinquent debt payment (*claim*) is made. Written notice and an opportunity to be heard must be given to the individual or entity responsible for paying a delinquent debt before the claim is certified to the IOC for offset. The notice must state the claim's amount, the reason for the amount due, the claim's date or time period, and a description of the process to challenge the claim. An individual or entity challenging a claim shall be provided an informal proceeding to refute the claim's existence, amount, or current collectability; the decision following this proceeding shall be reviewable. If a waiver of student fees is requested as a challenge to paying the claim, and the waiver of student fees is denied, an appeal of the denial of a fee waiver request shall be handled according to 4:140, *Waiver of Student Fees*. If no waiver of student fees is requested, reviews regarding payment of the claim shall be handled according to this policy before certification to the IOC for offset.
2. Certifying to the IOC that the debt is past due and legally enforceable, and notifying the IOC of any change in the status of an offset claim for delinquent debt.
3. Responding to requests for information from the IOC to facilitate the prompt resolution of any administrative review requests received by the IOC.

LEGAL REF.: 15 ILCS 405/10.05 and 10.05d.
810 ILCS 5/3-806.

General Personnel

Communicable and Chronic Infectious Disease ¹

The Superintendent or designee shall develop and implement procedures for managing known or suspected cases of a communicable and chronic infectious disease involving District employees that are consistent with State and federal law, Illinois Department of Public Health rules, and School Board policies. ²

An employee with a communicable or chronic infectious disease is encouraged to inform the Superintendent immediately and grant consent to being monitored by the District's Communicable and Chronic Infectious Disease Review Team. The Review Team, if used, provides information and recommendations to the Superintendent concerning the employee's conditions of employment and necessary accommodations. The Review Team shall hold the employee's medical condition and records in strictest confidence, except to the extent allowed by law. ³

An employee with a communicable or chronic infectious disease will be permitted to retain his or her position whenever, after reasonable accommodations and without undue hardship, there is no substantial risk of transmission of the disease to others, provided an employee is able to continue to perform the position's essential functions. ⁴ An employee with a communicable and chronic infectious disease remains subject to the Board's employment policies including sick and/or other leave, physical examinations, temporary and permanent disability, and termination.

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

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

² District employment is contingent upon satisfactory results of a physical examination and freedom from communicable diseases (105 ILCS 5/24-5). The U.S. Supreme Court, however, has held that the Rehabilitation Act prohibits discrimination against a person handicapped by a communicable disease, provided that person is "otherwise qualified" to perform the job. School Bd. of Nassau County, Fla. v. Arline, 107 S.Ct. 1123 (1987) (teacher with tuberculosis was protected by the Rehabilitation Act). The decision supports the position that an HIV-positive employee or applicant who is "otherwise qualified" to perform the job must be reasonably accommodated despite having AIDS.

The Americans with Disabilities Act Amendments Act (ADAAA), Pub. L. 110-325, may protect an HIV-positive employee or applicant (42 U.S.C. §12102(2)(A)). The ADAAA made significant changes to the Americans with Disabilities Act's definition of disability by broadening the scope of coverage thus overturning a series of U.S. Supreme Court decisions that interpreted the Americans with Disabilities Act of 1990 in a way that made it difficult to prove that impairments were a disability. EEOC's regulations, 29 C.F.R. Part 1630, can be found at: www.eeoc.gov/laws/types/disability_regulations.cfm. Boards should consult with their attorneys regarding how the ADAAA and its implementing regulations impact the employment of an individual with a communicable disease who is otherwise qualified to perform the job.

³ This paragraph is optional. While not required by law, the creation and use of a Communicable and Chronic Infectious Disease Review Team (CIDRT) could greatly assist a district's efforts to review data on an employee who has a communicable or infectious disease. Its members are appointed by the superintendent according to board policy, 2:150, *Committees*. Whether the CIDRT is an administrative committee organized by the superintendent and/or administrators or a board committee subject to the Open Meetings Act must be discussed with the board attorney (see also 2:150-AP, Superintendent Committees). The CIDRT is guided by the board's policies, Ill. Dept. of Public Health rules and regulations, and all other applicable State and federal laws. The CIDRT also consults the employee's personal physician and local health department officials before making any recommendations.

The Americans with Disabilities Act (ADA) specifies that only an employee's direct supervisor and someone who would need to know in the event of an emergency may have access to an employee's medical records (42 U.S.C. §12112(d)). The Review Team's ability to operate may depend on the employee's waiver of the ADA's confidentiality provisions.

⁴ Required by 42 U.S.C. §12101 et seq.

LEGAL REF.: Americans With Disabilities Act, 42 U.S.C. §12101 et seq.; 29 C.F.R. §1630.1 et seq., amended by the Americans with Disabilities Act Amendments Act (ADAAA), Pub. L. 110-325.
Rehabilitation Act of 1973, 29 U.S.C. §791; 34 C.F.R. §104.1 et seq.
Department of Public Health Act, 20 ILCS 2305/6.
105 ILCS 5/24-5.
Personnel Record Review Act, 820 ILCS 40/.
Control of Communicable Diseases, 77 Ill.Admin.Code Part 690.

CROSS REF.: 2:150 (Committees), 5:30 (Hiring Process and Criteria), 5:180 (Temporary Illness or Temporary Incapacity)

General Personnel

Ethics and Conduct ¹

All District employees are expected to maintain high standards in their school relationships, to demonstrate integrity and honesty, to be considerate and cooperative, and to maintain professional and appropriate relationships with students, parents, staff members, and others. ² In addition, the *Code of Ethics for Illinois Educators*, adopted by the Illinois State Board of Education, is incorporated by reference into this policy. ³ Any employee who sexually harasses a student or otherwise violates an employee conduct standard will be subject to discipline up to and including dismissal. ⁴

The following employees must file a *Statement of Economic Interests* as required by the Illinois Governmental Ethics Act: ⁵

1. Superintendent;
2. Building Principal;
3. Head of any department;
4. Any employee who, as the District's agent, is responsible for negotiating one or more contracts; including collective bargaining ~~agreement~~ agreement(s), in the amount of \$1,000 or greater;
5. Hearing officer;
6. Any employee having supervisory authority for 20 or more employees; and

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

² 105 ILCS 5/10-22.39 requires each board to conduct in-service training on educator ethics, teacher-student conduct, and school employee-student conduct for all personnel. These expectations will be most effective when the in-service curriculum reflects local conditions and circumstances. While the School Code only requires the in-service, the requirement presents an opportunity for each board and the superintendent to examine all current policies, collective bargaining agreements, and administrative procedures on this subject. Each board may then want to have a conversation with the superintendent and direct him or her to develop a curriculum for the in-service that instructs all district staff to maintain boundaries and act appropriately, professionally, and ethically with students. See discussion in third option of f/n 3, 5:100, *Staff Development Program*. After its discussion of these issues, the board may have further expectations and may choose to reflect those expectations here.

³ 23 Ill.Admin.Code Part 22. Boards are not required to include ISBE's *Code of Ethics for Illinois Educators* in a board policy. Incorporating it by reference into a policy demonstrates a board's commitment to the *Code's* principles and may allow a board to enforce the *Code* independently from any action taken by the State Superintendent.

Use this optional sentence to establish a requirement that the board can monitor: "The Superintendent or designee shall identify appropriate employee conduct standards and provide them to staff members." Sample conduct standards are contained in administrative procedure 5:120-AP2, *Employee Conduct Standards*. Consult the board attorney for advice on whether the board must offer to negotiate employee conduct standards with the applicable exclusive bargaining representative before establishing them.

⁴ This sentence is optional. The Ill. Human Rights Act makes it a civil rights violation to fail to take remedial action, or to fail to take appropriate disciplinary action, against any employee when the district knows that the employee committed or engaged in sexual harassment of a student (775 ILCS 5/5A-102). Sexual harassment of a student is also prohibited by 7:20, *Harassment of Students Prohibited*, and of an employee by 5:20, *Workplace Harassment Prohibited*.

⁵ 5 ILCS 420/4A-101. Any county clerk may use a mandatory system of Internet-based filing of economic interest statements; if done, the clerk must post the statements, without the addresses, of the filers, on a publicly accessible website (5 ILCS 420/4A-108).

7. Any employee in a position that requires an administrative or a chief school business official endorsement.

Ethics and Gift Ban

School Board policy 2:105, *Ethics and Gift Ban*, applies to all District employees. 6 Students shall not be used in any manner for promoting a political candidate or issue.

Prohibited Interests, Limitation of Authority, and Outside Employment and Conflict of Interest

~~No District employee~~ In accordance with Section 22-5 of the School Code, “no school officer or teacher shall be ~~directly or indirectly~~ interested in ~~any contract, work, or business of the District, or in the sale, proceeds, or profits of any article by~~ book, apparatus, or furniture used or to ~~the District, be used in any school with which such officer or teacher may be connected,~~” except when the employee is the author or developer of instructional materials listed with the Illinois State Board of Education and adopted for use by the ~~School~~ Board. 7 An employee having an interest in instructional materials must file an annual statement with the Board Secretary. 8

For the purpose of acquiring profit or personal gain, no employee shall act as an agent of the District nor shall an employee act as an agent of any business in any transaction with the District.

Employees shall not engage in any other employment or in any private business during regular working hours or at such other times as are necessary to fulfill appropriate assigned duties.

Incorporated

by reference: 5:120-E (Code of Ethics for Illinois Educators)

LEGAL REF.:

U.S. Constitution, First Amendment.

5 ILCS 420/4A-101 and 430/.

50 ILCS 135/.

105 ILCS 5/10-22.39 and 5/22-5. ~~and 5/24-22-5.~~

775 ILCS 5/5A-102.

23 Ill.Admin.Code Part 22, Code of Ethics for Illinois Educators.

Pickering v. Board of Township H.S. Dist. 205, 391 U.S. 563 (1968).

Garcetti v. Ceballos, 547 U.S. 410 (2006).

CROSS REF.:

2:105 (Ethics and Gift Ban), 5:100 (Staff Development Program)

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

6 The State Officials and Employees Ethics Act prohibits State employees from engaging in certain political activities and accepting certain gifts (5 ILCS 430/). The Act requires all school districts to adopt an *ordinance or resolution* “in a manner no less restrictive” than the Act’s provisions. See policy 2:105, *Ethics and Gift Ban*.

Districts may not inhibit or prohibit employees from petitioning, making public speeches, campaigning for or against political candidates, speaking out on public policy questions, distributing political literature, making campaign contributions, and seeking public office (50 ILCS 135/, Governmental Employees Political Rights Act). An employee may not use his/her position of employment to coerce or inhibit others in the free exercise of their political rights or engage in political activities at work (Id.).

7 This sentence quotes 105 ILCS 5/22-5 because the statute does not define important terms making it difficult to paraphrase. No appellate decision defines school officer or apparatus, or what is meant by connected. The statute was enacted in 1961 but earlier versions were in the School Code much longer. A violation of this prohibition is a Class A misdemeanor.

8 Id.

General Personnel

Temporary Illness or Temporary Incapacity ¹

A temporary illness or temporary incapacity is an illness or other capacity of ill-being that renders an employee physically or mentally unable to perform assigned duties. During such a period, the employee can use accumulated sick leave benefits. ² However, income received from other sources (worker's compensation, District-paid insurance programs, etc.) will be deducted from the District's compensation liability to the employee. The School Board's intent is that in no case will the employee, who is temporarily disabled, receive more than 100 percent of his or her gross salary. Those insurance plans privately purchased by the employee and to which the District does not contribute, are not applicable to this policy.

If illness, incapacity, or any other condition causes a teacher or other licensed employee to be absent in one school year, after exhaustion of all available leave, for more than 90 consecutive work days, such absence may be considered a permanent disability and the Board may begin dismissal proceedings subject to State and federal law, including the Americans with Disabilities Act. ³ The

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

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

This policy is consistent with the minimum requirements of State law. The local collective bargaining agreement may contain provisions that exceed these requirements. When a policy's subject matter is superseded by a bargaining agreement, the board policy can state, "Please refer to the current [insert name of CBA or use a generic reference, e.g., 'agreement between the bargaining representative and the School Board']".

² Temporary mental or physical incapacity as determined by a medical examination is not cause for dismissing a teacher (105 ILCS 5/10-22.4 and 5/24-13).

³ A teacher's contractual continued service status is not affected by an absence caused by temporary illness or temporary incapacity (105 ILCS 5/24-13). Two cases, decided before the Americans with Disabilities Act was enacted, held that this statute grants school boards the power to define, through policy, temporary illness or incapacity. *School Dist 151 v. ISBE*, 507 N.E.2d 134 (Ill.App.1, 1987); *Elder v. School Dist. No.127 1/2*, 208 N.E.2d 423 (Ill.App.1, 1965).

Important: Until February 2014, this paragraph in the **PRESS** sample policy applied to all employees. We limited its application to teachers in response to feedback that the paragraph should align with the statute. Section 24-13, which this paragraph implements, applies only to teachers and, thus, we amended the paragraph to make it applicable only to teachers. **This change may trigger a bargaining requirement with a bargaining unit for educational support personnel.**

Despite the statute's limitation to licensed employees, many boards apply this language to educational support personnel. Consult the board attorney about whether to apply this language to educational support personnel. For boards that wish to apply this language to both licensed and educational support personnel, strike teacher or other licensed from the text of the first two sentences of this paragraph and correct the grammar.

The Illinois appellate court decisions cited above upheld a board policy designating when a temporary [illness or] incapacity becomes permanent for the purpose of being a cause of dismissal. The court approved using 90 days of absence due to illness, after the exhaustion of sick days, as the point at which the district considers termination. The court upheld a hearing officer decision noting that a policy providing for a 90-school-day absence following exhaustion of sick leave was sufficient under Section 24-13. The court noted that applying that particular policy over a 2-year period would not be appropriate because the 2-year period would have the effect of allowing the school board to define a temporary illness or incapacity out of existence; i.e., making it impossible for a teacher to qualify for such an absence. **Important:** a district should consult the board attorney before determining that a teacher's temporary illness or incapacity became permanent.

The point at which any employee's temporary disability becomes permanent must be analyzed using the Americans with Disabilities Act, 42 U.S.C. §12102, also referred to as the ADA or the ADA Amendments Act (ADAAA). This federal law prohibits employers from discriminating against individuals with a disability who can perform the essential functions of a job with or without reasonable accommodation. A district should regularly analyze each position's job description to ensure that it identifies the position's essential functions. Consult the board attorney concerning compliance with the ADA.

Superintendent may recommend this paragraph's use when circumstances strongly suggest that the teacher or other licensed employee returned to work intermittently in order to avoid this paragraph's application. This paragraph shall not be considered a limitation on the Board's authority to take any action concerning an employee that is authorized by State and federal law. ⁴

Any employee may be required to have an examination, at the District's expense, by a physician who is licensed in Illinois to practice medicine and surgery in all its branches, an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a physician assistant who has been delegated the authority by his or her supervisor to perform health examinations if the examination is job-related and consistent with business necessity. ⁵

LEGAL REF.: Americans with Disabilities Act, 42 U.S.C. §12102.
105 ILCS 5/10-22.4, 5/24-12, and 5/24-13.
Elder v. School Dist. No.127 1/2, 208 N.E.2d 423 (Ill.App.1, 1965).
School District No. 151 v. ISBE, 507 N.E.2d 134 (Ill.App.1, 1987).

CROSS REF.: 5:30 (Hiring Process and Criteria), 5:185 (Family and Medical Leave), 5:250 (Leaves of Absence), 5:330 (Sick Days, Vacation, Holidays, and Leaves)

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

~~⁴ This optional sentence recognizes that the board may take action concerning an employee in situations beyond this policy's scope.~~

⁵ The State law (105 ILCS 5/24-5), allowing boards to require physicals of current employees ~~"from time to time,"~~ has been 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 neither eliminate the risk nor reduce it to an acceptable level (42 U.S.C. §12113; 29 C.F.R. Part 1630.2(r)).

Note that while examination by a spiritual leader/practitioner is sufficient for leaves, the statute does not authorize an examination by a spiritual leader/practitioner for district-ordered physicals of an employee. The difference may present a constitutional issue; contact the board attorney for an opinion if the employee wants to use an examination by a spiritual leader/practitioner.

Educational Support Personnel

Employment At-Will, Compensation, and Assignment ¹

Employment At-Will ²

Unless otherwise specifically provided, District employment is at-will, meaning that employment may be terminated by the District or employee at any time for any reason, other than a reason prohibited by law, or no reason at all. ³ Nothing in School Board policy is intended or should be construed as altering the employment at-will relationship.

Exceptions to employment at-will may include employees who are employed annually, have an employment contract, or are otherwise granted a legitimate interest in continued employment. The Superintendent is authorized to make exceptions to employing ~~non-certificated nonlicensed~~ employees at-will but shall maintain a record of positions or employees who are not at-will. ~~and the reason for the exception~~

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 items on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right.

A collective bargaining agreement may contain provisions that supersede this policy, in which case, the policy might state: "Please refer to the current bargaining agreement between the Educational Support Personnel and the School Board."

While the term "~~educational support personnel~~"² is not defined in the School Code, at least one appellate court and one circuit court decision ~~have~~ found in dicta that the term refers to ~~noncertificated nonlicensed~~ employees, such as clerical workers, custodians, cafeteria workers, bus drivers, and teachers' aides. Laukhuf v. Congerville-Eureka-Goodfield School Dist., 2003 WL 23936148 (Ill.Cir., 2003)(non-precedential); Buckellev v. Georgetown-Ridge Farm Community Unit School Dist., 575 N.E.2d 556 (Ill.App. 4, 1991).

² Illinois law does not specifically create a protected property interest in continued employment for ~~non-certificated nonlicensed~~ employees, except in a reduction in force. However, whether an employee is actually employed at-will depends on the specific facts. This determination is important because the dismissal of an employee having a protected property right in continued employment requires a notice and hearing. Cleveland Bd of Educ. v. Loudermill, 105 S.Ct. 1487 (1985). ~~See also Baird v. Warren Community Unit School Dist. No. 205, 389 F.3d 685 (7th Cir., 2004)(board members denied qualified immunity for denying a dismissed superintendent his procedural due process rights. A 2013 appellate decision that reinforced the existence of at-will employment is Griggsville-Perry Community Unit School Dist. No. 4 v. Illinois Educ. Labor Relations Bd., 963 N.E.2d 332 (Ill.App.4, 2013)(arbitrator exceeded his authority by implying a dismissal standard in the parties' collective-bargaining agreement for an at-will employee).~~

~~Even with this policy,~~ it is safest to presume that all ~~non-certificated nonlicensed~~ employees ~~not covered by a contract~~ are ~~annually at least~~ employed ~~annually~~. This is a good assumption because districts routinely assure next-year employment so that the employee will not qualify for summer unemployment. In addition, annual employment may be created through a collective bargaining agreement, past practice, an employees' handbook, personnel policy manual, or an oral promise. Arneson v. Bd of Trustees, McKendree College, 569 N.E.2d 252 (Ill.App.5, 1991). ~~Keeping accurate records of which positions or employees. Moreover, there are several exceptions to at-will, will help determine including prohibitions against discrimination and retaliatory discharge (Michael v. Precision Alliance Group, 952 N.E.2d 682 (Ill.App.5, 2011)(common law recognizes a cause of action for retaliatory discharge when the level of due process needed employee engaged in the event of a dismissal: protected activity).~~ Consult the ~~district's board~~ attorney for help determining ~~which employees are whether an employee is~~ employed at-will.

A district, by policy or handbook, may not take away a previously given a property interest in continued employment to current employees; only those employees hired afterwards could be affected. Duldulao v. St. Mary of Nazareth Hospital, 483 N.E.2d 956 (Ill.App.1, 1985); Kaiser v. Dixon, 468 N.E.2d 822 (Ill.App.2, 1984).

For a discussion of prohibited dismissal reasons, see 5:10, *Equal Employment Opportunity and Minority Recruitment*. Volunteer firefighters may not be fired for responding to an emergency (50 ILCS 748/).

³ 105 ILCS 5/10-23.5. For more information on RIF, see policy 5:290, *Employment Termination and Suspensions*.

Compensation

The Board will determine salary and wages for educational support personnel. Increments are dependent on evidence of continuing satisfactory performance. An employee covered by the overtime provisions in State or federal law⁴ shall not work overtime without the prior authorization from the employee's immediate supervisor. ⁴ Educational support personnel are paid twice a month. ⁵

Assignment

The Superintendent is authorized to make assignments and transfers of educational support personnel.

LEGAL REF.: 105 ILCS 5/10-22.34 and 5/10-23.5.
Griggsville-Perry Community Unit School Dist. No. 5 v. Illinois Educ. Labor Relations Bd., 963 N.E.2d 332 (Ill.App.4, 2013).
Cook v. Eldorado Community Unit School District, No. 03-MR-32 (Ill.App.5, 2004).
Duldulao v. St. Mary of Nazareth Hospital, 483 N.E. 2d 956 (Ill.App.1, 1985),
aff'd in part and remanded, 505 N.E.2d 314 (Ill. 1987).
Kaiser v. Dixon, 468 N.E. 2d 822 (Ill.App.2, 1984).

CROSS REF.: 5:10 (Equal Employment Opportunity and Minority Recruitment) 5:35
(Compliance with the Fair Labor Standards Act), 5:290 (Educational Support Personnel - Employment Termination and Suspensions), 5:310 (Educational Support Personnel - Compensatory Time-Off)

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

⁴ For information regarding overtime, see ~~IASB sample~~ policy 5:35, *Compliance with the Fair Labor Standards Act*.

⁵ 820 ILCS 115/3. However, the wages of employees who are *exempt* as defined in the Fair Labor Standards Act (FLSA), 29 U.S.C. §201 et seq., may be paid once a month. For a discussion of the FLSA, see 5:35, *Compliance with the Fair Labor Standards Act*.

Educational Support Personnel

Employment Termination and Suspensions ¹

Resignation and Retirement

An employee is requested to provide 2 weeks' notice of a resignation. ² A resignation notice cannot be revoked once given. An employee planning to retire should notify his or her supervisor at least 2 months before the retirement date.

Non-RIF Dismissal ³

The District may terminate an at-will employee at any time for any or no reason, but not for a reason prohibited by State or federal law.

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¹ State or federal law controls this policy's content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. School officials should consult with their attorneys before adopting this policy or taking any action under it.

The local collective bargaining agreement may contain provisions that exceed these requirements. When a policy's subject matter is superseded by a bargaining agreement, the board policy may state, "Please refer to the current [*insert name of educational support CBA*]."

Administrative procedures implementing this policy should include guidelines for exit interviews. These guidelines should include a list of items to discuss with the employee, e.g., the reasons for the termination; how the district could improve its policies, procedures, and working conditions; how to reduce employee turnover; and information about the employee's benefits, including continued health insurance coverage.

² Optional provision:

In most cases, resigning employees are permitted to work until their effective resignation date.

³ If employed at-will, the employee may be dismissed at any time for a non-discriminatory reason unless the dismissal is for a reduction in force. An Illinois appellate decision that reinforced the existence of at-will employment in Illinois is Griggsville-Perry Community Unit School Dist. No. 4 v. Ill. Educ. Labor Relations Bd., 963 N.E.2d 332 (Ill.App.4, 2013)(arbitrator exceeded his authority by implying a dismissal standard in the parties' collective-bargaining agreement for an at-will employee). See policy 5:270, *Employment At-Will, Compensation, and Assignment*. **Important:** whether a specific employee is actually employed at-will depends on the specific facts. This determination is important because the dismissal of an employee having a protected property right in continued employment requires a notice and hearing. *Cleveland Bd of Educ. v. Loudermill*, 105 S.Ct. 1487 (1985). See also *Baird v. Warren Comm. Unit School Dist.*, 389 F.3d 685 (7th Cir., 2004)(because board members denied a dismissed superintendent procedural due process rights, they were denied qualified immunity).

It is safest to presume that all non-certificated employees are employed for the school year because districts routinely assure next-year employment so that the employee will not qualify for summer unemployment. In addition, annual employment may be created through a collective bargaining agreement, past practice, an employees' handbook, personnel policy manual, or an oral promise. Thus, the sample policy addresses those employees "with an annual or longer contract or who otherwise have a legitimate expectation of continued employment." A dismissal at the end of the school year or end of a contract generally requires only minimal due process. A mid-year or mid-contract dismissal will require significantly greater due process.

Even if an employee is at-will, a district should consider giving a dismissal reason. The failure to give a reason may provoke an employee into challenging the dismissal, e.g., by alleging illegal discrimination or retaliation for exercising a protected right or whistleblowing.

Consult the board attorney to determine: (1) which employees are at-will, have annual employment, or have a different expectation for their length of employment, and (2) the level of due process to provide specific employees in the event of a dismissal.

Employees who are employed annually or have a contract, or who otherwise have a legitimate expectation of continued employment, may be dismissed: (1) at the end of the school year or at the end of their respective contract after being provided appropriate notice and after compliance with any applicable contractual provisions, or (2) mid-year or mid-contract provided appropriate due process procedures are provided.

The Superintendent is responsible for making dismissal recommendations to the School Board consistent with the Board's goal of having a highly qualified, high performing staff.

Reduction in Force and Recall 4

~~This section is applicable whenever~~ The Board decides may, as necessary or prudent, decide to decrease the number of educational support personnel or to discontinue some particular type of educational support service and, as a result of that action, ~~an educational support employee is removed, dismissed, or his or her hours are reduced~~ dismiss or reduce the hours of one or more educational support employees. When making decisions concerning reduction in force and recall, the Board will follow Sections 10-22.34c (outsourcing non-instructional services) and 10-23.5 (procedures) of the School Code, to the extent they are applicable and not superseded by legislation or an applicable collective bargaining agreement.

~~The Board shall use a seniority list to determine the order of dismissal or removal. The seniority list, categorized by positions, shows the length of continuing service of each full-time educational support employee. The employee with the shorter length of continuing service within the respective category of position shall be dismissed first.~~

~~Except as provided below, written notice will be given the employee by certified mail, return receipt requested, at least 30 days before the employee is removed or dismissed, or his or her hours are reduced, together with a statement of honorable dismissal and the reason therefore if applicable. The prior written notice will be extended to at least 90 days if the lay off is due to the District entering into a contract with a third party for non-instructional services. The prior written notice will be shortened to at least 5 days before an employee's hours are reduced as a result of an unforeseen reduction in the student population.~~

~~Any vacancies for the following school term or within one calendar year from the beginning of the following school term, shall be offered to the employees so removed or dismissed from that category or any other category of position provided they are qualified to hold such positions.~~

Final Paycheck

A terminating employee's final paycheck will be adjusted for any unused, earned vacation credit. 5 Employees are paid for all earned vacation. Terminating employees will receive their final pay on the

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4 105 ILCS 5/10-23.5 grants educational support personnel significant protection during a RIF. ~~This policy's provisions do not include the rights of the employee's exclusive~~ Unless otherwise defined by a collective bargaining representative because, where employees are represented by an exclusive representative, agreement, the board can define the position categories for a seniority list. Cook v. Eldorado Community Unit School District, 820 N.E.2d 481 (Ill.App.5, 2004). While the bargaining agreement's RIF provision typically includes those rights statute gives boards the discretion to define categories of positions, boards may not define categories differently for lay-off/recall purposes than for other purposes.

105 ILCS 5/10-22.34c governs layoffs as a result of a third party non-instructional services contract. See Community Unit School Dist. No. 5 v. Ill. Educational Labor Relations Board, 12 N.E.3d 120 (Ill.App.4, 2014)(no unfair practice occurred when a school employer outsourced its transportation services and supersedes a board policy dismissed bus drivers as a result of bona fide and legitimate reasons, not anti-union animus, and the district had bargained in good faith with the union.

next regular payday following the date of termination, except that an employee dismissed due to a reduction in force shall receive his or her final paycheck on or before the next regular pay date following the last day of employment. ⁶

Suspension

Except as provided below, the Superintendent is authorized to suspend an employee without pay as a disciplinary measure, during an investigation into allegations of misconduct or pending a dismissal hearing whenever, in the Superintendent's judgment, the employee's presence is detrimental to the District. A disciplinary suspension shall be with pay: (1) when the employee is exempt from the overtime provisions, ⁷ or (2) until an employee with an employment contract for a definite term is provided a notice and hearing according to the suspension policy for professional employees. ⁸

Any criminal conviction resulting from the investigation or allegations shall require the employee to repay to the District all compensation and the value of all benefits received by the employee during the suspension. The Superintendent will notify the employee of this requirement when the employee is suspended. ⁹

LEGAL REF.: 5 ILCS 430 et seq.
105 ILCS 5/10-22.34c and 5/10-23.5.
820 ILCS 105/4a.
[Griggsville-Perry Community Unit School Dist. No. 4 v. Illinois Educ. Labor Relations Bd., 963 N.E.2d 332 \(Ill.App.4, 2013\).](#)

CROSS REF.: 5:240 (Professional Personnel - Suspension), 5:270 (Educational Support Personnel - Employment At-Will, Compensation, and Assignment)

⁵ A district may also adjust an employee's final paycheck for advanced vacation leave, *provided* that the employee agreed to deduct a specified amount of pay equaling the advanced vacation (56 Ill.Admin.Code §300.760). If employees are required to execute such an agreement before taking unearned vacation leave, add the following phrase to this sentence: "or, if the employee agreed in writing, vacation time taken that was not earned."

⁶ These final paycheck requirements are in 105 ILCS 5/10-23.5.

⁷ Employees who are exempt from overtime requirements become eligible for overtime if they are subject to disciplinary suspensions without pay. Auer v. Robbins, 117 S.Ct. 905 (1997). Although the U.S. Dept. of Labor modified this rule in 2004, the Illinois legislature rejected these rule changes (820 ILCS 105/4a). Illinois employers must use the federal rules as they existed on March 30, 2003.

⁸ A suspension of an employee having a protected property right in continued employment requires a notice and hearing. See f/n 3 for additional discussion.

⁹ The repayment requirements in the first sentence of this paragraph are in 5 ILCS 430/5-60(b). The second sentence is optional.

Educational Support Personnel

Sick Days, Vacation, Holidays, and Leaves ¹

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

Sick and Bereavement Leave ²

Full or part-time educational support personnel who work at least 600 hours per year receive 10 paid sick leave days per year. Part-time employees ~~who work at least half time are entitled to will receive sick days on the same basis as full-time employees, but the leave pay will be based on the employee's~~

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

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

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

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

² This section contains the minimum benefits provided by 105 ILCS 5/24-6. Each specified number of days in this section is the statutory minimum. The School Code does not address whether an employee's 10 paid sick leave days are available upon employment, accrued over months, or after working for a certain period of time, e.g., one year. Before adopting this policy or applying its provisions, the district should examine any applicable bargaining agreements. Strict accounting of unused sick days is important to avoid:

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

~~average number of part time hours per week equivalent to their regular workday.~~ Unused sick leave shall accumulate to a maximum of 180 days, including the leave of the current year. ³

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

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

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

Vacation ⁵

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

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

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

Insert the following sentence if a board wants to comply with the IMRF's requirement that public bodies have a written plan allowing eligible employees to convert their eligible accumulated sick leave to service credit upon their retirement (40 ILCS 5/7-139(a)(8); see also IMRF General Memorandum #555 at www.imrf.org/pubs/er_pubs/gen_memos/2007_gm/gm_555.pdf;

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

This policy is the District's written plan allowing eligible employees to convert eligible accumulated sick leave to service credit upon a District employee's retirement under the Illinois Municipal Retirement Fund.

The local collective bargaining agreement may contain this written plan. If it does, the board policy can refer to the agreement.

Please refer to the current [*insert name of CBA or use a generic reference, e.g., 'agreement between the bargaining representative and the School Board'*] for the District's written plan allowing eligible employees to convert eligible accumulated sick leave to service credit upon an employee's retirement under the Illinois Municipal Retirement Fund.

If a district maintains two separate sick leave plans, one for employees under a collective bargaining agreement, and one for non-unionized employees, insert both options.

If either or both options are chosen, add 40 ILCS 5/7-139 to the Legal References.

If the board does not have a written sick leave plan for purposes of IMRF sick leave to service credit conversion or does not wish to include it in the policy, do not include any of the options or add the citation to the Legal Reference.

⁴ 105 ILCS 5/24-6.

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

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

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

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

Holidays ⁷

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

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

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

Personal Leave ⁸

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

1. Except in cases of emergency or unavoidable situations, a personal leave request should be submitted to the Building Principal 3 days before the requested date.

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⁶ Required by 820 ILCS 115/5.

⁷ Holidays are listed in 105 ILCS 5/24-2. For information on the waiver process, see 2:20-E, *Waiver and Modification Request Resource Guide*. Holidays not specified in the statute may be added to the policy; however, boards adding additional holidays should monitor and review to ensure the list remains current.

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

⁸ State law does not address personal leave.

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

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

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

Other Leaves

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

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

LEGAL REF.: 20 ILCS 1805/30.1 et seq.
 105 ILCS 5/10-20.7b, 5/24-2, and 5/24-6.
 820 ILCS 147 and 180/~~1 et seq.~~
School Dist 151 v. ISBE, 507 N.E.2d 134 (Ill.App.1, 1987); Elder v. School Dist. No.127 1/2, 208 N.E.2d 423 (Ill.App.1, 1965).

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

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

¹⁰ Military leave is governed by: The School Code (105 ILCS 5/10-20.7b, 5/24-13, and 5/24-13.1); the Military Leave of Absence Act (5 ILCS 325/ added mandatory leave for "other training or duty required by the United States Armed Forces" and to require the public employer to make-up the difference between military pay and regular compensation); Service Member's Employment Tenure Act (330 ILCS 60/4); Public Employee Armed Services Rights Act (5 ILCS 330/4); National Guard Employment Rights (20 ILCS 1805/30.20); and Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §4301).

Granting General Assembly leave to ESPs is optional.

¹¹ 820 ILCS 147/. See policy 5:250, *Leaves of Absence*, and administrative procedure 5:250-AP, *School Visitation Leave*.

¹² Required by Victims' Economic Security and Safety Act, 820 ILCS 180/, and 56 Ill.Admin.Code §280. Important information about this leave is discussed in the footnotes in policy 5:250, *Professional Personnel - Leaves of Absence*.

¹³ 10 ILCS 5/13-2.5, amended by P.A. 98-691.

Instruction

School Accountability ¹

According to the Illinois General Assembly, the primary purpose of schooling is the transmission of knowledge and culture through which students learn in areas necessary to their continuing development and entry into the world of work. ² To fulfill that purpose, the Illinois State Board of Education prepared State Goals for Learning with accompanying Illinois Learning Standards. ³

The School Board gives priority in the allocation of resources, including funds, time, personnel, and facilities, to fulfilling this purpose.

Quality Assurance

The Board continuously monitors student achievement and the quality of the District's work. The Superintendent shall supervise the following quality assurance components, in accordance with State statute and State Board of Education rules, and continuously keep the Board informed:

1. Prepare each school's annual recognition application and quality assurance appraisal, whether internal or external, to assess each school's continuous school improvement. ⁴
2. If applicable, implement a No Child Left Behind Act plan, including the completion of the NCLB Consolidated Application, and seek Board approval where necessary or advisable. ⁵
3. Continuously assess whether the District and its schools are making adequate yearly progress as defined by State law. ⁶
4. If applicable, develop District and School Improvement Plans, present them for Board approval, submit them to the State Superintendent for verification, and supervise their implementation. If applicable, develop a restructuring plan for any school that remains on academic watch status after a fifth annual calculation. ⁷
5. Prepare a school report card, present it at a regular Board meeting, and disseminate it as provided in State law. ⁸

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¹ State or federal law controls this policy's content.

² 105 ILCS 5/27-1.

³ 23 Ill.Admin.Code §1, Appendix D.

⁴ 105 ILCS 5/2-3.25 - 2-3.25b; 23 Ill.Admin.Code §§1.10(a) and 1.20.

⁵ Omit this item if the district does not receive Title I funds. Title I is part of the Elementary and Secondary Education Act (20 U.S.C. §6301 et seq.). It was amended by No Child Left Behind (NCLB) which was signed on 1-8-02 and officially expired on 9-30-07. NCLB remains in effect due to a continuing resolution.

⁶ 20 U.S.C. §6312 contains the required components of a NCLB plan. ISBE's *Grant and Programs* division administers the NCLB Consolidated Application.

⁶ 105 ILCS 5/2-3.25a; ~~5/2-3.64~~; 5/2-3.64a-5, added by P.A. 98-972; and 23 Ill.Admin.Code §§1.40-1.70, 1.80 & 1.85.

⁷ State requirements for district and school improvement plans as well as restructuring plans are in 105 ILCS 5/2-3.25d and 5/2-3.63; and 23 Ill.Admin.Code §1.85.

⁸ 105 ILCS 5/10-17a. Districts must present the report card at a regular board meeting, post it on the district's website, make it available to newspapers of general circulation in the district, notify parents/guardians of its availability on the district's website, provide it to parents/guardians on request, submit it to the regional superintendent, and otherwise disseminate it as required by State law.

6. In accordance with Sec. 2-3.153 of the School Code, administer at least biennially a survey of learning conditions on the instructional environment within the school to, at minimum, students in grades 6 through 12 and teachers. 9

School Choice for Students Enrolled in a School Identified for Improvement, Corrective Action, or Restructuring 10

This section of the policy is effective only if the choice requirements in federal law are applicable to Illinois. When effective, this section applies to only those students enrolled in a school identified by the Board for school improvement, corrective action, or restructuring as defined by federal law. 11 Those students may transfer to another public school within the District, if any, that has not been so identified. If there are no District schools available into which a student may transfer, the Superintendent or designee shall, to the extent practicable, establish a cooperative agreement with other districts in the area. 12 A student who transfers to another school under this policy may remain at that school until the student completes the highest grade at that school. 13 The District shall provide transportation only until the end of the school year in which the transferring school ceases to be identified for school improvement or subject to corrective action or restructuring. 14 All transfers and notices provided to parents/guardians and transfer requests are governed by State and federal law. 15

When this section of the policy is effective, students from low-income families shall be provided supplemental educational services as provided in federal law if they attend any District school that: (1) failed to make adequate yearly progress for 3 consecutive years, or (2) is subject to corrective action or restructuring. 16

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

9 Required by 105 ILCS 5/2-3.153. The State Superintendent must publicly report on selected indicators of learning conditions resulting from the administration of the instrument at the individual school, district, and State levels.

10 The provisions in this section are required by §1116 of No Child Left Behind (20 U.S.C. §6316; 34 C.F.R. §200.44). Districts that do not receive Title I funds should omit this section. Sample policy 7:30, School Assignment, implements the State law requirement that all districts have a policy governing student transfers within the district. ISBE received a waiver for school year 2015; the future status of choice depends on federal action on any applicable request(s) by ISBE for a Title I waiver. ISBE's website contains information at www.isbe.net/grants/html/choice.htm.

When the federal choice law is effective, school districts must reconcile it with the State law limiting transfers, 105 ILCS 5/10-21.3a. Sample policy 7:30, *School Assignment and Intra-District Transfer*, implements this law.

11 For a school identified for school improvement, see 20 U.S.C. §6316(b)(1)(E)(i) and 34 C.F.R. §200.32; for corrective action, see 20 U.S.C. §6316(b)(7)(C)(i) and 34 C.F.R. §200.42; for restructuring, see 20 U.S.C. §6316(b)(8)(A)(i) and 34 C.F.R. §200.43.

12 20 U.S.C. §6316(b)(11).

13 20 U.S.C. §6316(b)(13).

14 20 U.S.C. §6316(b)(9) and (b)(13).

15 The lowest achieving children from low-income families must receive transfer priority (20 U.S.C. §6316(b)(1)(E)(ii). Federal law provides that transferring students "shall be enrolled in classes and other activities in the public school to which the students transfer in the same manner as all other children at the public school."

16 20 U.S.C. §6316(b)(5)(B), (b)(7)(iii), and (b)(8)(A)(ii). The definition of, and requirements for, supplemental education services are found in 20 U.S.C. §6316(e). Only students from low-income families must receive supplemental education services 20 U.S.C. §6316(e)(12)(A).

ISBE received a waiver for school year 2015; the future status of supplemental educational services depends on federal action on any applicable request(s) by ISBE for a Title I waiver. ISBE's website contains information at www.isbe.net/ses/. ISBE's rules for providers of supplemental educational services are at 23 Ill.Admin.Code Part 675.

LEGAL REF.: No Child Left Behind Act, §1116, 20 U.S.C. §6316.
34 C.F.R. §§200.32, 200.33, 200.42, and 200.43.
105 ILCS 5/2-3.25d, 5/2-3.63, ~~5/2-3.64~~, 5/2-3.64a-5, 5/10-21.3a, and 5/27-1.
23 Ill.Admin.Code Part 1, Subpart A: Recognition Requirements.

CROSS REF.: 6:170 (Title I Programs), 6:340 (Student Testing and Assessment Program), 7:10
(Equal Educational Opportunities)

Instruction

Curriculum Development ¹

Adoption ²

The Superintendent shall recommend a comprehensive curriculum that is aligned with:

1. The District's educational philosophy and goals,
2. Student needs as identified by research, demographics, and student achievement and other data,
3. The knowledge, skills, and abilities required for students to become life-long learners,
4. The minimum requirements of State and federal law and regulations for curriculum and graduation requirements, ³
5. The curriculum of non-District schools that feed into or from a District school, provided that the necessary cooperation and information is available, ⁴
6. The Illinois State Learning Standards and any District learning standards, and
7. Any required State or federal student testing.

The School Board will adopt, upon recommendation of the Superintendent, a curriculum that meets the above criteria. ⁵

Experimental Educational Programs and Pilot Projects ⁶

The Superintendent may recommend experimental educational programs and/or pilot projects for Board consideration. Proposals must include goals, material needs, anticipated expenses, and an evaluation process. The Superintendent shall submit to the Board periodic progress reports for programs that exceed one year in duration and a final evaluation with recommendation upon the program's completion.

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.

² This section is not dictated by State or federal law, but reflects board work regarding curriculum. Each board should dwell over this section to ensure it articulates the board's intent.

³ State law mandates certain courses of study, but local school boards may set requirements exceeding State law-mandated courses of study (105 ILCS 5/10-20.8 and 5/27-1 et seq.).

⁴ Alternative for unit districts:

5. The curriculum District-wide and articulated across all grade levels.

⁵ The following is an alternative for boards that do not want the sample language's degree of delegation:

The School Board will consider the Superintendent's recommendation and adopt a curriculum that meets the above criteria.

⁶ Experimental educational programs may require the approval of the State Board of Education and an agreement with the affected exclusive bargaining agent (105 ILCS 5/10-19). State law addresses pilot programs for teachers in relation to clinical schools, restructuring, and providing special assistance and support to beginning teachers (105 ILCS 5/2-3.52A).

Single-Gender Classes and Activities ⁷

The Superintendent may recommend a program of nonvocational single-gender classes and/or activities to provide diverse educational opportunities and/or meet students' identified educational needs. Participation in the classes or activities must be voluntary, both genders must be treated with substantial equality, and the program must otherwise comply with State and federal law and with Board policy 7:10, *Equal Educational Opportunities*. The Superintendent must periodically evaluate any single-gender class or activity to ensure that: (1) it does not rely on overly broad generalizations about the different talents, capabilities, or preferences of either gender, and (2) it continues to comply with State and federal law and with Board policy 7:10, *Equal Educational Opportunities*.

Development ⁸

The Superintendent shall develop a curriculum review program to monitor the current curriculum and promptly suggest changes to make the curriculum more effective, to take advantage of improved teaching methods and materials, and to be responsive to social change, technological developments, student needs, and community expectations.

The Superintendent shall report to the Board as appropriate, the curriculum review program's efforts to:

1. Regularly evaluate the curriculum and instructional program.
2. Ensure the curriculum continues to meet the stated adoption criteria.
3. Include input from a cross-section of teachers, administrators, parents/guardians, and students, representing all schools, grade levels, disciplines, and specialized and alternative programs.
4. Coordinate with the process for evaluating the instructional program and materials.

Curriculum Guides and Course Outlines

The Superintendent shall develop and provide subject area curriculum guides to appropriate staff members.

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⁷ The U.S. Dept. of Education (DOE) amended its Title IX regulation to make it easier for schools to have single-sex classes and extracurricular activities (34 C.F.R. Part 106). Title IX generally protects students from discrimination on the basis of sex. However, the DOE added flexibility to its rules on single-sex classes and activities back in 2006, citing research that suggests that some students benefit in single-sex classes. The rules are very specific and should be reviewed with the board attorney when designing single-sex classes or activities.

Consult the board attorney about accommodation issues for transgender or gender non-conforming students in single sex classes. State law prohibits gender-based discrimination, including transgender and gender non-conforming students (775 ILCS 5/5-101(11); 775 ILCS 5/1-103(O-1) and 23 Ill.Admin.Code §1.240). Federal law prohibits exclusion and discrimination on the basis of sex. 20 U.S.C. §1681(a), Title IX of the Education Amendments of 1972. According to the U.S. Department of Education's Office for Civil Rights (OCR) and the U.S. Department of Justice, Title IX protects lesbian, gay, bisexual, and transgender students, from gender discrimination. See 7:10-AP, *Accommodating Transgender Students or Gender Non-Conforming Students*.

⁸ The last two sections of this policy provide a process for the board to monitor the extent that its ends for curriculum development are being pursued. However, a board may be concerned that these sections offend the board's efforts to delegate authority to the superintendent to manage the district. If so, these sections should be deleted. See the IASB's "Foundational Principles of Effective Governance,"

www.iasb.com/principles_popup.cfm.

LEGAL REF.: 34 C.F.R. Part 106.
105 ILCS 5/10-20.8 and 5/10-19.

CROSS REF.: 6:60 (Curriculum Content), 6:65 (Student Social and Emotional Development),
6:70 (Teaching About Religions), 6:80 (Teaching About Controversial Issues)
6:100 (Using Animals in the Educational Program), 6:110 (Programs for
Students At Risk of Academic Failure and/or Dropping Out of School and
Graduation Incentives Program), 6:120 (Education of Children with Disabilities),
6:130 (Program for the Gifted), 6:140 (Education of Homeless Children), 6:145
(Migrant Students), 6:150 (Home and Hospital Instruction), 6:160 (English
Language Learners), 6:170 (Title I Programs), 6:180 (Extended Instructional
Programs), 7:10 (Equal Educational Opportunities), 7:15 (Student and Family
Privacy Rights)