

## Students

### Equal Educational Opportunities 1

Equal educational and extracurricular opportunities shall be available for all students without regard to color, race, nationality, religion, sex, sexual orientation, ancestry, age, physical or mental disability, gender identity,<sup>2</sup> status of being homeless, immigration status, order of protection status, actual or potential marital or parental status, including pregnancy.<sup>3</sup> Further, the District will not knowingly enter into agreements with any entity or any individual that discriminates against students on the basis of sex or any other protected status, except that the District remains viewpoint neutral when granting access to school facilities under School Board policy 8:20, *Community Use of School Facilities*.<sup>4</sup> Any student may file a discrimination grievance by using Board policy 2:260, *Uniform Grievance Procedure*.<sup>5</sup>

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

<sup>1</sup> State or federal law requires this subject matter be covered by policy and controls this policy's content.

<sup>2</sup> Adopting separate policies or inserting policy statements about accommodations and inclusion of transgender students in the educational program are unsettled areas of the law. Some lawyers believe doing so may open boards to equal protection challenges for not creating separate policies for other protected statuses, e.g., race, nationality, religion, etc. **Consult the board attorney if your board wishes to adopt a separate policy or insert policy statements about accommodations and inclusion of transgender students.**

See 7:10-AP<sup>1</sup>, *Accommodating Transgender Students or Gender Non-Conforming Students* for a case-by-case procedure that school officials may use when a student requests an accommodation based upon his or her gender identity.

For a list of policies that address the equal educational opportunities, health, safety, and general welfare of students within the District, see 7:10-E, *Equal Educational Opportunities Within the School Community*.

<sup>3</sup> Many civil rights laws guarantee equal education opportunities; see citations in the Legal References.

In 23 Ill.Admin.Code §1.240, ISBE states that "no school system may deny access to its schools or programs to students who lack documentation of their immigration status or legal presence in the United States, and no school system may inquire about the immigration status of a student (*Plyler v. Doe*, 457 U.S. 202 (1982))."

The Ill. Human Rights Act ([IHRA](#)) and an ISBE rule prohibit schools from discriminating against students on the basis of *sexual orientation* and *gender identity*.<sup>2</sup> (775 ILCS 5/5-101(11); 23 Ill.Admin.Code §1.240). *Sexual orientation* is defined as the "actual or perceived heterosexuality, homosexuality, bisexuality, or gender related identity, whether or not traditionally associated with the person's designated sex at birth." (775 ILCS 5/1-103(O-1)). *Gender identity* is included in the definition of sexual orientation in the Act. The Act permits schools to maintain single-sex facilities that are distinctly private in nature, e.g., restrooms and locker rooms. (775 ILCS 5/5-103). 775 ILCS 5/1-102(A) makes *order of protection status* a protected category.

The ~~Ill. Human Rights Act~~[IHRA](#)'s jurisdiction is specifically limited to: (1) failing to enroll an individual, (2) denying access to facilities, goods, or services, or (3) failing to take corrective action to stop severe or pervasive harassment of an individual. (775 ILCS 5/5-102.2).

<sup>4</sup> 23 Ill.Admin.Code §200.40(b) prohibits entering into agreements with entities that discriminate against students on the basis on sex. Section 200.80(a)(4) contains an exception for single sex youth organizations, e.g., Boy and Girl Scouts. Note that the U.S. Supreme Court refused to apply N.J.'s public accommodation law to the Boy Scouts because forcing the Scouts to accept a homosexual as a member would violate the Scouts' freedom of expressive association. *Boy Scouts of America v. Dale*, [420 S.Ct. 244](#) [6530 U.S. 640](#) (2002). When deciding whether to allow non-school groups to use its facilities, a public school district may not engage in viewpoint discrimination. *Good News Club v. Milford Central Sch. ee1*, [121 S.Ct. 2093](#) [533 U.S. 98](#) (2001).

<sup>5</sup> Districts must have a grievance procedure. (See Legal References following policy). Absent a specific statute or rule, there is no consensus on whether students have the right to appeal a board's decision to the Regional Superintendent and thereafter to the State Superintendent pursuant to 105 ILCS 5/2-3.8.

## Sex Equity <sup>6</sup>

No student shall, based on sex, sexual orientation, or gender identity be denied equal access to programs, activities, services, or benefits or be limited in the exercise of any right, privilege, advantage, or denied equal access to educational and extracurricular programs and activities.

Any student may file a sex equity complaint by using Board policy 2:260, *Uniform Grievance Procedure*. A student may appeal the Board's resolution of the complaint to the Regional Superintendent (pursuant to 105 ILCS 5/3-10) and, thereafter, to the State Superintendent of Education (pursuant to 105 ILCS 5/2-3.8). <sup>7</sup>

## Administrative Implementation

The Superintendent shall appoint a Nondiscrimination Coordinator.<sup>8</sup> The Superintendent and Building Principal shall use reasonable measures to inform staff members and students of this policy and grievance procedure. <sup>9</sup>

---

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

<sup>6</sup> Every district must have a policy on sex equity. ~~(23 Ill.Admin.Code §200.40(b)). The Ill. Human Rights Act (IHRA), Public Accommodation section, prohibits schools from: (1) failing to enroll an individual, (2) denying a individual access to its facilities, goods, or services, or (3) failing take corrective action to stop severe or pervasive harassment of an individual (775 ILCS 5-102.2), on the basis of the individual's sex or sexual orientation, among other classifications (775 ILCS 5/5-101). Districts must periodically evaluate their policies and practices to identify and eliminate sex discrimination as well as evaluate course enrollment data to identify disproportionate enrollment based on sex. In-service training for all staff members is required. ~~(23 Ill.Admin.Code §1.420).~~~~

With some exceptions, Title IX guarantees that "[n]o person in the United States shall, on the basis of gender, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance..." ~~(20 U.S.C. §§1681(a)). Equal participation and equal opportunity in athletics is addressed in the U.S. Dept. of Education's implementing rules. ~~(34 C.F.R. §106.41).~~ Generally, when a school district offers a team for one gender but not for the other, a member of the excluded gender is allowed to try out for the team unless the sport is a *contact sport*. Contact sports are boxing, wrestling, rugby, ice hockey, football, basketball, and other sports involving bodily contact. The rules also list the factors that determine whether equal opportunities are available to both genders. These include: whether the selection of athletics accommodates the interests and abilities of both genders; equipment and supplies; scheduling; opportunity to receive coaching and academic tutoring; locker rooms, practice facilities, and fields; and publicity.~~

~~105 ILCS 5/10-20.60 (final citation pending), added by P.A. 100-29, eff. 1-1-18, requires public schools to provide reasonable accommodations to breastfeeding students. See 7:10-AP-2, *Accommodating Breastfeeding Students*, for specific reasonable accommodations under Illinois law.~~

~~105 ILCS 5/10-20.60 (final citation pending), added by P.A. 100-163, eff. 1-1-18, requires school districts to make feminine hygiene products (defined as tampons and sanitary napkins for use in connection with the menstrual cycle) available, at no cost to students, in the bathrooms of school buildings serving students in grades 6 through 12. **Note:** The statute does not delineate between types of bathrooms (student, staff, girls, boys, unisex, etc.). Consult with the board attorney about implementing this law.~~

<sup>7</sup> Districts must have a grievance procedure and must tell students that they may appeal a board's resolution of a sex equity complaint to the Regional Superintendent and, thereafter, to the State Superintendent. ~~(23 Ill.Admin.Code § 200.40).~~ Student complaints regarding breastfeeding accommodations must also be processed in accordance with these procedures. See 2:260, *Uniform Grievance Procedure* at f/n 5.

Use this alternative for districts in suburban Cook County: replace "Regional Superintendent" with "appropriate Intermediate Service Center." Use this alternative for districts in suburban Cook County: replace "Regional Superintendent" with "appropriate Intermediate Service Center." ~~P.A. 96-893 abolished the Regional Office of Education for Suburban Cook County and transferred its duties and powers to Intermediate Service Centers.~~

<sup>8</sup> Required by regulations implementing Title IX. ~~(34 C.F.R. Part 106.8).~~

<sup>9</sup> Required by regulations implementing Title IX. ~~(34 C.F.R. Part 106; 23 Ill.Admin.Code §200.40).~~ Comprehensive Faculty and student handbooks can provide required notices, along with other important information, to recipients. Handbooks can be developed by the building principal, but should be reviewed and approved by the superintendent and board. Faculty handbooks may contain working conditions and be subject to mandatory collective bargaining.

LEGAL REF.: 20 U.S.C. §1681 et seq., Title IX of the Education Amendments of 1972, implemented by 34 C.F.R. Part 106.  
29 U.S.C. §791 et seq., Rehabilitation Act of 1973.  
42 U.S.C. §11431 et seq., McKinney-Vento Homeless Assistance Act.  
Good News Club v. Milford Central Sch., 533 U.S. 98 (2001).  
Ill. Constitution, Art. I, §18.  
105 ILCS 5/3.25b, 5/3.25d(b), 5/10-20.12, 5/10-20.60 (P.A.s 100-29 and 100-163, final citations pending), 5/10-22.5, and 5/27-1.  
775 ILCS 5/1-101 et seq., Illinois Human Rights Act.  
775 ILCS 35/5, Religious Freedom Restoration Act.  
23 Ill.Admin.Code §1.240 and Part 200.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 6:65 (Student Social and Emotional Development), 7:20 (Harassment of Students Prohibited), 7:50 (School Admissions and Student Transfers To and From Non-District Schools), 7:60 (Residence), 7:130 (Student Rights and Responsibilities), 7:160 (Student Appearance), 7:165 (Student Uniforms), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:250 (Student Support Services), 7:330 (Student Use of Buildings - Equal Access), 7:340 (Student Records), 8:20 (Community Use of School Facilities)