

Commented [DJ1]: Please note the large areas of blank space on this page and page 3 are intentional due to formatting styles within **PRESS** materials. The spacing appears normal once the footnotes are removed

General Personnel

Equal Employment Opportunity and Minority Recruitment¹

DRAFT

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

¹ Federal and State law (see the policy's Legal References) require that all districts have a policy on equal employment opportunities and control this policy's content. **This is a complex, confusing, and highly litigated area of the law; consult the board attorney for advice on the application of these laws to specific situations.**

The School District shall provide equal employment opportunities² to all persons regardless of their race;³ color; creed; religion;⁴ national origin; sex;⁵ sexual orientation;⁶ age;⁷ ancestry; marital status;⁸

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

² *Equal employment opportunities* apply to virtually all terms and conditions of employment, e.g., discharge, hire, promotion, pay, demotion, and benefits (see the policy's Legal References). The Ill. Constitution protects the following categories from discrimination in employment: race, color, creed, national ancestry, sex, and handicap. Art. I, §§17, 18, and 19. The Ill. Human Rights Act (IHRA) protects the following categories from discrimination in employment, whether *actual* or *perceived*: race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability, military status, order of protection status, sexual orientation, pregnancy, reproductive health decisions, unfavorable discharge from military service, arrest record, conviction record (unless authorized by law), citizenship status, ~~and~~ work authorization status. 775 ILCS 5/1-102(A), amended by P.A.s 102-233, and 103-785, eff. 1-1-25; 5/1-103, amended by P.A.s 102-419, and 102-1102 and 103-785, eff. 1-1-25; and 775 ILCS 5/2-103.1. The IHRA also prohibits employers from using artificial intelligence (AI) in a manner that subjects employees to unlawful discrimination, and it requires employers to provide notice to employees when it uses AI with respect to recruitment, hiring, promotion, renewal of employment, selection for training, discharge, discipline, tenure, or the terms, privileges, or conditions of employment. 775 ILCS 5/2-102(L), added by P.A. 103-804, eff. 1-1-26. For resources on the use of AI in employment decisions, see www.eeoc.gov/ai.

The IHRA requires employers to annually disclose to the Ill. Dept. of Human Rights (IDHR) certain information about adverse judgments and administrative rulings where there was a finding of sexual harassment or unlawful discrimination under any federal, State, or local law, as well as data regarding settlement agreements, if requested by an IDHR investigator. 775 ILCS 5/2-108 (scheduled to be repealed on 1-1-30).

Title VII of the Civil Rights Act of 1964 prohibits discrimination because of an individual's race, color, religion, sex, or national origin. 42 U.S.C. §2000e *et seq.*, amended by The Lilly Ledbetter Fair Pay Act of 2009 (LLFPA), Pub.L. 111-2.

Under the Workplace Transparency Act (WTA) (820 ILCS 96/), employers may not, as a condition of employment or continued employment, prevent prospective or current employees from making truthful statements or disclosures about alleged unlawful employment practices, including discrimination. *Id.* at 96/1-25.

The LLFPA clarifies that a discriminatory compensation decision or other practice occurs each time an employee is paid or receives a last benefits check pursuant to the discriminatory compensation decision as opposed to only from the time when the discriminatory compensation decision or other practice occurred. The Act has no legislative history available to define what the phrase *or other practice* might mean beyond a discriminatory compensation decision; however, in a guidance document, the U.S. Equal Employment Opportunity Commission (EEOC) states that practices "may include employer decisions about base pay or wages, job classifications, career ladder or other noncompetitive promotion denials, tenure denials, and failure to respond to requests for raises." See *Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009* (2014), at: www.eeoc.gov/laws/guidance/equal-pay-act-1963-and-lilly-ledbetter-fair-pay-act-2009.

The Ill. Equal Pay Act of 2003 (EPA) offers additional protection by prohibiting the payment of wages to one sex less than the opposite sex or to an African-American less than a non-African-American *for the same or substantially similar work*. 820 ILCS 112/. The Ill. Dept. of Labor (IDOL) enforces the EPA. The EPA also prohibits employers from requesting or requiring applicants to disclose wage or salary history as a condition of being considered for employment or as a condition of employment. *Id.* at 112/10(b-5). If an applicant voluntarily offers such information without prompting, an employer still cannot use that information in making an offer or determining future pay. See sample administrative procedure 5:30-AP1, *Interview Questions*, for sample permissible inquiries on this topic. Employers may seek wage or salary history from an applicant's current or former employer if that information is a matter of public record under the Freedom of Information Act (FOIA); however, districts that wish to undertake such searches should exercise caution; the fact a district seeks out publicly available wage information could still be used against it in a pay discrimination claim. *Id.* at 112/10(b-10). Consult the board attorney for further guidance.

While not exhaustive, other laws protecting these and additional classifications are named in subsequent footnotes.

³ The IHRA defines race to include traits associated with race, including, but not limited to, hair texture and protective hairstyles such as braids, locks, and twists. 775 ILCS 5/1-103(M-5), added by P.A. 102-1102. The law allows employers to implement dress codes or adopt grooming policies that include restrictions on attire, clothing, or facial hair to maintain workplace safety or food sanitation. 775 ILCS 5/2-102(E-5). Title VII does not have a definition of race, but EEOC guidance provides that "[r]ace discrimination includes discrimination on the basis of ancestry or physical or cultural characteristics associated with a certain race, such as skin color, hair texture or styles, or certain facial features." See the EEOC's *Questions and Answers about Race and Color Discrimination in Employment*, at: www.eeoc.gov/laws/guidance/questions-and-answers-about-race-and-color-discrimination-employment.

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

⁴ 775 ILCS 5/2-102 of the IHRA, amended by P.A. 102-233, contains a *religious discrimination* subsection. It expressly prohibits employers from requiring a person to violate a sincerely held religious belief to obtain or retain employment unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious belief, practice, or observance without undue hardship on the conduct of the employer's business. Religious beliefs include, but are not limited to: the wearing of any attire, clothing, or facial hair in accordance with the requirements of his/her religion. 775 ILCS 5/2-102(E-5). Employers may, however, enact a dress code or grooming policy that restricts attire, clothing, or facial hair to maintain workplace safety or food sanitation. *Id.*

Regarding accommodation of an employee's religious practice under EEOA, the U.S. Supreme Court held in the case *Groff v. DeJoy*, 600 U.S. 447 (2023), that *undue hardship* means a burden that is "substantial in the overall context of an employer's business", rather than a mere *de minimis* standard. *Id.* at 468. In addition to the IHRA and Title VII (also discussed in f/n 2), see 775 ILCS 35/, Religious Freedom Restoration Act.

⁵ Discrimination on the basis of sex under Title VII includes discrimination on the basis of sexual orientation or transgender status. *Bostock v. Clayton Cnty.*, 140 S.Ct. 1731 (2020); *Hively v. Ivy Tech*, 853 F.3d 339 (7th Cir. 2017). In addition to the IHRA and Title VII (discussed in f/n 2), see Title IX of the Education Amendments of 1972 (Title IX). 20 U.S.C. §1681 *et seq.*; 34 C.F.R. Part 106. See sample policy 2:265, *Title IX Grievance Procedure*. The federal Equal Pay Act prohibits an employer from paying persons of one sex less than the wage paid to persons of the opposite sex for equal work. 29 U.S.C. §206(d). See f/n 2 above for more information on State equal pay protections, including on the basis of sex. The LLFPA defines *date of underpayment* as each time wages are underpaid. Employees have one year from the time they become aware of the underpayment to file a complaint with the IDOL. 820 ILCS 112/15(b).

⁶ *Sexual orientation* means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity; it does not include a physical or sexual attraction to a minor by an adult. 775 ILCS 5/1-103(O-1).

⁷ Age Discrimination in Employment Act (ADEA) (29 U.S.C. §621 *et seq.*), amended by LLFPA (see f/n 2). 29 C.F.R. Part 1625, amended the EEOC regulations under ADEA to reflect the U.S. Supreme Court's decision in *General Dynamic Systems, Inc. v. Cline*, 540 U.S. 581 (2004), holding the ADEA permits employers to favor older workers because of age. Thus, favoring an older person over a younger person is not unlawful discrimination, even when the younger person is at least 40 years old.

⁸ 105 ILCS 5/10-22.4 and 775 ILCS 5/1-103(Q). The term *marital status* means an individual's legal status of being married, single, separated, divorced, or widowed. 775 ILCS 5/1-103(J). This statutory definition does not encompass the identity of one's spouse. Thus, school districts may adopt no-spouse policies. *Boaden v. Dept. of Law Enforcement*, 171 Ill.2d 230 (Ill. 1996).

arrest record;⁹ military status; order of protection status;¹⁰ unfavorable military discharge;¹¹ citizenship status provided the individual is authorized to work in the United States;¹² work authorization status;¹³ use of lawful products while not at work;¹⁴ being a victim of domestic violence, sexual violence, gender

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

⁹ Districts may not make employment decisions on the basis of arrest history, but may use job-disqualifying criminal convictions provided specific conditions are met. 775 ILCS 5/2-103 and 5/2-103.1. See *fn 219*, below. The Job Opportunities for Qualified Applicants Act, [820 ILCS 75/15](#), prohibits an employer from asking about a criminal record until the employer determines that the applicant is qualified for the position; however, this does not apply when employers are required to exclude applicants with certain criminal convictions from employment. School employers should limit their requests for criminal convictions to *job-disqualifying* convictions, as permitted by the IHRA. 775 ILCS 5/2-103.1, *added by: 820 ILCS 75/45*. See also the IDHR's guidance, *Conviction Record Protection – Frequently Asked Questions*, at: <https://dhr.illinois.gov/conviction-record-protection-frequently-asked-questions.html> and the EEOC's guidance, *Consideration of Arrest and Conviction Records in Employment Decisions* (2012), at: www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

¹⁰ 775 ILCS 5/1-103(Q). The term *order of protection status* means a person protected under an order of protection issued pursuant to the Ill. Domestic Violence Act of 1986 (750 ILCS 60/), Article 112A of the Code of Criminal Procedure of 1963 (725 ILCS 5/112A-1.5), the Stalking No Contact Order Act (740 ILCS 21/), the Civil No Contact Order Act (740 ILCS 22/), or an order of protection issued by a court of another state. 775 ILCS 5/1-103(K-5).

¹¹ *Military status* means a person's status on active duty or in status as a veteran in the U.S. Armed Forces, veteran of any reserve component of U.S. Armed Forces, or current member or veteran of the Ill. Army National Guard or Ill. Air National Guard. 775 ILCS 5/1-103(J-1). *Unfavorable military discharge* does *not* include those characterized as RE-4 or *dishonorable*. 775 ILCS 5/1-103(P). The Uniformed Services Employment and Reemployment Rights Act of 1994 prohibits employers from discriminating or retaliating against any person for reasons related to past, present, or future service in a *uniformed service*. 38 U.S.C. §4301 *et seq.*

¹² 775 ILCS 5/1-102(C). According to the Immigration Reform and Control Act of 1986, all employers must verify that employees are either U.S. citizens or authorized to work in the U.S. 8 U.S.C. §1324(a) *et seq.*

¹³ 775 ILCS 5/2-102(A), amended by P.A. 102-233. *Work authorization status* means the status of being a person born outside of the United States, and not a U.S. citizen, who is authorized by the federal government to work in the United States. 775 ILCS 5/2-101(L), added by P.A. 102-233. Under the IHRA, it is a civil rights violation for an employer to refuse to honor a legal work authorization; however, employers are not required to sponsor any applicant or employee to obtain or modify work authorization status, unless required by federal law. 775 ILCS 5/2-102(G), amended by P.A. 102-233; 775 ILCS 5/2-104(D), added by P.A. 102-233.

¹⁴ The Right to Privacy in the Workplace Act prohibits discrimination based on use of lawful products, e.g., alcohol, cannabis, and tobacco, off premises during non-working hours. 820 ILCS 55/5.

violence, or any other crime of violence;¹⁵ genetic information;¹⁶ physical or mental handicap or disability, if otherwise able to perform the essential functions of the job with reasonable accommodation;¹⁷ pregnancy, childbirth, or related medical conditions;¹⁸ [reproductive health decisions](#);¹⁹ credit history, unless a satisfactory credit history is an established bona fide occupational

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

¹⁵ 820 ILCS 180/30, amended by P.A.s 102-487 and 102-890, Victims' Economic Security and Safety Act (VESSA). *Gender violence* means: (1) one or more acts of violence or aggression that are a criminal offense under State law committed, at least in part, on the basis of a person's actual or perceived sex or gender, (2) a physical intrusion or invasion of a sexual nature under coercive conditions that is a criminal offense under State law, or (3) a threat to commit one of these acts. 820 ILCS 180/10(12.5). In certain circumstances, an employer can be held liable for gender-related violence that occurs in the workplace if the employer failed to investigate complaints or failed to supervise, train, or monitor an employee who engaged in the violence. 740 ILCS 82/11, added by P.A. 103-202, Gender Violence Act. *Other crime of violence* under VESSA means conduct prohibited by 720 ILCS 5/9 (homicide), 720 ILCS 5/11 (sex offenses), 720 ILCS 5/12 (bodily harm), 720 ILCS 5/26.5 (harassing and obscene communications), 720 ILCS 5/29D (terrorism), and 720 ILCS 5/33A (armed violence), or similar provision of the Criminal Code of 1961. 820 ILCS 180/10(2.5), added by P.A. 102-487.

An employer is prohibited from discriminating against any individual, e.g., an applicant for employment, because he or she "is an employee whose employer is subject to Section 21 of the Workplace Violence Prevention Act." The Workplace Violence Prevention Act allows an employer to seek a *workplace protection restraining order* when there is a credible threat of violence at the workplace. 820 ILCS 275/. The law requires the employer seeking a *workplace protection restraining order* to notify the employee who is a victim of *unlawful violence*. 820 ILCS 275/21.

¹⁶ Illinois' Genetic Information Privacy Act (GIPA) (410 ILCS 513/25) and Title II of Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. §2000ff et seq.). Both laws protect job applicants and current and former employees from discrimination based on their genetic information. Note that GIPA provides greater protections to Illinois employees than Title II of GINA. GIPA prohibits employers from penalizing employees who do not disclose genetic information or do not choose to participate in a program requiring disclosure of the employee's genetic information. See ¶n 12 in sample policy 2:260, *Uniform Grievance Procedure*, for the definition of genetic information and a detailed description of both statutes, including of Title I of GINA affecting the use of genetic information in health insurance. The EEOC vacated certain 2016 ADA and GINA wellness program regulations following an adverse court ruling, 83 Fed. Reg. 65296. Those rules provided guidance to employers on the extent to which they could use incentives (such as discounted health plan costs) to encourage employees to participate in wellness programs that asked for employee and family health information. Consult the board attorney for guidance regarding specific application of ADA and GINA and how they integrate with other related laws, e.g., the Family Medical Leave Act and other State laws governing time off for sickness and workers' compensation.

¹⁷ Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §12101 et seq.), amended by the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) (Pub. L. 110-325) and modified by the LLFPA; Rehabilitation Act of 1973 (29 U.S.C. §701 et seq.).

¹⁸ 775 ILCS 5/2-102(I). Employers must provide reasonable accommodations to employees with conditions related to pregnancy, childbirth, or related conditions. 775 ILCS 5/2-102(J). Guidance from the IDHR is available at: <https://dhr.illinois.gov/publications/pregnancy-rights.html>. Employers are required to post a notice summarizing the right to be free from unlawful discrimination and the right to certain reasonable accommodations. 775 ILCS 5/2-102(K). The IDHR is required to prepare such a notice, retrievable from its website, which employers may use.

Federal law also prohibits employers from discriminating against employees and applicants on the basis of pregnancy, childbirth, or related medical conditions. 42 U.S.C. §2000e(k). Similar to the IHRA, the federal Pregnant Workers Fairness Act (PWFA) (42 U.S.C. §2000g et seq.), added by Pub.L. 117-328, and implemented by 29 C.F.R. Part 1636, requires employers to provide reasonable accommodations to an employee's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship. [For further information about implementation of the PWFA, see the EEOC's Summary of Key Provisions of EEOC's Final Rule to Implement the PWFA.](#) at: www.eeoc.gov/summary-key-provisions-eeocs-final-rule-implement-pregnant-workers-fairness-act-pwfa. Pregnant workers with pregnancy-related impairments may also have disabilities for which they may be entitled to reasonable accommodation under the ADA. Guidance from the EEOC is available at: www.eeoc.gov/pregnancy-discrimination. State law also prohibits the State, which includes school districts, from interfering with or discriminating against an individual's fundamental right to continue a pregnancy or to have an abortion. 775 ILCS 55/.

¹⁹ 775 ILCS 5/1-102(A) and 5/1-103(O), amended by P.A. 103-785, eff. 1-1-25. *Reproductive health decisions* means a person's decisions regarding their use of: contraception; fertility or sterilization care; assisted reproductive technologies; miscarriage management care; healthcare related to the continuation or termination of pregnancy; or prenatal, intranatal, or postnatal care. Id. at 5/1-103(O-2).

requirement of a particular position;²⁰ conviction record, unless authorized by law;²¹ [family responsibilities](#);²² or other legally protected categories.^{23 24 25 26} No one will be penalized solely for

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

²⁰ 820 ILCS 70/, Employee Credit Privacy Act. Unless a satisfactory credit history is an *established bona fide occupational requirement* of a particular position, an employer may not: (1) refuse to hire, discharge, or otherwise discriminate against an individual with respect to employment because of the individual's credit history or credit report; (2) inquire about an applicant's or employee's credit history; or (3) order or obtain an applicant's or employee's credit report from a consumer reporting agency. The Act identifies circumstances that permit a satisfactory credit history to be a job requirement, such as, the position's duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more. *Id.* at 70/10.

²¹ 775 ILCS 5/2-103.1(A). The IHRA prohibits an employer from *disqualifying* or taking other *adverse action* against an applicant or employee based on a *conviction record* unless: (1) otherwise authorized by law; (2) there is a *substantial relationship* between the criminal offense and the employment sought; or (3) granting the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. *Id.* Disqualification or adverse action includes refusal to hire, segregation, and actions with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges, or conditions of employment. *Id.* If a board wants to terminate or take other adverse action against a *current* district employee based in whole or in part on a conviction record, it still must comply with all applicable statutory, policy, and bargaining agreement provisions. Boards should consult the board attorney to ensure all legal obligations are met.

Districts that wish to disqualify or take other adverse action against an applicant or employee based on a conviction record must first engage them in an *interactive assessment*, providing the individual with the opportunity to submit evidence in mitigation or to dispute the accuracy of the conviction record. See sample policy 5:30, *Hiring Process and Criteria*, at f/n 5, and sample administrative procedure 5:30-AP2, *Investigations*, for more information.

²² [775 ILCS 5/2-102\(A\), amended by P.A. 103-797, eff. 1-1-25, prohibits an employer from refusing to hire, segregating, harassing, or making other employment-related decisions on the basis of an employee's family responsibilities. Family responsibilities means an employee's actual or perceived provision of personal care to a covered family member, as those terms are defined in the Employee Sick Leave Act, 820 ILCS 191/5.](#)

²³ Insert the following optional sentence (775 ILCS 5/1-103(A) and 29 U.S.C. §631):

Age, as used in this policy, means the age of a person who is at least 40 years old.

²⁴ Insert the following optional provision (29 U.S.C. §705(10)(A)-(B), (20)(C)(v), (20)(D) and 42 U.S.C. §12114):

Handicap and disability, as used in this policy, excludes persons:

1. Currently using illegal drugs;
 2. Having a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, are unable to perform the duties of the job; or
 3. Whose current alcohol use prevents them from performing the job's duties or constitutes a direct threat to the property or safety of others.
- Persons who have successfully completed or are participating in a drug rehabilitation program are considered *disabled*.

²⁵ Districts may not make residency in the district a condition of employment for teachers or educational support personnel. 105 ILCS 5/24-4.1, 5/10-23.5. This ban on residency requirements for teachers applies only to instructional personnel, and not, for example, to assistant principals. *Owen v. Kankakee Sch. Dist.*, 261 Ill.App.3d 298 (3rd Dist. 1994). Districts also may not ask an applicant, or the applicant's previous employer, whether the applicant ever received, or filed a claim for, benefits under the Workers' Compensation Act or Workers' Occupational Diseases Act. 820 ILCS 55/10(a). Districts are also prohibited from requiring, requesting, or coercing an employee or potential employee to provide a user name and password or any password or other related account information to gain or demand access to his or her personal online account. 820 ILCS 55/10(b). While the law does not prohibit employers from viewing public information, consult the board attorney before engaging in this practice.

²⁶ School districts must accommodate employees who choose to continue breastfeeding after returning to work. See 740 ILCS 137/, Right to Breastfeed Act; 820 ILCS 260/, Nursing Mothers in the Workplace Act (NMWA); and 29 U.S.C. §218d, added by Pub.L. 117-328. At least one court has ruled an implied private right of action may exist under the NMWA. *Spriesch v. City of Chicago*, 2017 WL 4864913 (N.D.Ill. 2017). See sample language for a personnel handbook in sample administrative procedure 5:10-AP, *Workplace Accommodations for Nursing Mothers*.

his or her status as a registered qualifying patient or a registered designated caregiver for purposes of the Compassionate Use of Medical Cannabis Program Act, 410 ILCS 130/.²⁷

Persons who believe they have not received equal employment opportunities should report their claims to the Nondiscrimination Coordinator and/or a Complaint Manager under Board policy 2:260, *Uniform Grievance Procedure*, or in the case of denial of equal employment opportunities on the basis of race, color, or national origin, Board policy 2:270, *Discrimination and Harassment on the Basis of Race, Color, and National Origin Prohibited*. These individuals are listed below. No employee or applicant will be discriminated or retaliated against because he or she: (1) requested, attempted to request, used, or attempted to use a reasonable accommodation as allowed by the Illinois Human Rights Act, or (2) initiated a complaint, was a witness, supplied information, or otherwise participated in an investigation or proceeding involving an alleged violation of this policy or State or federal laws, rules or regulations, provided the employee or applicant did not make a knowingly false accusation nor provide knowingly false information.²⁸

Administrative Implementation

The Superintendent shall appoint a Nondiscrimination Coordinator for personnel who shall be responsible for coordinating the District's nondiscrimination efforts. The Nondiscrimination Coordinator may be the Superintendent or a Complaint Manager under Board policy 2:260, *Uniform*

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

²⁷ 410 ILCS 130/40; 77 Ill.Admin.Code Part 946. To legally use medical cannabis, an individual must first become a registered qualifying patient. Their use of cannabis, e.g., permissible locations, is governed by the Compassionate Use of Medical Cannabis Program Act, 410 ILCS 130/. There are many situations in which no one, even a registered qualifying patient, may possess or use cannabis except as provided under *Ashley's Law* (105 ILCS 5/22-33), including in a school bus or on the grounds of any preschool, or primary or secondary school. 410 ILCS 130/30(a)(2) & (3). See sample policy 5:50, *Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition*, at f/n 9 for further discussion.

²⁸ 775 ILCS 5/6-101, amended by P.A. 103-472, ~~eff. 8-1-24~~. Discrimination on the basis of a request for or use of a reasonable accommodation is a civil rights violation under the IHRA. *Id.* Most discrimination laws prohibit retaliation against employees who oppose practices made unlawful by those laws, including, for example, Title VII, Title IX, ADA, ADEA, VESSA, the EPA, and the Ill. Whistleblower Act (IWA).

The IWA ~~specifically~~ prohibits employers from retaliating against employees ~~who for (1) disclosing or threaten to disclose information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information about an employer's activity, policy, or practice discloses a violation of that the employee believes, in good faith: (1) violates a State or federal law, rule, or regulation, or (2) poses a substantial and specific danger to employees, public health, or safety. (740 ILCS 174/15(b), amended by P.A. 103-867, eff. 1-1-25.); (2) disclosing information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding where the employee has reasonable cause to believe that the information reveals a violation of a State or federal law, rule or regulation (740 ILCS 174/15(a)); (3) refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation, including, but not limited to, violations of FOIA (740 ILCS 174/20); and (4) disclosing or attempting to disclose public corruption or wrongdoing (740 ILCS 174/20.1). The definition of retaliation is expanded to include other retaliation and threatening retaliation. 740 ILCS 174/20.1, 20.2. See 740 ILCS 174/15, 20, 20.1, and 20.2, amended by P.A. 103-867, eff. 1-1-25, for other specific categories of retaliation prohibited by the IWA.~~

The Ill. False Claims Act defines *State* to include school districts. 740 ILCS 175/2(a). Thus, boards may seek a penalty from a person for making a false claim for money or property. 740 ILCS 175/4. For information regarding the IWA and the tort of retaliatory discharge, see *Thomas v. Guardsmark*, 487 F.3d 531 (7th Cir. 2007)(discussing the elements of retaliatory discharge and IWA); *Sherman v. Kraft General Foods, Inc.*, 272 Ill.App.3d 833 (4th Dist. 1995)(finding employee who reported asbestos hazard had a cause of action for retaliatory discharge).

Grievance Procedure. The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator.²⁹

The Superintendent shall insert into this policy the names, office addresses, email addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers.³⁰

Nondiscrimination Coordinator:³¹

Name

Address

Email

Telephone

Complaint Managers:

Name

Address

Email

Telephone

Name

Address

Email

Telephone

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

²⁹ The Nondiscrimination and Title IX Coordinator(s) need not be the same person. If the district uses a separate Title IX Coordinator who does not also serve as the Nondiscrimination Coordinator, delete "~~The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator.~~" insert a hard return to create a new paragraph, and insert "The Superintendent shall appoint a Title IX Coordinator to coordinate the District's efforts to comply with Title IX." Then, list the Title IX and Nondiscrimination Coordinators' names and contact information separately in this policy.

³⁰ Title IX regulations require districts to designate and authorize at least one employee to coordinate their efforts to comply with Title IX and to refer to that employee as the *Title IX Coordinator*. 34 C.F.R. §106.8(a). Districts must identify the Title IX Coordinator by name, office address, email address, and telephone number. Id. See f/ns 22 and 23 in sample policy 2:260, *Uniform Grievance Procedure*.

While the names and contact information are required by law to be listed, they are not part of the adopted policy and do not require board action. This allows for additions and amendments to the names and contact information when necessary. It is important for updated names and contact information to be inserted into this policy and regularly monitored.

³¹ Best practice is that throughout the district's board policy manual, the same individual be named as Nondiscrimination Coordinator. In contrast, Complaint Managers identified in individual policies may vary depending upon local district needs.

The Superintendent shall also use reasonable measures to inform staff members and applicants that the District is an equal opportunity employer, such as, by posting required notices and including this policy in the appropriate handbooks. ³²

Minority Recruitment ³³

The District will attempt to recruit and hire minority employees. The implementation of this policy may include advertising openings in minority publications, participating in minority job fairs, and recruiting at colleges and universities with significant minority enrollments. This policy, however, does not require or permit the District to give preferential treatment or special rights based on a protected status without evidence of past discrimination.

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

³² In addition to notifying employees of the Uniform Grievance Procedure, a district must notify them of the person(s) designated to coordinate the district's compliance with Title IX and the Rehabilitation Act of 1973. 34 C.F.R. §§106.8(a), 104.8(a). The Nondiscrimination Coordinator may be the same individual for both this policy and sample policy 7:10, *Equal Educational Opportunities*, as well as a Complaint Manager for sample policy 2:260, *Uniform Grievance Procedure*. A comprehensive faculty handbook can provide required notices, along with other important information, to recipients. The handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and school board. Any *working conditions* contained in the handbook may be subject to mandatory collective bargaining.

³³ All districts must have a policy on minority recruitment. 105 ILCS 5/10-20.7a. Unlike minority recruitment efforts, affirmative action plans are subject to significant scrutiny because of the potential for reverse discrimination. The U.S. Constitution's guarantee of equal protection prohibits school districts from using racial hiring quotas without evidence of past discrimination. See 29 C.F.R. §1608.1 *et seq.* (EEOC's guidelines for affirmative action plans); Wygant v. Jackson Bd. of Ed., 476 U.S. 267 (1986) (The goal of remedying societal discrimination does not justify race-based layoffs.); City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) (Minority contractor quota struck; quotas must be narrowly tailored to remedy past discrimination and the city failed to identify the need for remedial action and whether race-neutral alternatives existed.).

The IHRA states that it shall not be construed as requiring any employer to give preferential treatment or special rights based on sexual orientation or to implement affirmative action policies or programs based on sexual orientation. 775 ILCS 5/1-101.1.

LEGAL REF.: 8 U.S.C. §1324a et seq., Immigration Reform and Control Act.
20 U.S.C. §1681 et seq., Title IX of the Education Amendments of 1972; 34 C.F.R. Part 106.
29 U.S.C. §206(d), Equal Pay Act.
29 U.S.C. §218d, Fair Labor Standards Act.
29 U.S.C. §621 et seq., Age Discrimination in Employment Act.
29 U.S.C. §701 et seq., Rehabilitation Act of 1973.
38 U.S.C. §4301 et seq., Uniformed Services Employment and Reemployment Rights Act (1994).
42 U.S.C. §1981 et seq., Civil Rights Act of 1991.
42 U.S.C. §2000d et seq., Title VI of the Civil Rights Act of 1964; 34 C.F.R. Part 100.
42 U.S.C. §2000e et seq., Title VII of the Civil Rights Act of 1964; 29 C.F.R. Part 1601.
42 U.S.C. §2000ff et seq., Genetic Information Nondiscrimination Act of 2008.
42 U.S.C. §2000gg et seq., Pregnant Workers Fairness Act; [29 C.F.R. Part 1636](#).
42 U.S.C. §2000e(k), Pregnancy Discrimination Act.
42 U.S.C. §12111 et seq., Americans with Disabilities Act, Title I.
Ill. Constitution, Art. I, §§17, 18, and 19.
105 ILCS 5/10-20.7, 5/10-20.7a, 5/10-21.1, 5/10-22.4, 5/10-23.5, 5/22-19, 5/24-4, 5/24-4.1, and 5/24-7.
410 ILCS 130/40, Compassionate Use of Medical Cannabis Program Act.
410 ILCS 513/25, Genetic Information Privacy Act.
740 ILCS 174/, Ill. Whistleblower Act.
775 ILCS 5/1-103, 5/2-101, 5/2-102, 5/2-103, 5/2-103.1, 5/2-104(D) and 5/6-101, Ill. Human Rights Act.
775 ILCS 35/, Religious Freedom Restoration Act.
820 ILCS 55/10, Right to Privacy in the Workplace Act.
820 ILCS 70/, Employee Credit Privacy Act.
820 ILCS 75/, Job Opportunities for Qualified Applicants Act.
820 ILCS 112/, Ill. Equal Pay Act of 2003.
820 ILCS 180/30, Victims' Economic Security and Safety Act.
820 ILCS 260/, Nursing Mothers in the Workplace Act.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 2:265 (Title IX Grievance Procedure), 2:270 (Discrimination and Harassment on the Basis of Race, Color, and National Origin Prohibited), 5:20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and Criteria), 5:40 (Communicable and Chronic Infectious Disease), 5:50 (Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition), 5:70 (Religious Holidays), 5:180 (Temporary Illness or Temporary Incapacity), 5:200 (Terms and Conditions of Employment and Dismissal), 5:250 (Leaves of Absence), 5:270 (Employment At-Will, Compensation, and Assignment), 5:300 (Schedules and Employment Year), 5:330 (Sick Days, Vacation, Holidays, and Leaves), 7:10 (Equal Educational Opportunities), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 8:70 (Accommodating Individuals with Disabilities)

Students

Student Appearance¹

A student's appearance, including dress and hygiene, must not disrupt the educational process or compromise standards of health and safety. The District does not prohibit hairstyles historically associated with race, ethnicity, or hair texture, including, but not limited to, protective hairstyles such as braids, locks, and twists.² The District also does not prohibit the right of a student to wear or accessorize the student's graduation attire with items associated with the student's cultural, ethnic, or

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

¹ Required by 105 ILCS 5/10-22.25b, amended by P.A.s 102-360 and 103-463, for recognition under 105 ILCS 5/2-3.25. For districts to receive recognition from the Ill. State Board of Education (ISBE), they must provide assurances of compliance with the *Jett Hawkins Law* (hairstyles) and P.A. 103-463 addressing graduation attire; this policy's second and third sentences do that. Ill. State Board of Education (ISBE) resources on the *Jett Hawkins Law* are available at: www.isbe.net/jethawkinslaw. ISBE will have resource materials on P.A. 103-463 at its website by 7-1-24. ISBE's *Guidance on Display of Graduation Attire and Inclusion of Culturally Appropriate Regalia* (June 2024) is available at: www.isbe.net/Documents/Graduation-Attire-Guidance.pdf. State or federal law also controls this policy's content.

105 ILCS 5/10-22.25b, amended by P.A.s 102-360 and 103-463, specifically authorizes a school board to adopt a school uniform or dress code policy. **There are hundreds of decisions on dress codes and uniform policies, making it imperative that a board contact its attorney for assistance in applying the law to specific fact situations.**

Generally, if a student's dress has sufficient communicative content, it will warrant First Amendment protection. If protected, a school's ability to regulate the dress will be analyzed according to *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503 (1969) – it may be regulated only if it would substantially disrupt school operations or interfere with the right of others. In *Brandt v. Bd. of Educ. of City of Chicago*, 420 F.Supp.2d 921 (N.D.Ill. 2006), *earlier decision*, 326 F.Supp.2d 916 (N.D.Ill. 2004), an Illinois federal court upheld a school's authority to punish students for wearing t-shirts portraying a one-handed boy; the court said: "A school need not tolerate student speech that is inconsistent with the school's basic educational mission even though the First Amendment would protect similar speech or expressive conduct outside of the school setting. This holding is suspect after the Seventh Circuit decision in *Zamecnik v. Indian Prairie Sch. Dist. #204*, 636 F.3d 874 (7th Cir. 2011). There the court held that the school district violated students' free speech rights by forbidding them from wearing during school hours a T-shirt saying "Be Happy, Not Gay."

A school may regulate student dress that does not have sufficient communicative content to receive free speech protection, provided the regulation is not arbitrary or excessive. Although many courts have ruled similarly with respect to grooming, e.g., hair length, and non-earring piercings, the Seventh Circuit, the federal appellate court that governs Illinois, has struck down school regulations governing hair length and earrings (See *Breen v. Kahl*, 419 F.2d 1034 (7th Cir. 1969); *Crews v. Clones*, 432 F.2d 1259 (7th Cir. 1970) (exclusion of long-haired student from class constituted denial of equal protection to male students); *Arnold v. Carpenter*, 459 F.2d 939 (7th Cir. 1972); *Holsapple v. Woods*, 500 F.2d 49 (7th Cir. 1974) (limitation of ruling recognized by *Hayden ex rel. v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569 (7th Cir. 2014) (recognizing school's right to set policy); *Olesen by Olesen v. Bd. of Educ. Dist. 228*, 676 F.Supp. 820, 822 (N.D.Ill. 1987) (male students have a liberty interest in wearing an earring to school). But see *Blau v. Fort Thomas Public Sch. Dist.*, 401 F.3d 381 (6th Cir. 2005) (upheld a Kentucky middle school's student dress code that prohibited visible body piercing other than ears). A school's uniform policy was upheld in *Alwood v. Clark and Belleville Twp. High Sch. Dist. 201*, 2005 WL 2001317 (S.D.Ill. 2005).

² For boards that want to expand upon the law's requirement of race, ethnicity, or hair texture, amend this sentence as follows:

"The District does not prohibit hairstyles ~~or hair textures~~ historically associated with race, ethnicity, ~~or hair texture~~, ~~or any other protected classes under Board policy 7:10, Equal Educational Opportunities~~, including, but not limited to, protective hairstyles such as braids, locks, and twists, ~~nor does it prohibit hairstyles historically associated with any other protected status under Board policy 7:10, Equal Educational Opportunities.~~"

If the board chooses this expansion and also uses policy 7:165, *School Uniforms*, ensure that this option aligns with the option in 7:165's f/n 10.

Formatted: Not Strikethrough

religious identity or other characteristic or category protected under the Ill. Human Rights Act, 775 ILCS 5/1-103(Q).³ Students who disrupt the educational process or compromise standards of health and safety must modify their appearance. Procedures for guiding student appearance will be developed by the Superintendent or designee and included in the *Student Handbook(s)*.⁴

LEGAL REF.: 105 ILCS 5/2-3.25 and 5/10-22.25b.
Tinker v. Des Moines Indep. Sch. Dist., 393 U.S. 503 (1969).

CROSS REF.: 7:10 (Equal Educational Opportunities), 7:130 (Student Rights and Responsibilities), 7:165 (School Uniforms), 7:190 (Student Behavior)

DRAFT

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

³ 105 ILCS 5/10-22.25b, amended by P.A.s 102-360 and 103-463. 775 ILCS 5/1-103(Q), which is referenced in 105 ILCS 5/10-22.25b, prohibits unlawful discrimination based on a person's actual or perceived race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service. [See also f/n 1, above, for more information.](#)

⁴ A comprehensive Student Handbook can provide notice to parents and students of the school's conduct rules, extracurricular and athletic participation requirements, and other important information. The Handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and board.

Members of the Ill. Principals Assoc. may subscribe to the IPA's Model Student Handbook Service. While this service is not a handbook *per se*, it provides principals with quick, user-friendly access to model student handbook provisions that are attorney drafted and fully aligned with IASB's policy services. For more information, see www.ilprincipals.org/msh/. See also sample exhibit 7:190-E2, *Student Handbook Checklist*.

Students

School Uniforms ¹

Students are encouraged to wear school uniforms to school on all school attendance days, in order to maintain and promote orderly school functions, student safety, and a positive learning environment.² The Building Principal is authorized to designate days on which this uniform policy is relaxed.³

The Superintendent or designee shall designate a school-wide uniform after receiving input from school staff members, parents, and interested community members.⁴ Students may:⁵

1. Display religious messages on items of clothing to the same extent they are permitted to display other messages;
2. Wear attire that is part of the student's religious practice;

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 concerns an area in which the law is unsettled. Boards may adopt a school uniform policy, provided it is "necessary to maintain the orderly process of a school function or prevent endangerment of student health or safety." 105 ILCS 5/10-22.25b, amended by P.A.s 102-360 (*Jett Hawkins Law*) and P.A. 103-463 (graduation attire).

² Alternatively, the board may designate certain individual attendance centers.

A voluntary school uniform policy permits students to freely choose whether and under what circumstances they will wear the uniform. A voluntary policy allows the district to gauge parental support—something that is vital to the policy's success. In addition, a voluntary policy does not implicate the First Amendment.

Boards may adopt a mandatory uniform policy, with or without an *opt-out* provision. An opt-out provision allows a student to be excused from the policy because of an objection from a parent/guardian based on cultural, religious, or other reasons. While the constitutionality of a mandatory uniform policy is disputed, the inclusion of an opt-out provision reduces vulnerability to constitutional attack. For districts desiring a mandatory uniform policy, substitute this provision for the first sentence (eliminate the 2nd sentence if no opt-out provision is wanted):

Students are required to wear school uniforms to school on all attendance days, unless otherwise indicated by the Building Principal, in order to maintain and promote orderly school functions, student safety, and a positive learning environment. This policy will be waived for any student whose parent/guardian provides the Board with a signed statement detailing the grounds for their objection.

³ Optional; eliminate this sentence if the board wants to enforce the policy every day.

⁴ Boards may allow each school to designate its own uniform or designate a district-wide uniform, as the following alternative provides:

The Superintendent or designee shall designate a district-wide uniform after receiving input from school staff members, parents, and interested community members.

⁵ A uniform policy must accommodate students whose religious beliefs are substantially burdened by a uniform requirement. Religious messages may not be singled out for suppression; they must be subject to the same rules as generally apply to other messages. For more information, see U.S. Dept. of Education's publication:

www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

3. Wear or display expressive items, such as a button, as long as such items do not contribute to disruption by substantially interfering with discipline or with the rights of others;⁶ and
4. Wear the uniform of a nationally recognized youth organization such as Boy Scouts or Girl Scouts on regular meeting days.

No student shall be denied attendance at school, penalized, or otherwise subject to compliance measures for failing to wear a uniform because of:

1. Personal choice;⁷
2. Insufficient time in which to comply with this policy;⁸
3. Financial hardship;⁹
4. Hairstyles, including hairstyles historically associated with race, ethnicity, or hair texture, including, but not limited to, protective hairstyles such as braids, locks, and twists;¹⁰
5. Graduation attire or accessories to graduation with the student's cultural, ethnic, or religious identity or other characteristic or category protected under the Ill. Human Rights Act, 775 ILCS 5/1-103(Q);¹¹ or
6. Religious objection by the student's parent/guardian to the student's compliance with this policy or the applicable uniform, if they have provided the Superintendent with a signed statement detailing their objection.¹²

Any student eligible for reduced or free lunches, or for a waiver of student fees, is eligible for financial assistance toward the purchase of school uniforms. The Superintendent or designee shall develop a process for informing parents/guardians of the availability of financial assistance and a method to process financial requests.¹³

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

⁶ In 1969, the U.S. Supreme Court recognized that students enjoy First Amendment free speech rights in school but that schools have the authority to limit student speech that might reasonably be predicted to cause a material and substantial disruption or invasion of the rights of others. *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503 (1969). The manner in which this ruling applies to uniform policies is still unsettled. See *DePinto v. Bayonne Bd. of Ed.*, 514 F.Supp.2d 633 (D.-N.J. 2007) (a school district was enjoined from disciplining elementary students who wore a button protesting the district's mandatory uniform policy). However, many decisions have upheld a compulsory uniform policy. See *Blau v. Ft. Thomas Public Sch. Dist.*, 401 F.3d 381 (6th Cir. 2005); *Canady v. Bossier Parish Sch. Bd.*, 240 F. 3d 437 (5th Cir 2001); *Littlefield v. Forney Sch. Dist.*, 268 F.3d 275 (5th Cir. 2001); *Jacobs v. Clark Cnty. Sch. Dist.*, 373 F.Supp.2d 1162 (D. Nev. 2005); *Phoenix Elementary Sch. Dist. v. Green*, 943 P. 2d 836 (Az.Ct. App. 1997); *Vines v. Zion Sch. Dist.*, 2002 WL 58815 (N.D.Ill. 2002); *Alwood v. Clark*, 2005 WL 2001317 (S.D.Ill. 2005); *Bear v. Fleming*, 714 F.Supp.2d 972 (W.D. S.D. 2010) (requiring students to wear a cap and gown while receiving their diplomas is reasonably related to the school board's legitimate interest in maintaining order). **Before adopting a uniform policy, a board should discuss this issue with its attorney.**

⁷ Omit *personal choice* if the district has a mandatory uniform policy.

⁸ 105 ILCS 5/10-22.25b.

⁹ *Id.*

¹⁰ *Id.*, amended by P.A. 102-360 (*Jett Hawkins Law*). See f/n 1 in sample policy 7:160, *Student Appearance*.

If the board expanded upon the law's requirement of race, ethnicity, or hair texture, in policy 7:160, *Student Appearance*, amend number 4 as follows to align with it:

"Hairstyles, including hairstyles historically associated with race, ethnicity, or hair texture, ~~or any other protected classes under Board policy 7:10, Equal Educational Opportunities~~, including but not limited to, protective hairstyles such as braids, locks, and twists, ~~or hairstyles historically associated with any other protected status under Board policy 7:10, Equal Educational Opportunities~~."

¹¹ *Id.*, amended by P.A. 103-463. See f/ns 1 & 3 in sample policy 7:160, *Student Appearance*.

¹² *Id.* Remove this provision if a mandatory uniform policy is adopted with a provision allowing the parents/guardians to obtain an opt-out (see f/n 2).

¹³ *Id.* State law requires the board to establish "criteria and procedures under which the board will accommodate the needs of or otherwise provide appropriate resources to assist a student from an indigent family."

No student shall be suspended or expelled from school, or receive a lowered academic grade, because of failing to comply with this policy. ¹⁴

The Superintendent or designee shall develop incentives and positive reinforcement measures to encourage full compliance. ¹⁵

LEGAL REF: 105 ILCS 5/2-3.25 and 5/10-22.25b.

CROSS REF: 4:140 (Waiver of Student Fees), 7:160 (Student Appearance), 7:190 (Student Behavior)

DRAFT

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

¹⁴ For those boards choosing a mandatory uniform policy with no opt-out provision, replace this sentence with the following:

Disciplinary action may be taken for failure to comply with this policy. Before initiating disciplinary action, a conference with the parent(s)/guardian(s) shall be requested to solicit cooperation and support.

¹⁵ The following alternative takes the board into operational matters but it ensures that the nuts and bolts issues will be covered by administration:

The Superintendent or designee shall develop incentives and positive reinforcement measures to encourage full compliance and shall communicate information to students and parents/guardians concerning:

1. The uniform's description and its availability;
2. The requirements for jackets and outer garments;
3. Optional articles of attire, if any;
4. Compliance measures;
5. Methods to facilitate recycling of uniforms within the school community; and
6. Notice of uniform sales and lists of competitive prices from vendors of uniform articles.