

School Board

Powers and Duties of the School Board; Indemnification

The major powers and duties of the School Board include, but are not limited to:

1. Organizing the Board after each consolidated election by electing officers and establishing its regular meeting schedule and, thereafter, taking action during lawfully called meetings to faithfully fulfill the Board's responsibilities in accordance with State and federal law. ¹
2. Formulating, adopting, and modifying Board policies, at its sole discretion, subject only to mandatory collective bargaining agreements and State and federal law. ²
3. Employing a Superintendent and other personnel, making employment decisions, dismissing personnel, including determining whether an employee has willfully or negligently failed to report an instance of suspected child abuse or neglect as required by 325 ILCS 5/3 and establishing an equal employment opportunity policy that prohibits unlawful discrimination. ⁴
4. Directing, through policy, the Superintendent, in his or her charge of the District's administration. ⁵
5. Approving the annual budget, tax levies, major expenditures, payment of obligations, annual audit, and other aspects of the District's financial operation; and making available a statement of financial affairs as provided in State law. ⁶
6. Entering contracts using the public bidding procedure when required. ⁷

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. School board powers listed in the School Code are not exclusive, meaning that a board may exercise "all other powers not inconsistent with this Act that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board." 105 ILCS 5/10-20. This policy's intent is to list the *major* statutory powers and duties – not all of them. See also 105 ILCS 5/10-20.5 and 5/10-21.

For power/duty #1, see 105 ILCS 5/10-16 and 5/10-16.5 and policies 2:80, *Board Member Oath and Conduct*, and 2:210, *Organizational School Board Meeting*. Boards that elect officers for one-year terms and/or hold organizational meetings yearly, replace the default text in number 1 with the following:

Annually organizing the Board by electing officers and establishing its regular meeting schedule and, thereafter, taking action during lawfully called meetings to faithfully fulfill the Board's responsibilities in accordance with Board policy and State and federal law.

² 105 ILCS 5/10-20.5 and policy 2:240, *Board Policy Development*; 105 ILCS 5/10-21; and 115 ILCS 5/, III. Educational Labor Relations Act.

³ 105 ILCS 5/10-23.12(c), added by P.A. 101-531; 105 ILCS 5/21B-75(b), amended by P.A. 101-531. For further discussion see f/n 22 in policy 5:90, *Abused and Neglected Child Reporting*. **Note:** While 105 ILCS 5/10-23.12(c) permits boards to *immediately* dismiss certain employees upon the determination that he or she has willfully or negligently failed to report, this does not negate a board's responsibility to provide employees with due process required by the law and district policies and procedures. Consult the board attorney for further guidance.

⁴ 105 ILCS 5/10-21.4 (employing superintendent); 5/10-20.7 and 5/10-21.1 (teachers); 5/10-21.9 (criminal history records checks); 5/10-22.34 (non-certificated personnel (this statute still uses certificated rather than licensed)); 5/10-22.4 (dismissing teachers for cause); and 5/10-23.5 and 5/24-12 (reduction in force). See the policies in the **PRESS** Policy Reference Manual Sections 3, General School Administration, and 5, Personnel.

⁵ 105 ILCS 5/10-16.7.

⁶ 105 ILCS 5/10-20.19 and 5/17-1 *et seq.* See policies in the **PRESS** Policy Reference Manual Section 4, Operational Services.

⁷ 105 ILCS 5/10-20.21. See policy 4:60, *Purchases and Contracts*.

7. Providing, constructing, controlling, and maintaining adequate physical facilities; making school buildings available for use as civil defense shelters; and establishing a resource conservation policy. ⁸
8. Establishing an equal educational opportunities policy that prohibits unlawful discrimination. ⁹
9. Approving the curriculum, textbooks, and educational services. ¹⁰
10. Evaluating the educational program and approving School Improvement and District Improvement Plans. ¹¹
11. Presenting the District report card and School report card(s) to parents/guardians and the community; these documents report District, School, and student performance. ¹²
12. Establishing and supporting student behavior policies designed to maintain an environment conducive to learning, including deciding individual student suspension or expulsion cases brought before it. ¹³
13. Establishing attendance units within the District and assigning students to the schools. ¹⁴
14. Establishing the school year. ¹⁵
15. Requiring a moment of silence to recognize veterans during any type of school event held at a District school on November 11. ¹⁶
16. Providing student transportation services pursuant to State law. ¹⁷
17. Entering into joint agreements with other boards to establish cooperative educational programs or provide educational facilities. ¹⁸
18. Complying with requirements in the Abused and Neglected Child Reporting Act (ANCRA). Specifically, each individual Board member must, if an allegation is raised to the member during an open or closed Board meeting that a student is an abused child as defined in ANCRA ~~the Act~~, direct or cause the Board to direct the Superintendent or other equivalent

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⁸ For the first clause, see 105 ILCS 5/10-20.6, 5/10-20.12, 5/10-22.10, 5/10-22.35A, and 5/10-22.36; and policy 4:150, *Facility Management and Building Programs*. For the second clause, see 105 ILCS 5/10-22.35. For the third clause, see 105 ILCS 5/10-20.19c; and policy 4:70, *Resource Conservation*.

⁹ Many civil rights laws guarantee equal educational opportunities; see policy 7:10, *Equal Educational Opportunities*.

¹⁰ 105 ILCS 5/10-20.8. See policies in the **PRESS Policy Reference Manual** Section 6, Instruction.

¹¹ 105 ILCS 5/2-3.25d, which addressed school and district improvement plans, was repealed by P.A. 100-1046. 105 ILCS 5/2-3.25f, and 105 ILCS 5/27-1. For more specific information about school and district improvement plans, see policy 6:10, *Educational Philosophy and Objectives* and f/n 6 in policy 6:15, *School Accountability*.

¹² 105 ILCS 5/10-17a, amended by P.A.s 100-364, 100-465, 100-807, ~~and 100-863~~, 100-1121, and 101-68, eff. 1-1-20. This statute details the requirements for *presenting* the district report card and school report card(s), including presenting them at a regular school board meeting and posting them on the district's website.

¹³ 105 ILCS 5/10-22.6, amended by P.A.s 100-105, 100-810, and 100-1035. See policies 7:190, *Student Behavior*; 7:200, *Suspension Procedures*; and 7:210, *Expulsion Procedures*.

¹⁴ 105 ILCS 5/10-21.3 and 5/10-22.5. See policy 7:30, *Student Assignment and Intra-District Transfer*.

¹⁵ 105 ILCS 5/10-19, amended by P.A.s 100-465 and 101-12, and 23 Ill.Admin.Code §1.420, amended at 42 Ill. Reg. 11512. See policy 6:20, *School Year Calendar and Day*.

¹⁶ Recognizing veterans on Nov. 11 is required by 105 ILCS 5/10-20.46.

¹⁷ 105 ILCS 5/10-22.22. See policy 4:110, *Transportation*.

¹⁸ 105 ILCS 5/10-22.31a. See policy 1:20, *District Organization, Operations, and Cooperative Agreements*.

school administrator to comply with the Act¹⁹ AN CRA's requirements concerning the reporting of child abuse. ¹⁹

19. Communicating the schools' activities and operations to the community and representing the needs and desires of the community in educational matters. ²⁰

Indemnification ²¹

To the extent allowed by law, the Board shall defend, indemnify, and hold harmless School Board members, employees, volunteer personnel (pursuant to 105 ILCS 5/10-22.34, 10-22.34a and 10-22.34b), mentors of certified staff (pursuant to 105 ILCS 5/2-3.53a, 2-3.53b, and 105 ILCS 5/21A-5 *et seq.*), and student teachers who, in the course of discharging their official duties imposed or authorized by law, are sued as parties in a legal proceeding. Nothing herein, however, shall be construed as obligating the Board to defend, indemnify, or hold harmless any person who engages in criminal activity, official misconduct, fraud, intentional or willful and wanton misconduct, or acts beyond the authority properly vested in the individual.

LEGAL REF.: 105 ILCS 5/10, 5/17-1, and 5/27-1.
115 ILCS 5/, Ill. Educational Labor Relations Act.
325 ILCS 5/, Abused and Neglected Child Reporting Act.

CROSS REF.: 1:10 (School District Legal Status), 1:20 (District Organization, Operations, and Cooperative Agreements), 2:10 (School District Governance), 2:80 (Board Member Oath and Conduct), 2:140 (Communications To and From the Board), 2:210 (Organizational School Board Meeting), 2:240 (Board Policy Development), 4:60 (Purchases and Contracts), 4:70 (Resource Conservation), 4:100 (Insurance Management), 4:110 (Transportation), 4:150 (Facility Management and Building Programs), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:90 (Abused and Neglected Child Reporting), 6:10 (Educational Philosophy and Objectives), 6:15 (School Accountability), 6:20 (School Year Calendar and Day), 7:10 (Equal Educational Opportunities), 7:30 (Student Assignment and Intra-District Transfer), 7:190 (Student Behavior), 7:200 (Suspension Procedures), 7:210 (Expulsion Procedures), 8:10 (Connection with the Community), 8:30 (Visitors to and Conduct on School Property)

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¹⁹ 325 ILCS 5/4(d), amended by P.A. 101-564, eff. 1-1-20. *Abuse* and *neglect* are defined in 325 ILCS 5/3; for a *disabled adult student* see 20 ILCS 1305/1-17(b).

²⁰ See policy 8:10, *Connection with the Community*.

²¹ 105 ILCS 5/10-20.20 (duty to indemnify) and 5/10-22.3 (duty to insure against loss or liability). These statutes identify the same individuals for protection except that the indemnification statute includes mentors of certified staff members. See f/n 3 in policy 4:100, *Insurance Management*.

Public officials or employees who are sued or incur loss because of the performance of their duties imposed or authorized by law on behalf of the public entity are entitled to indemnification. *McQuillan on Municipal Corporations* §12.137 (3rd ed. 1973). Public employees who must defend themselves in actions based upon the performance of official duties are entitled to indemnification. *Wayne Twsp. Bd. of Auditors v. Ludwig*, 154 Ill.App.3d 899 (2nd Dist. 1987). The public's interest is served by indemnifying public officials and employees in the performance of their official duties in order to recruit and retain qualified public employees and officials.

School Board

Exhibit - Waiver and Modification Request Resource Guide

Waiver or Modification	Explanation, Special Considerations, and Resources
<p>Exemptions from Unfunded Mandates, 105 ILCS 5/22-60.</p>	<p>Explanation</p> <p>Applies to unfunded or under-funded: (1) mandates in the School Code enacted after 8-20-10, or (2) regulatory mandates promulgated by the Ill. State Board of Education (ISBE) and adopted by rule after 8-20-10, other than those promulgated with respect to 105 ILCS 5/22-60 or statutes already enacted on or before 8-20-10.</p> <p>Allows the District to petition its Regional Superintendent or a Suburban Cook County Intermediate Service Center, whichever is appropriate, to request exemption from implementing the mandate in school(s) in the next school year.</p> <p>Special Considerations</p> <ol style="list-style-type: none"> 1. Whether the significance of the unfunded or under-funded mandate justifies the effort needed to seek an exemption, and 2. The advisability of simultaneously seeking a waiver or modification using Section 2-3.25g (see <i>Explanation</i> section in the row below). <p>Resources</p> <p>ISBE Rules and Waivers division at: www.isbe.net/Pages/Waivers.aspx, (217) 782-5270, or waivers@isbe.net.</p>
<p>School Code Mandates and ISBE Rules, 105 ILCS 5/2-3.25g, amended by P.A. 100-465; 23 Ill.Admin.Code §1.100.</p>	<p>Explanation</p> <p>There are two options for the District (explanations are listed below each option):</p> <p>Option 1: Petition ISBE for a <i>waiver</i> of School Code mandates; ISBE forwards the petition for waiver to the Ill. General Assembly for consideration in its next-scheduled report.</p> <p>Option 2: Petition ISBE for one or more of the following:</p> <ol style="list-style-type: none"> 1. A <i>modification</i> of the mandates in the School Code (this is different than asking for a <i>waiver</i> of mandates in the School Code). 2. A <i>waiver</i> of ISBE administrative rules.

Waiver or Modification	Explanation, Special Considerations, and Resources
	<p>3. A <i>modification</i> of ISBE administrative rules.</p> <p>For Option 1, a <i>waiver of mandates in the School Code</i>, the District must demonstrate that the waiver is necessary to: (a) stimulate innovation; (b) improve student performance; or (c) it can address the intent of the mandate in a more effective, efficient, or economical manner. 105 ILCS 5/2-3.25g, amended by P.A. 100-465, and 23 Ill.Admin.Code §1.100, list and describe mandates from which school districts may not seek a <i>waiver</i> or <i>modification</i>. Any previously authorized waiver or modification concerning requirements for student performance data to be a significant factor in evaluations or for using the four prescribed evaluation categories terminated on 9-1-14. Id.</p> <p>For Option 2, a <i>modification of the mandates in the School Code</i> and/or a <i>waiver or modification of administrative rules</i>, the District must demonstrate that: (1) it can address the intent of the rule or mandate in a more effective, efficient, or economical manner; or (2) the waiver or modification is necessary to stimulate innovation or improve student performance.</p> <p>The District must also provide certain notices as follows:</p> <ol style="list-style-type: none"> 1. Publish a notice in a newspaper of general circulation within the District of the time, date, place, and general subject matter of a public hearing on the proposed waiver or modification request. This notice must be published at least seven days before the hearing. 2. If there is no newspaper published in the county, give notice in a secular newspaper published in an adjoining county having general circulation within the District. 715 ILCS 5/2, amended by P.A. 100-72, and 715 ILCS 5/5. 3. Post the time, date, place, and general subject matter of the public hearing on the District's website at least 14 days before the hearing. 105 ILCS 5/2-3.25g. <p>Check the ISBE website listed below in the <i>Special Considerations</i> section for changes in notice requirements.</p> <p>Special Considerations</p> <p>The District must develop a plan supporting a waiver or modification request that meets the criteria in 105 ILCS 5/2-3.25g. See www.isbe.net/Pages/Overview-of-the-Waiver-Process.aspx. 105 ILCS 5/2-3.25g; 23 Ill.Admin.Code §1.100.</p>

Waiver or Modification	Explanation, Special Considerations, and Resources
	<p>Resources</p> <p>ISBE rules at:</p> <p>23 Ill.Admin.Code §1.100 (<i>Waiver and Modification of State Board Rules and School Code Mandates</i>)</p> <p>23 Ill.Admin.Code §1.110 (<i>Appeal Process Under Section 22-60 of the School Code</i>)</p> <p>ISBE waivers at: www.isbe.net/Pages/Waivers.aspx</p> <p>Waiver overview at: www.isbe.net/Pages/Overview-of-the-Waiver-Process.aspx</p> <p>Instructions at: www.isbe.net/Pages/Waiver-Application.aspx</p> <p>Application form at: www.isbe.net/documents/33-77_waiver_application.pdf</p>
<p>Physical Education, 105 ILCS 5/27-6, amended by P.A. 100-465.</p> <p>Driver Education, 105 ILCS 5/24.2 and 105 ILCS 5/2-3.25g, amended by P.A. 100-465.</p>	<p>Explanation</p> <p>See the <i>Explanation</i> section in the row above.</p> <p>Special Considerations</p> <p>In addition to the <i>Explanation</i> section above:</p> <ol style="list-style-type: none"> 1. Physical education is managed as a <i>waiver</i> of School Code mandates discussed in the <i>Explanation</i> section above. A waiver of this School Code mandate may be in effect for up to five years. Recent legislative changes removed any cap applicable to renewal of waivers related to physical education. 2. Driver education fee increases require the District to include the proposed amount of the fee increase: (a) in the public notice; and (b) on the District’s website. 105 ILCS 5/2-3.25g(c-5). Note: For a sample school district resolution to increase driver education fees, see 4:140-E3, <i>Resolution to Increase Driver Education Fees</i>. <p>Resources</p> <p>See the <i>Resources</i> section in the row above.</p>
<p>Holidays, 105 ILCS 5/24-2(b).</p>	<p>Explanation</p> <p>Allows the District to hold school or schedule teachers’ institutes, parent-teacher conferences, or staff development on certain holidays without submitting a modification request to and obtaining approval from ISBE.</p> <p>After a public hearing, the District may hold school or schedule teachers’ institutes, parent-teacher conferences, or staff development on:</p>

Waiver or Modification	Explanation, Special Considerations, and Resources
	<ol style="list-style-type: none"> 1. The third Monday in January (Dr. Martin Luther King, Jr.'s Birthday); 2. February 12 (President Abraham Lincoln's Birthday); 3. The first Monday in March (Casimir Pulaski Day); 4. The second Monday in October (Columbus Day); and/or 5. November 11 (Veterans Day). <p>Special Considerations</p> <p>The Board must provide notice before the public hearing to both educators and parents/guardians with: (1) the time, date, and place of the hearing; (2) a description of the proposal; and (3) information that testimony from educators and parents/guardians will be taken about the proposal during the hearing.</p> <p>The District must prepare a proposal for recognizing the person(s) honored by the holiday through instructional activities conducted on that day or, if the day is not used for student attendance, on the first school day preceding or following that day. The District may also consider aligning the proposal with Board policies 5:200, <i>Terms and Conditions of Employment and Dismissal</i>; 5:330, <i>Sick Days, Vacation, Holidays, and Leaves</i>; and 6:20, <i>School Year Calendar and Day</i>.</p> <p>Resources</p> <p>See the tab labeled <i>Waivers and modifications no longer needed for legal school holiday requests, most parent-teacher conference schedules</i> on ISBE's website at: www.isbe.net/Pages/Modifications-of-the-School-Codes-and-Rules-of-the-State-Board.aspx.</p>
<p>Parent-Teacher Conferences (<u>Attendance Calculation</u>), 105 ILCS 5/18-8.05(F)(2)(d), repealed by P.A. 100-582. Prior to the repeal of 105 ILCS 5/18-8.05(F), Section 5/18-8.05(F)(2)(d)(1.5) specifically addressed Parent-Teacher Conferences. 105 ILCS 5/10-19.05(d), added by P.A. 101-12.</p>	<p>Explanation</p> <p>Despite the repeal of 105 ILCS 5/18-8.05(F), the ISBE rules implementing it are still in effect at 23 Ill. Admin. Code §1.420(f). See f/n 5 in policy 6:20, <i>School Year Calendar and Day</i>, for more information about ISBE's response to this law's repeal.</p> <p>Prior to its repeal, the law allowed flexible scheduling options for parent-teacher conferences without the need to submit a formal waiver request through ISBE to the Ill. General Assembly. The District is was allowed to count a parent-teacher conference as a full day of <u>attendance</u> under any of the following configurations:</p> <ol style="list-style-type: none"> 1. A minimum of five clock-hours of parent-teacher

Waiver or Modification	Explanation, Special Considerations, and Resources
	<p>conferences;</p> <ol style="list-style-type: none"> <li data-bbox="776 321 1425 510">2. Both a minimum of two clock-hours of parent-teacher conferences held in the evening following a full day of student attendance, and a minimum of three clock-hours of parent-teacher conferences held on the day immediately following evening parent-teacher conferences; or <li data-bbox="776 531 1425 688">3. Multiple parent-teacher conferences held in the evenings following full days of student attendance, in which the time used for the parent-teacher conferences is equivalent to a minimum of five clock-hours. <p>Special Considerations Any other options for counting a parent-teacher conference as a full day of attendance not covered by the language above will require a waiver request to the General Assembly for its consideration.</p> <p>Consult the Board Attorney about Parent Teacher Conferences and flexible scheduling options in the context of P.A. 100-582.</p> <p>Resources See the tab labeled <i>Waivers and modifications no longer needed for legal school holiday requests, most parent-teacher conference schedules</i> on ISBE's website at: www.isbe.net/Pages/Modifications-of-the-School-Codes-and-Rules-of-the-State-Board.aspx.</p>

School Board

Vacancies on the School Board - Filling Vacancies ¹

Vacancy

Elective office of a School Board member becomes vacant before the term's expiration when any of the following occurs: ²

1. Death of the incumbent,
2. Resignation in writing filed with the Secretary of the Board,
3. Legal disability, ³
4. Conviction of a felony, bribery, perjury, or other infamous crime or of any offense involving a violation of official oath or of a violent crime against a child, ⁴
5. Removal from office,
6. The decision of a competent tribunal declaring his or her election void, ⁵
7. Ceasing to be an inhabitant of the District or a particular area from which he or she was elected, if the residential requirements contained in the School Code are violated,
8. An illegal conflict of interest, ⁶ or
9. Acceptance of a second public office that is incompatible with Board membership. ⁷

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¹ State law controls this policy's content. A helpful publication is on the IASB website, *Vacancies on the Board of Education*, published by the Ill. Council of School Attorneys (ICSA), available at: www.iasb.com/law/vacancies.cfm.

² 105 ILCS 5/10-11. See also 10 ILCS 5/25-2.

³ *Id.* *Legal disability* is not defined, but must be interpreted consistently with other laws, e.g., laws prohibiting discrimination on the basis of a disability. A similar statute regarding the occurrence of vacancies on the State Board of Education provides guidance. It states that a vacancy occurs when: "a member is adjudicated to be a person under legal disability under the Probate Act of 1975, as amended, or a person subject to involuntary admission under the Mental Health and Developmental Disabilities Code." [105 ILCS 5/1A-2.1](#).

⁴ *Id.* at f/n 2. See also Ill. Constitution, Art. XIII, and 5 ILCS 280/1. Depending on the authority, *infamous crime* has different meanings. Pursuant to 10 ILCS 5/25-2 felony, bribery, and perjury fall are *infamous crimes*. An *infamous crime* is one that is inconsistent with commonly accepted principles of honesty and decency. *People ex rel. City of Kankakee v. Morris*, 126 Ill.App.3d 722 (3rd Dist. 1984). An admission of guilt, pursuant to a plea agreement, to an otherwise office-disqualifying offense, constitutes a resignation. 10 ILCS 5/25-2. An Ill. Appellate court twice found that a felony forgery conviction in another state constituted an infamous crime rendering the individual ineligible to hold the office of school board member. *Alvarez v. Williams*, 23 N.E.3d 544 (Ill.App.1 2014); *Williams v. Cook Co. Officers Electoral Board*, 35 N.E.3d 82 (Ill.App.1 2015).

A board member commits official misconduct if he/she intentionally or recklessly fails to perform any mandatory duty required by law, knowingly performs an act forbidden by law, performs an act in excess of his or her lawful authority in order to obtain personal advantage for oneself or another, or solicits or knowingly accepts for doing any act a fee or reward which he or she knows is not authorized by law. 720 ILCS 5/33-3.

⁵ See *Miceli v. Lavelle*, 114 Ill.App.3d 311 (1st Dist. 1983).

⁶ *Id.* at f/n 2 and 50 ILCS 105/3. 105 ILCS 5/10-9 contains limited exceptions to the laws prohibiting board member interest in contracts (explained in footnotes to 2:100, *Board Member Conflict of Interest*). Virtually the same exceptions are stated in 50 ILCS 105/3. For more information, see *Conflict of Interest and Incompatible Offices FAQ* (ICSA), available at: www.iasb.com/law/COI_FAQ.pdf.

Filling Vacancies 8

Whenever a vacancy occurs, the remaining members shall notify the Regional Superintendent of Schools of that vacancy within five days after its occurrence and shall fill the vacancy until the next regular board election, at which election a successor shall be elected to serve the remainder of the unexpired term. However, if the vacancy occurs with less than 868 days remaining in the term or less than 88 days before the next regularly scheduled election, the person so appointed shall serve the remainder of the unexpired term, and no election to fill the vacancy shall be held. Members appointed by the remaining members of the Board to fill vacancies shall meet any residential requirements as specified in the School Code. The Board shall fill the vacancy within 6045 days after it occurred by a public vote at a meeting of the Board.

Immediately following a vacancy on the Board, the Board will publicize it and accept résumés from District residents who are interested in filling the vacancy.⁹ After reviewing the applications, the Board may invite the prospective candidates for personal interviews to be conducted during duly scheduled closed meetings. ¹⁰

LEGAL REF.: 105 ILCS 5/10-10 and 5/10-11.

CROSS REF.: 2:40 (Board Member Qualifications), 2:60 (Board Member Removal from Office), 2:120 (Board Member Development)

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⁷ An individual may not hold simultaneously two offices that are incompatible; acceptance of the second office is a constructive resignation of the first office (Ill. Constitution, Art. IV, Sec. 2(e), and Art. VI, Sec. 13(b)). The offices of alderman, school board member, and park district commissioner are incompatible. *People ex. Rel. Alvarez v. Price*, 408 Ill.App.3d 457 (1st Dist. 2011). The court found that offices can be incompatible absent an actual conflict; the eventuality of a conflict is enough. See *People v. Wilson*, 357 Ill.App.3d 204 (3rd Dist. 2005)(simultaneously holding offices as a county board member and a school board member violates the Public Officer Prohibited Activities Act; this legislation prohibits a county board member from holding a second office). [For more information on incompatible offices, see the FAQ referenced in f/n 6.](#)

A board member may participate in a group health insurance program provided to an employee of the district that the board member serves if the board member is a dependent of that employee. 105 ILCS 5/10-22.3a.

⁸ This paragraph restates the requirements in 105 ILCS 5/10-10, [amended by P.A. 101-67, eff. 1-1-20](#). If the board fails to act within 6045 days after the vacancy occurs, the regional superintendent, under whose supervision and control the district is operating, must then fill the vacancy within 30 days. *Id.*

105 ILCS 5/9-11.2 provides that in any school district that elects its board member according to area of residence and that has one or more unexpired term(s) to be filled at an election, the winner(s) of the unexpired term(s) shall be determined first and independently of those running for full terms.

If a vacancy for an area of residence remains unfilled, a board must submit a proposition at the next general election for the election of a board member at large. 105 ILCS 5/10-10.5, amended by P.A. 100-800, [eff. 1-1-19](#).

[Questions arise when fewer individuals run for seats on the board than are up for election. 105 ILCS 5/10-11 partially addresses this issue; it states "no elective office...becomes vacant until the successor of the incumbent of such office has been appointed or elected, as the case may be, and qualified." Id. A board with potential holdover incumbent members should seek advice from the board attorney regarding \(1\) how long the seat can be held over by the incumbent member, and \(2\) the process by which the Board should fill the seat.](#)

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

⁹ The process for filling a vacancy is at the board's discretion. See 2:70-E, *Checklist for Filling Board Vacancies by Appointment*.

¹⁰ The Open Meetings Act allows a board to consider in closed session the appointment of someone to fill a vacancy. 5 ILCS 120/2(c)(3).

School Board

Exhibit - Checklist for Filling Board Vacancies by Appointment

The School Board fills a vacancy by either appointment or election. The Board uses this checklist for guidance when it must fill a vacancy by appointment. Some items contain guidelines along with explanations. For more information, see *Vacancies on the Board of Education*, published by a committee of the Ill. Council of School Attorneys, and available at: www.iasb.com/law/vacancies.cfm.

- Confirm that the Board must fill the vacancy by appointment.**

Guidelines	Explanation
Review Board policy 2:70, <i>Vacancies on the School Board - Filling Vacancies</i> , to determine if a vacancy on the Board occurred and, if so, whether the successor will be selected by election or Board appointment.	Filling a vacancy by Board appointment or election depends upon when the vacancy occurred. If a vacancy occurs with less than: (1) 868 days remaining in the term of office, or (2) 88 days before the next regularly scheduled election for the vacant office, no election to fill the vacancy is held and the appointee serves the remainder of the term. At all other times, an appointee serves until the next regular school election, at which election a successor is elected to serve the remainder of the unexpired term. See 105 ILCS 5/10-10.
<u>In the event a seat on the board goes unfilled at an election, consult the Board Attorney to determine (1) how long the seat can be held over by the incumbent member, and (2) the process by which the Board will fill the seat.</u>	<u>The School Code partially addresses the concept of a holdover seat; it states “no elective office... becomes vacant until the successor of the incumbent of such office has been appointed or elected, as the case may be, and qualified.” 105 ILCS 5/10-11.</u>

- Notify the Regional Superintendent of the vacancy within five days of its occurrence (105 ILCS 5/10-10).**
- Develop a list of qualifications for appointment of a person to fill the vacancy.**

Guidelines	Explanation
At a minimum, a candidate must meet the following qualifications: <ul style="list-style-type: none"> • Be a United States citizen • Be at least 18 years of age • Be a resident of Illinois and the District for at least one year immediately preceding the appointment • Be a registered voter • Not be a child sex offender 	While the School Code does not expressly set forth eligibility requirements for appointment to a Board vacancy, the Board may want to use the qualifications for elected Board members listed in 105 ILCS 5/10-3 and 5/10-10. For guidance discussing other qualifications that the Board may want to consider, see IASB’s <i>Recruiting School Board Candidates</i> , available at: www.iasb.com/training/recruiting.cfm For guidance regarding conflict of interest and

Guidelines	Explanation
<ul style="list-style-type: none"> • Not hold another incompatible public office • Not have a prohibited interest in any contract with the District • Not be a school trustee • Not hold certain types of prohibited State or federal employment 	incompatible offices, see Conflict of Interest and Incompatible Offices FAQ (ICSA).
When additional qualifications apply, the following items may be included in the Board’s list of qualifications: <ul style="list-style-type: none"> • Meet all qualifications based upon the distribution of population among congressional townships in the district. • Meet all qualifications based upon the distribution of population among incorporated and unincorporated areas. 	Board members of some community unit school districts may be subject to historical residential qualifications based on the distribution of population among congressional townships in the district or between the district’s incorporated and unincorporated areas. 105 ILCS 5/10-11(105 ILCS 5/11A-8) . <u>Note: If a vacancy for an area of residence remains unfilled, a board must submit a proposition at the next general election for the election of a board member at large. 105 ILCS 5/10-10.5(c), added by P.A. 100-800.</u>

Decide who will receive completed vacancy applications.

Guidelines	Explanation
The Board President will accept applications. The Board will discuss, at an open meeting, its process to review the applications and who will contact applicants for an interview.	Who accepts vacancy applications is at the Board’s sole discretion. According to 2:110, <i>Qualifications, Term, and Duties of Board Officers</i> , the Board President is a logical officer to accept the applications, but this task may be delegated to the Secretary or Superintendent’s secretary if the Board determines that it is more convenient. Who accepts the applications must be decided prior to posting the vacancy announcement.

Create the Board member vacancy announcement.

Announcement	Explanation
School District _____ Board Member Vacancy The School District is accepting applications to fill the vacancy resulting from [<i>reason for vacancy</i>] of [<i>former Board member’s name</i>].	The contents of a vacancy announcement, how it is announced, and where it is posted are at the Board’s sole discretion. The Board may want to announce the vacancy and its intent to fill it by appointment during an open meeting. The announcement may be posted on the District’s website and in the local newspaper(s).
The individual selected will serve on the School Board from the date of appointment to [<i>date</i>].	The length of the appointment depends upon when during the term of office the vacancy occurred. See 105 ILCS 5/10-10 and Board policy 2:70, <i>Vacancies on the School Board - Filling Vacancies</i> , to determine the length of the appointment.

Announcement	Explanation
The School District [<i>School District's philosophy or mission statement</i>].	See Board policy 1:30, <i>School District Philosophy</i> , for the District's mission statement that is specific to the community's goals.
Applicants for the Board vacancy must be: [<i>Board's list of qualifications</i>].	See checklist item titled <i>Develop a list of qualifications for appointment of a person to fill the vacancy</i> above.
Applicants should show familiarity with the Board's policies regarding general duties and responsibilities of a Board and a Board member, including fiduciary responsibilities, conflict of interest, ethics and gift ban. The Board's policies are available at [<i>locations</i>].	Listing this along with the Board's list of qualifications assists candidates in understanding a Board member's duties and responsibilities and may facilitate a better conversation during the interview process. See Board policies: 2:20, <i>Powers and Duties of the School Board</i> ; <i>Indemnification</i> ; 2:80, <i>Board Member Oath and Conduct</i> ; 2:100, <i>Board Member Conflict of Interest</i> ; 2:105 <i>Ethics and Gift Ban</i> ; and 2:120, <i>Board Member Development</i> .
Applications may be obtained at [<i>location and address and/or website</i>] beginning on [<i>date and time</i>]. Completed applications may be turned in by [<i>time and date</i>] to [<i>name and title of person receiving applications</i>].	See action item titled <i>Decide who will receive completed vacancy applications</i> above.

- Publicize the vacancy announcement by placing it on the District's website, announcing it at a meeting, and/or advertising it in the local newspaper(s).**
- Accept and review applications from prospective candidates (see *Decide who will receive completed vacancy applications* above).**
- Contact appropriate applicants for interviews (see *Decide who will receive completed vacancy applications* above).**
- Develop interview questions.**

Interview Questions	Explanation
<p>Why do you want to be a Board member?</p> <p>What specific skills would you bring to the Board?</p> <p>Please give specific examples of your ability in interpersonal relationships and teamwork.</p> <p>What do you see as the role of a Board member?</p> <p>What have you done to prepare</p>	<p>Interview questions are at the Board's sole discretion. This list is not exhaustive, but it may help the Board tailor its questions toward finding a candidate who will approach Board membership with a clear understanding of its demands and expectations along with a constructive attitude toward the challenge. The Board may also want to consider allowing an equal amount of time for each interview.</p> <p>See IASB's <i>Recruiting School Board Candidates</i>, available at: www.iasb.com/training/recruiting.cfm</p> <p>A prospective candidate to fill a vacancy may raise</p>

Interview Questions	Explanation
<p>yourself for the challenges of being a Board member?</p> <p>Please describe your previous community or non-profit experiences.</p> <p>What areas in the district would you like to see the Board strengthen?</p> <p>What is your availability to meet the time, training commitments, and other responsibilities required for Board membership?</p> <p>Describe what legacy you would like to leave behind.</p>	<p>other specific issues that the Board will want to cover during an interview.</p>

- Conduct interviews with candidates (interviews may occur in closed session pursuant to 5 ILCS 120/2(c)(3)).**

Interview Plan	Explanation
<p>In each interview, the Board President will:</p> <p>Introduce Board members to the candidate at the beginning of the interview.</p> <p>Describe the Board's interview process, selection process, and ask the candidate if he or she has questions about the Board's process for filling a vacancy by appointment.</p> <p>Describe the District's philosophy or mission statement.</p> <p>Describe the vacancy for the candidate by reviewing the: (1) qualifications, and (2) general duties and responsibilities of the Board and the Board members, including fiduciary responsibilities, conflict of interest, ethics and gift ban, and general Board member development.</p> <p>Begin asking the interview questions that the Board developed.</p> <p>Ask the candidate whether he or she has any questions for the Board.</p> <p>Thank the candidate and inform the candidate when the Board expects to make a decision and how the candidate will be contacted regarding</p>	<p>The Board President will lead the Board as it interviews prospective candidates. See Board policy 2:110, <i>Qualifications, Term, and Duties of Board Officers</i>. The president presides at all meetings. (105 ILCS 5/10-13).</p> <p>The Board may also want to consider allowing an equal amount of time for each interview.</p>

Interview Plan	Explanation
the Board's decision.	

- Fill vacancy by a vote during an open meeting of the Board before the 6045th day (105 ILCS 5/10-10, amended by P.A. 101-67, eff. 1-1-20).
- Assist the appointed Board member in filing his or her statement of economic interest (5 ILCS 420/4A-105(c)).
- Announce the appointment to District staff and community.

Announcement	Explanation
<p>The Board appointed [<i>appointee's name</i>] to fill the vacancy on the Board.</p> <p>The appointment will be from [<i>date</i>] to [<i>date</i>].</p> <p>The Board previously established qualifications for the appointee in a careful and thoughtful manner. [<i>Appointee's name</i>] meets these qualifications and has demonstrated the willingness to accept the duties and responsibilities of a Board member. [<i>Appointee's name</i>] brings a clear understanding of the demands and expectations of being a Board member along with a constructive attitude toward the challenge.</p>	<p>The contents of the appointment announcement and length of time it is displayed are at the Board's sole discretion. The Board may want to consider announcing the appointment during its meeting and also by posting it in the same places that it posted the vacancy announcement.</p> <p>See Board policy 8:10, <i>Connection with the Community</i>.</p>

- Administer the Oath of Office and begin orientation.

Guidelines	Explanation
See Board policy 2:80, <i>Board Member Oath and Conduct</i> .	Each individual, before taking his or her seat on the Board, must take an oath in substantially the form given in 105 ILCS 5/10-16.5.
See Board policy 2:120, <i>Board Member Development</i> , and 2:120-E1, <i>Guidelines for Serving as a Mentor to a New School Board Member</i> .	Orientation assists new Board members to learn, understand, and practice effective governance principles. See the IASB Foundational Principles of Effective Governance, available at: www.iasb.com/principles_popup.cfm .

- Inform IASB of the newly appointed Board member's name and directory information.

School Board

Board Member Conflict of Interest ¹

No School Board member shall: (1) have a beneficial interest directly or indirectly in any contract, work, or business of the District unless permitted by State or federal law;² or (2) solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to

Commented [DJ1]: Text from ¶n 2 has been moved and revised in ¶n 6.

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

¹ State law and federal regulations control this policy's content. Conflict of interest is comprehensively discussed in the Ill. Council of School Attorneys' publication, *Answers to FAQs, Conflict of Interest and Incompatible Offices*, www.iasb.com/law/COI_FAQ.pdf.

² The School Code prohibits a school board member from having an interest in a contract with the district he or she serves. Exceptions to this rule permit a board member to provide materials, merchandise, property, services, or labor if: (1) the board member has less than a 7½% share in the ownership of the business; the board member publicly discloses the interest; the board member abstains from voting on the contract; the contract is approved by a majority vote; the contract is awarded after sealed bids to the lowest responsible bidder if the amount of the contract exceeds \$1,500, or awarded without bidding if the amount of the contract is less than \$1,500; and the award of the contract would not cause the aggregate amount of all such contracts so awarded in the same fiscal year to exceed \$25,000; OR (2) the contract is approved by a majority vote, provided that any such interested member shall abstain from voting; the amount of the contract does not exceed \$1,000 or the award of the contract does not cause the aggregate amount of such contracts to the same individual to exceed \$2,000 in the same fiscal year, or \$5,000 in the same fiscal year if the labor or materials to be provided are not otherwise available in the district; and the interested member publicly discloses the interest. See 105 ILCS 5/10-9 for other exceptions.

A board member does not have a prohibited interest in a contract with the district he or she serves "if the board member is an employee of a business that is involved in the transaction of business with the school district, provided that the board member has no financial interests other than as an employee," (105 ILCS 5/10-9).

The Public Officer Prohibited Activities Act prohibits a governing body member from being "in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote." (50 ILCS 105/3). Exceptions to this prohibition are similar to those in the School Code.

Generally, an individual may be a board member at a school district that employs his or her spouse. Indeed, 105 ILCS 5/10-22.3a specifically allows a board member to participate in a group health insurance program provided to a district employee if the board member is that employee's dependent, i.e., spouse or child. However, this is a fact-sensitive inquiry; a board member should seek legal counsel before voting on anything related to his or her spouse. See the *Answers to FAQs*, referenced in ¶n 1.

A violation of the School Code or Public Officer Prohibited Activities Act is a Class 4 felony. Due to the severity of this penalty as well as to avoid the appearance of impropriety, a legal opinion should be obtained before a board member becomes financially interested in any contract with his or her district. Abstaining from the vote, or absence from the meeting when the vote is taken, does not negate an otherwise illegal conflict of interest.

~~2-C.F.R. §200.318(c)(1) prohibits employees, officers, or agents of a school district from participating in the selection, award, or administration of a contract supported by a federal award if they have a real or apparent conflict of interest. Conflicts of interest arise when one of the following individuals has a financial or other interest in the entity selected for the award:~~

~~School district employee, officer, or agent;~~

~~Any member of the employee, officer, or agent's immediate family;~~

~~The employee, officer, or agent's business partner; and~~

~~An organization that employs or is about to employ one of above.~~

~~For a discussion of what an apparent conflict of interest means, see the discussion about avoiding the appearance of impropriety discussed in the Ill. Council of School Attorneys' publication, *Answers to FAQs, Conflict of Interest and Incompatible Offices* cited above in ¶n 1.~~

~~If the district has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. 2-C.F.R. §200.318(c)(2).~~

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agreements or contracts with the District.³ Situations in which the interest is not substantial or the gift is an unsolicited item of nominal value must comply with State law and Board policy 2:105, *Ethics and Gift Ban*.⁴

Board members must annually file a *Statement of Economic Interests* as required by the Illinois Governmental Ethics Act.⁵ Each Board member is responsible for filing the statement with the county clerk of the county in which the District's main office is located by May 1.

Federal and State Grant Awards ⁶

No Board member shall participate in the selection, award, or administration of a contract supported by a federal award or State award governed by the Grant Accountability and Transparency Act (GATA) (30 ILCS 708/) if he or she has a real or apparent conflict of interest. A conflict of interest arises when a Board member or any of the following individuals has a financial or other interest in the entity selected for the contract:

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~~³ 2 C.F.R. §200.318(c)(1).~~

~~⁴ Id. The rule provides flexibility for school districts to "set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value," along with "disciplinary actions to be applied for violations." Referring to sample policy 2:105, *Ethics and Gift Ban* for these standards provides clarity and consistency. Policy 2:105, *Ethics and Gift Ban* refers to **Limitations on Receiving Gifts** in the Ethics Act at 5 ILCS 430/10-10 – 10-30, along with discussion of the specific penalties available under the Ethics Act at 5 ILCS 430/50-5 in its **Enforcement** subhead.~~

~~⁵ 5 ILCS 420/4A-101.5, and 4A-105, 106.5, and through 107, amended by P.A. 101-221. Any county clerk may implement a system of Internet-based filing for economic interest statements. 5 ILCS 420/4A-108, amended by P.A. 101-221, amended by P.A. 99-108. If an Internet-based filing system is used, the clerk must post the statements, without filers' addresses or signatures, on a publicly accessible website. Id.~~

~~Each candidate for the school board must file with the county clerk or the county board of election commissioners, whichever is applicable, or administration of the county clerk showing that the candidate has filed a *Statement of Economic Interests* as required by the Ill. Governmental Ethics Act. 5 ILCS 420/4A-108(b)(3). A candidate's name will be stricken from the ballot if he or she files the incorrect *Statement of Economic Interests* form. *Ferrand v. Chicago Bd of Election Comm.*, 6 N.E.3d 779 (Ill.App.1, 2014) Ill.App.1st 140225 (2-13-2014); *Cortez v. Municipal Officers Electoral Board*, 986 N.E.2d 689 (Ill. App.1, 2013).~~

~~⁶ 2 C.F.R. §200.318(c)(1) prohibits employees, officers, or agents of a school district from participating in the selection, award, or administration of a contract supported by a federal award if they have a *real or apparent conflict of interest*. *Conflicts of interest arise when one of the following individuals has a financial or other interest in the entity selected for the award:*~~

- ~~a. School district employee, officer, or agent;~~
- ~~b. Any member of the employee, officer, or agent's immediate family;~~
- ~~c. The employee, officer, or agent's business partner; and~~
- ~~d. An organization that employs or is about to employ one of above.~~

~~The term *participate* is not specifically defined in the federal regulation; consult the board attorney regarding other actions the board can take to limit the influence of a conflicted board member, beyond abstention from the board's evaluation and vote on a contract. The uniform federal rules on procurement standards in 2 C.F.R. Part 200 also apply to eligible State grants through the Grant Accountability Transparency Act (GATA), 30 ILCS 708/. *Authoritative sources and guidance regarding conflict of interest and financial disclosure are provided through the GATA Resource Library at www.grants.illinois.gov. See also the Ill. State Board of Education's *Procurement and Purchasing Checklist* at www.isbe.net/Pages/Audit-and-Monitoring-Review-Requirements-and-Tools.aspx.*~~

~~The law does not specifically define an *apparent conflict of interest*. For a discussion of what an *apparent conflict of interest* *may* means, see the discussion about avoiding the *appearance of impropriety* *see-in* the Answers to FAQs, cited above in fn 1.~~

~~If the district has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-federal entity must also maintain written standards of conduct covering organizational conflicts of interest. *Organizational conflicts of interest* means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. 2 C.F.R. §200.318(c)(2).~~

1. Any person that has a close personal relationship with a Board member that may compromise or impair the Board member's fairness and impartiality, including a member of the Board member's immediate family or household;
2. The Board member's business partner; or
3. An entity that employs or is about to employ the Board member or one of the individuals listed in one or two above.

LEGAL REF.: 5 ILCS 420/4A-101.5, 420/4A-105, 420/4A-106.5, and 420/4A-107.
30 ILCS 708/, Grant Accountability and Transparency Act.
50 ILCS 105/3.
105 ILCS 5/10-9.
2 C.F.R. §200.318(c)(1).

CROSS REF.: 2:105 (Ethics and Gift Ban), 4:60 (Purchases and Contracts), 5:120 (Employee Ethics; Conduct; and Conflict of Interest)

School Board

Ethics and Gift Ban ¹

Prohibited Political Activity

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

1. No employee shall intentionally perform any *political activity* during any *compensated time*, as those terms are defined herein. ²
2. No Board member or employee shall intentionally use any District property or resources in connection with any political activity. ³
3. At no time shall any Board member or employee intentionally require any other Board member or employee to perform any political activity: (a) as part of that Board member's or employee's duties, (b) as a condition of employment, or (c) during any compensated time off, such as, holidays, vacation, or personal time off.
4. No Board member or employee shall be required at any time to participate in any political activity in consideration for that Board member or employee being awarded additional compensation or any benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment or otherwise; nor shall any Board member or employee be awarded additional compensation or any benefit in consideration for his or her participation in any political activity.

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¹ The State Officials and Employees Ethics Act (SOEEA) (5 ILCS 430/) requires a policy on this subject matter and controls its content. ~~(5 ILCS 430/70-5, amended by P.A. 101-221)~~. This policy contains items on which collective bargaining may be required. Any policy that impacts wages, hours, or terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. This policy concerns an area in which the law is unsettled.

The Ill. Attorney General developed a model ethics ordinance to assist units of local government and school districts. See www.ag.state.il.us/government/ethics_ordinance.html. The model ordinance provides that the local governmental entity will enforce the policy through quasi-criminal proceedings or through hiring an attorney to prosecute violators. These penal enforcement provisions present an obvious difficulty for school districts – the legislature has **not** granted school districts the power to adopt penal ordinances and penalties. This sample policy, while based on the Attorney General's model ordinance, does **not** contain penal provisions and penalties and it does **not** contemplate the hiring of an attorney to prosecute violators.

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

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

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

Limitations on Receiving Gifts 4

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

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

1. Opportunities, benefits, and services that are available on the same conditions as for the general public.
2. Anything for which the Board member or employee, or his or her spouse or immediate family member, pays the fair market value.
3. Any: (a) contribution that is lawfully made under the Election Code, or (b) activities associated with a fundraising event in support of a political organization or candidate.
4. Educational materials and missions.
5. Travel expenses for a meeting to discuss business.
6. A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of the individual's spouse and the individual's fiancé or fiancée.
7. Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the

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

Generally, 2 C.F.R. §200.318(c)(1) prohibits employees, officers, or agents of a school district from participating in the selection, award, or administration of a contract supported by a federal award if they have a real or apparent *conflict of interest*. For more discussion on conflict of interest, see sample policy 2:100, *Board Member Conflict of Interest*. Specifically, 2 C.F.R. §200.318(c)(1) requires school districts to "set standards for situations in which the gift is an unsolicited item of nominal value (*standards*)," along with "disciplinary actions to be applied for violations (*disciplinary actions*)" without defining *nominal value*.

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

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

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

official position or employment of the recipient or his or her spouse or immediate family member and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (a) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (b) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (c) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other Board members or employees, or their spouses or immediate family members.

8. Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are: (a) consumed on the premises from which they were purchased or prepared; or (b) catered. *Catered* means food or refreshments that are purchased ready to consume, which are delivered by any means.
9. Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of a Board member or employee), if the benefits have not been offered or enhanced because of the official position or employment of the Board member or employee, and are customarily provided to others in similar circumstances.
10. Intra-governmental and inter-governmental gifts. *Intra-governmental gift* means any gift given to a Board member or employee from another Board member or employee, and *inter-governmental gift* means any gift given to a Board member or employee from an officer or employee of another governmental entity.
11. Bequests, inheritances, and other transfers at death.
12. Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

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

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

Enforcement

The Board President and Superintendent shall seek guidance from the Board attorney concerning compliance with and enforcement of this policy and State ethics laws. ⁵ The Board may, as necessary or prudent, appoint an Ethics Advisor for this task.

Written complaints alleging a violation of this policy shall be filed with the Superintendent or Board President. If attempts to correct any misunderstanding or problem do not resolve the matter, the Superintendent or Board President shall, after consulting with the Board Attorney, either place the alleged violation on a Board meeting agenda for the Board's disposition or refer the complainant to Board policy 2:260, *Uniform Grievance Procedure*. A Board member who is related, either by blood

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⁵ This provision is consistent with sample policy 2:160, *Board Attorney*.

or by marriage, up to the degree of first cousin, to the person who is the subject of the complaint, shall not participate in any decision-making capacity for the Board. If the Board finds it more likely than not that the allegations in a complaint are true, it shall notify the State's Attorney and/or consider disciplinary action for the employee. ⁶

Definitions ⁷

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

Political activity means:

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

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

⁶ The Ill. Attorney General's model ethics ordinance includes the specific penalties from the Ethics Act. 5 ILCS 430/50-5. Elsewhere the Act states that a "governmental entity may provide in [its] ordinance or resolution ... for penalties similar to those provided in this Act for similar conduct." 5 ILCS 430/70-10. Thus, school boards do not need to enact policy containing criminal sanctions. Rather, as provided in this sample policy, violations can be referred to the State's Attorney.

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

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

⁷ The definitions contained in this policy are all from 5 ILCS 430/5-15 with minor adaptations.

10. Preparing or reviewing responses to candidate questionnaires.
11. Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.
12. Campaigning for any elective office or for or against any referendum question.
13. Managing or working on a campaign for elective office or for or against any referendum question.
14. Serving as a delegate, alternate, or proxy to a political party convention.
15. Participating in any recount or challenge to the outcome of any election.

With respect to an employee whose hours are not fixed, *compensated time* includes any period of time when the employee is on premises under the control of the District and any other time when the employee is executing his or her official duties, regardless of location. ⁸

Prohibited source means any person or entity who:

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

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

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

⁸ The Ethics Act prohibits employees from engaging in political activities on *compensated time* but does not define the term. *Compensated time* is easy to determine for employees with fixed working hours. Determining *compensated time* for a salaried employee who does not have obligatory hours of attendance is more difficult. For this reason, the term *compensated time* should include both the time when the employee is physically present on district premises as well as any other time when the employee is engaged in official duties.

Complaints of Sexual Harassment Made Against Board Members by Elected Officials 9

Pursuant to the State Officials and Employees Ethics Act (5 ILCS 430/70-5), members of the Board and other elected officials are encouraged to promptly report claims of sexual harassment by a Board member. Every effort should be made to file such complaints as soon as possible, while facts are known and potential witnesses are available. If the official feels comfortable doing so, he or she should directly inform the individual that the individual's conduct or communication is offensive and must stop.

Board members and elected officials should report claims of sexual harassment against a member of the Board to the Board President or Superintendent. If the report is made to the Superintendent, the Superintendent shall promptly notify the President, or if the President is the subject of the complaint, the Vice President. Reports of sexual harassment will be confidential to the greatest extent practicable. 10

When a complaint of sexual harassment is made against a member of the Board by another Board member or other elected official, the Board President shall appoint a qualified outside investigator who is not a District employee or Board member to conduct an independent review of the allegations. If the allegations concern the President, or the President is a witness or otherwise conflicted, the Vice President shall make the appointment. If the allegations concern both the President and Vice President, and/or they are witnesses or otherwise conflicted, the Board Secretary shall make the appointment. The investigator shall prepare a written report and submit it to the Board. 11

If a Board member has engaged in sexual harassment, the matter will be addressed in accordance with the authority of the Board. 12

The Superintendent will post this policy on the District website and/or make this policy available in the District's administrative office. 13

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

9 Required. Under the SOEEA, by 2-9-20, school districts must, by resolution, amend their sexual harassment policies "to provide for a mechanism for reporting and independent review of allegations of sexual harassment made against an elected official of the governmental unit by another elected official of a governmental unit." 5 ILCS 430/70-5, amended by P.A. 101-221. This policy includes both elected and appointed board members to effectuate the intent of the law, to comprehensively address sexual harassment in the workplace, and for consistent treatment. The statute does not address whether the *independent review* must or may be limited to a board member's conduct in his or her official capacity, or if it can extend to a board member's behavior in his or her individual capacity. Consult the board attorney for advice.

See policy 5:20, *Workplace Harassment Prohibited*, and its f/n's for information about what types of conduct may rise to the level of unlawful sexual harassment under federal and State laws. This policy only addresses the requirements of the SOEEA; it does not address harassment complaints made by employees or other non-elected individuals against board members. Such complaints may be processed under policy 2:260, *Uniform Grievance Procedure*. See policy 2:260 at f/n 16.

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

10 The Open Meetings Act (OMA) does not provide a specific exemption for discussion of complaints against a members of a public body in closed session. 5 ILCS 120/2(c)(1), amended by P.A. 101-459.

11 5 ILCS 430/70-5(a), amended by P.A. 101-221, eff. 1-1-20. The law requires governmental units, including school districts, to conduct an *independent review* of allegations of sexual harassment made against an elected official by another elected official; however, that term is not defined. Consult the board attorney about how to investigate such complaints.

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

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

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

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

¹³ [This paragraph is optional, but it aligns with the intent of P.A. 101-221. See f/n 9, above.](#)

School Board

Qualifications, Term, and Duties of Board Officers ¹

The School Board officers are: President, Vice President, Secretary, and Treasurer.² These officers are elected or appointed by the Board at its organizational meeting.

President ³

The Board elects a President from its members for a two-year term. The duties of the President are to:

1. Preside at all meetings;
2. Focus the Board meeting agendas on appropriate content;
3. Make all Board committee appointments, unless specifically stated otherwise; ⁴
4. Attend and observe any Board committee meeting at his or her discretion; ⁵
5. Represent the Board on other boards or agencies;
6. Sign official District documents requiring the President's signature, including Board minutes and Certificate of Tax Levy;
7. Call special meetings of the Board;
8. Serve as the head of the public body for purposes of the Open Meetings Act and Freedom of Information Act; ⁶
9. Ensure that a quorum of the Board is physically present at all Board meetings; ⁷
10. Administer the oath of office to new Board members; ~~and~~ ⁸
11. Serve as or appoint the Board's official spokesperson to the media; ~~and~~.

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. Selection of officers must be in open session. 5 ILCS 120/2. Board officer vacancies are discussed in *Answers to FAQs: Vacancies on the Board of Education*, Ill. Council of School Attorneys, www.iasb.com/law/vacancies.cfm.

² Districts governed by a board of directors have three officers: a president, clerk, and treasurer. The president and clerk must be board members 105 ILCS 5/10-5.

³ 105 ILCS 5/10-13. The board by resolution may decrease to one year the term of office for the president.

Of the listed duties, only the following are imposed by law: #1, preside at meetings (Id.); #6, sign minutes (105 ILCS 5/10-7) and sign certificate of tax levy (105 ILCS 5/17-11); #7, call special meetings (105 ILCS 5/10-16); and #8, serve as *head of the public body* for the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA) purposes (5 ILCS 140/2(e), 140/7(f), and 140/9.5).

⁴ Alternatively, strike the "unless" clause and substitute: "subject to Board approval." Be sure this treatment is consistent with policy 2:150, *Committees*.

⁵ Optional. A board that wants the president to participate in committee meetings may use the following alternative: "Be a member of all Board committees." Using this alternative, the president would be counted to determine the number of members that constitutes a quorum for each board committee meeting. If a board would like the superintendent to attend any or all meetings of a board committee, it should consider asking the superintendent to be a committee resource person (or other such title) rather than an ex-officio member of the board committee itself. That way, the superintendent will not count to determine the number of committee members that constitutes a quorum.

⁶ The *head of the public body* or its attorney may request an advisory opinion from the Ill. Attorney General Public Access Counselor (PAC) concerning compliance with OMA or FOIA. 5 ILCS 120/3.5(h) and 5 ILCS 140/9.5(h). FOIA defines *head of the public body* to mean *president* or "such person's duly authorized designee." 5 ILCS 140/2(e). Preliminary drafts, recommendations, and other records in which opinions are expressed, or policies are formulated, lose this exemption from disclosure if a relevant portion of a requested record is publicly cited and identified by the *head of the public body*. 5 ILCS 140/7(f).

⁷ Optional. Requiring the president to monitor the presence of a quorum assists compliance with OMA's mandate that a quorum be physically present at all board meetings. 5 ILCS 120/7.

⁸ Optional. Omit this duty if policy 2:80, *Board Member Oath and Conduct* provides that the board member oath is given by other means.

~~4-12.~~ Except when the Board President is the subject of a complaint of sexual harassment, a witness, or otherwise conflicted, appoint a qualified outside investigator to conduct an independent review of allegations of sexual harassment made against a Board member by another Board member or elected official. 9

The President is permitted to participate in all Board meetings in a manner equal to all other Board members, including the ability to make and second motions.

The Vice President fills a vacancy in the Presidency. 10

Vice President 11

The Board elects a Vice President from its members for a two-year term. The Vice President performs the duties of the President if:

1. The office of President is vacant;
2. The President is absent; or
3. The President is unable to perform the office's duties.

A vacancy in the Vice Presidency is filled by a special Board election.

Secretary 12

The Board elects a Secretary for a two-year term. The Secretary may be, but is not required to be, a Board member. The Secretary may receive reasonable compensation as determined by the Board before appointment. However, if the Secretary is a Board member, the compensation shall not exceed \$500 per year, as fixed by the Board at least 180 days before the beginning of the term.¹³ The duties of the Secretary are to:

1. Keep minutes for all Board meetings, and keep the verbatim record for all closed Board meetings;
2. Mail meeting notification and agenda to news media who have officially requested copies;
3. Keep records of the Board's official acts, and sign them, along with the President, before submitting them to the Treasurer at such times as the Treasurer may require;

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⁹ See policy 2:105, *Ethics and Gift Ban, Complaints of Sexual Harassment Made Against Board Members by Elected Officials* subhead. 5 ILCS 430/70-5, amended by P.A. 101-221, requires school districts to amend their sexual harassment policies "to provide for a mechanism for reporting and independent review of allegations of sexual harassment made against an elected official of the governmental unit by another elected official of a governmental unit." If the board has chosen to have the Superintendent appoint an outside investigator in these cases (see 2:105, *Ethics and Gift Ban*, at ¶n 11), remove item 12 from the list of board president duties and delete the Cross Reference to 2:105, *Ethics and Gift Ban*.

¹⁰ 105 ILCS 5/10-13.1 states that the "vice-president shall perform the duties of the president if there is a vacancy in the office of president or in case of the president's absence or inability to act" However, an earlier enacted statute calls for the appointment of a *president pro tempore* if the president is absent from any meeting or refuses to perform his or her duties, and specifies that the "vice-president, if the board elects such officer, shall be appointed the president pro tempore." 105 ILCS 5/10-13. This policy resolves any confusion by implementing the latter enacted statute and stating that the vice president fills a vacancy in the presidency.

¹¹ 105 ILCS 5/10-13.1. The board by resolution may decrease to one year the term of office for the vice president.

¹² 105 ILCS 5/10-14. The board by resolution may decrease to one year the term of office for the secretary. In districts governed by a board of directors, a clerk who is a board member performs these duties. 105 ILCS 5/10-5. The policy's provisions regarding compensation are required by 105 ILCS 5/10-14 (governs secretaries who are board members and non-board members) and by 50 ILCS 145/2 (governs secretaries who are board members).

Of the listed duties, only the following are imposed by law: #1, board meeting minutes (105 ILCS 5/10-7; see policy 2:220, *School Board Meeting Procedure*, for the requirements for minutes); #3, records board's official acts and submits them to the treasurer (105 ILCS 5/10-7); #4, treasurer's report (105 ILCS 5/10-8); #5, local election official (see f/n 2 and 7 of policy 2:30, *School District Elections*); #6, public inspection of the budget (105 ILCS 5/17-1).

Use this alternative for districts in suburban Cook County: replace "Regional Superintendent" in item #4 with "appropriate Intermediate Service Center."

¹³ 105 ILCS 5/10-14 and 50 ILCS 145/2.

4. Report to the Treasurer on or before July 7, annually, such information as the Treasurer is required to include in the Treasurer's report to the Regional Superintendent;
5. Act as the local election official for the District;
6. Arrange public inspection of the budget before adoption;
7. Publish required notices;
8. Sign official District documents requiring the Secretary's signature; and
9. Maintain Board policy and such other official documents as directed by the Board.

The Secretary may delegate some or all of these duties, except when State law prohibits the delegation. The Board appoints a secretary pro tempore, who may or may not be a Board member, if the Secretary is absent from any meeting or refuses to perform the duties of the office. A permanent vacancy in the office of Secretary is filled by special Board election.

Recording Secretary 14

The Board may appoint a Recording Secretary who is a staff member. The Recording Secretary shall:

1. Assist the Secretary by taking the minutes for all open Board meetings;
2. Assemble Board meeting material and provide it, along with prior meeting minutes, to Board members before the next meeting; and
3. Perform the Secretary's duties, as assigned, except when State law prohibits the delegation.

In addition, the Recording Secretary or Superintendent receives notification from Board members who desire to attend a Board meeting by video or audio means. 15

Treasurer 16

The Treasurer of the Board shall be either a member of the Board who serves a one-year term or a non-Board member who serves at the Board's pleasure.¹⁷ A Treasurer who is a Board member may not be compensated.¹⁸ A Treasurer who is not a Board member may be compensated provided it is established before the appointment.¹⁹ The Treasurer must: 20

1. Be at least 21 years old;

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¹⁴ This section is optional.

¹⁵ To allow attendance by video or audio means, a board must adopt policy language conforming to the restrictions in OMA, 5 ILCS 120/2.01 and 120/7. See subhead **Quorum and Participation by Audio or Video Means** in policy 2:220, *School Board Meeting Procedure*, [and its fn 31](#).

¹⁶ This section is for: (1) districts in a Class I, or (2) a Class II county (Cook Co.) district that has withdrawn from the authority of the township treasurer or is located in a township in which the office of township treasurer was abolished. 105 ILCS 5/5-1 defines Class I county school units as districts in counties with less than 2,000,000 inhabitants. Those districts in Cook County (Class II county) under the authority of the trustees of schools of the township and the township treasurers should use this alternative: "Qualifications, appointment, and duties of the Treasurer for the School District shall be as provided in the School Code." See 105 ILCS 5/8-1(a) for how the township treasurer is appointed and the term of office; duties are found in 105 ILCS 5/8-2, 5/8-6, 5/8-16, and 5/8-17.

¹⁷ 105 ILCS 5/8-1(b). The treasurer's term of office is two years if the district is located in a Class II county (Cook Co.) that was under the jurisdiction and authority of the township treasurer and township trustees of schools at the time those offices were abolished. 105 ILCS 5/8-1(c). Those boards should use the following alternative:

The Treasurer of the Board shall serve a two-year term beginning and ending on the first day of July.

¹⁸ 105 ILCS 5/8-1(b) and (c).

¹⁹ 105 ILCS 5/8-3.

²⁰ Qualification #1 is required for treasurers in a Class I county or Class II county (Cook Co.) that withdrew from the authority of the township treasurer and township trustees of schools. 105 ILCS 5/8-1(b). This sample policy makes it applicable to Class II county (Cook Co.) districts that were under the authority of the township treasurer and township trustees of schools at the time those offices were abolished.

Qualification #2 is required for treasurers in a Class I county or Class II county (Cook Co.) that withdrew from the authority of the township treasurer and township trustees of schools. 105 ILCS 5/8-1(b). Districts in a Class II county (Cook Co.) that were under the authority of the township treasurer and township trustees of schools at the time those offices were abolished should replace this qualification as follows: "2. Not be the District Superintendent." 105 ILCS 5/8-1(c).

2. Not be a member of the County Board of School Trustees; and
3. Have a financial background or related experience, or 12 credit hours of college-level accounting.

The Treasurer shall: ²¹

1. Furnish a bond, which shall be approved by a majority of the full Board;
2. Maintain custody of school funds;
3. Maintain records of school funds and balances;
4. Prepare a monthly reconciliation report for the Superintendent and Board; and
5. Receive, hold, and expend District funds only upon the order of the Board.

A vacancy in the Treasurer's office is filled by Board appointment.

LEGAL REF.: 5 ILCS 120/7 and 420/4A-106.
105 ILCS 5/8-1, 5/8-2, 5/8-3, 5/8-6, 5/8-16, 5/8-17, 5/10-1, 5/10-5, 5/10-7, 5/10-8,
5/10-13, 5/10-13.1, 5/10-14, 5/10-16.5, and 5/17-1.

CROSS REF.: 2:80 (Board Member Oath and Conduct), [2:105 \(Ethics and Gift Ban\)](#), 2:150 (Committees), 2:210 (Organizational School Board Meeting), 2:220 (School Board Meeting Procedure)

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Qualification #3 is required for treasurers in a Class I county. 105 ILCS 5/8-1(d). This qualification should be replaced by the following for districts in a Class II county (Cook Co.): "Upon being appointed for his or her first term, be a certified public accountant or a certified chief school business official as defined in the School Code; experience as a township treasurer in a Class II county school before July 1, 1989 is deemed equivalent." 105 ILCS 5/8-1(e).

²¹ 105 ILCS 5/8-2, 5/8-6, and 5/8-16.

School Board

Administrative Procedure - Superintendent Committees

The Superintendent or designee creates Superintendent or administrative committees as deemed necessary, makes all appointments, and directs all activities. A Superintendent or administrative committee reports to the Superintendent or administrator who directs its activities. The Superintendent or designee should consult the Board Attorney (a) concerning whether any of these committees must comply with the Open Meetings Act (OMA), and/or (b) to receive guidance for ensuring that the meetings either comply with OMA requirements or do not trigger OMA.¹ Unless otherwise indicated, the listed Superintendent or administrative committees are optional:

Communicable and Chronic Infectious Disease Program Task Force

This task force assists in the development and review of a chronic and infectious disease program consistent with the District's policies and State and federal laws and regulations, and reports directly to the Superintendent or designee. Appointments are made to the task force only if the Superintendent or designee determines that its input is desirable. See policies 5:40, *General Personnel - Communicable and Chronic Infectious Disease*; and 7:280, *Students - Communicable and Chronic Infectious Disease*.

Task force members include the Superintendent or designee, school medical advisor, a school nurse, and representatives from the School Board, local health department, PTA, the professional staff, and other employee groups.

Communicable and Chronic Infectious Disease Review Team

This review team monitors those employees and students who have a communicable and chronic infectious disease, and:

1. Reviews individual medical case histories.
2. Recommends the most appropriate educational setting for a student, which may include temporary removal from and return to the regular educational setting.
3. Recommends the most appropriate work setting for an employee; this may include retention in his/her present position, transfer to another position, or temporarily excused from or returned to his/her work assignment.

Team members include the District's medical advisor, a school nurse, the Building Principal, and the Superintendent or designee.

The footnotes should be removed before the material is used.

¹ Superintendent and administrative committees are generally not governed by the Open Meetings Act (OMA), but the operation and function of specific committees may make the Act applicable. For example, any committee, whether superintendent or board, having as members at least a majority of the quorum (three out of seven) of the board, will be subject to OMA. 5 ILCS 120/1.02. Other factors that determine whether a committee is governed by OMA include "who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure; the entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute; whether its role is solely advisory or whether it also has a deliberative or investigative function; whether the entity is subject to government control or otherwise accountable to any public body; whether the group has a budget; its place within the larger organization or institution of which it is a part; and the impact of decisions or recommendations that the group makes." *University Professionals v. Stukel*, 344 Ill.App.3d 856, 865 (1st Dist. 2003).

The review team is guided by the Board's policies, Ill. Dept. of Public Health (IDPH) rules and regulations, and all other applicable State and federal laws. It reports directly to the Superintendent or designee. See also policies 5:40, *General Personnel - Communicable and Chronic Infectious Disease*; and 7:280, *Students - Communicable and Chronic Infectious Disease*. The review team consults the employee's or the student's personal physician and local health department officials before making any recommendations.

The Communicable and Chronic Infectious Disease Review Team respects the privacy rights of each employee and student and takes such precautions as may be necessary to secure confidentiality.

Food Allergy Management Committee

This committee develops and implements the District's Food Allergy Management Program and reports directly to the Superintendent or designee. It monitors the program for effectiveness and establishes a schedule for the Superintendent to report this information to the Board. See policy 7:285, *Food Allergy Management Program*, based upon the *ISBE/IDPH Guidelines* at: www.isbe.net/Documents/food_allergy_guidelines.pdf. See also the modifiable Microsoft® Word version of the *ISBE/IDPH Guidelines* at: www.isbe.net/Pages/Food-Allergy-Guidelines.aspx.

Committee members include District-level administrators, Building Principals, the District Safety Coordinator (see 4:170-AP1, *Comprehensive Safety and Security Plan, Part C, District Safety Coordinator and Safety Team; Responsibilities*), District 504 Coordinator (see policy 6:120, *Education of Children with Disabilities*), staff members, parents/guardians, community members, and students.

Employee Drug-Substance Abuse Prevention Committee

This committee makes recommendations directly to the Superintendent or designee regarding the issues of employee drug-substance abuse and resulting employee conduct standards, and:

1. Cooperates with community and State agencies on drugsubstance abuse programs.
2. Gathers information about drugsubstance abuse and suggests methods to disseminate it to employeesstaff.
3. Develops a support network that encourages employees to self-refer for treatment and suggests procedures for early identification and treatment.
4. Recommends procedures that would protect the privacy of employees while taking into consideration any directives from the Board's- to the Superintendent regarding the District's obligation to provide a safe environment and to ensure high quality performance, which may include but not be limited to-:
 - a. Securing training for designated district employees to educate them to identify symptoms of being impaired by or under the influence of substances prohibited by policy. For guidance about what impaired by or under the influence of means, see:
 - i. Footnote discussions in numbers five and six in policy 5:50, Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition;
 - ii. 625 ILCS 5/11-501.2 and 5/11-501.9, amended by P.A. 101-27 (chemical and other tests, validity, etc., a/k/a field sobriety tests);
 - iii. 410 ILCS 705/10-50(d), added by P.A. 101-27 (an employer may consider an employee to be impaired or under the influence of cannabis if the employer has a good faith belief that an employee manifests specific articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual

behavior, or negligence or carelessness in operating equipment or machinery; disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property; disruption of a production or manufacturing process; or carelessness that results in any injury to the employee or others) **Note:** Consult the Board Attorney about identifying cannabis use)); and

- iv. Professional development opportunities in the area, e.g., local law enforcement agencies may be a place to begin.
- b. Implementing a reasonable suspicion and/or drug testing² program(s) to enhance the District's ability to identify and discipline employees suspected of being impaired by and/or under the influence of prohibited substances. **Note:** Consult the Board Attorney before implementing any drug-testing program(s) or disciplining employees based upon the results of these programs. Drug testing will likely assist the District with the challenges of identifying cannabis-related issues, but the science behind impairment identification and behavioral testing for cannabis impairment is new and emerging.
- c. Addressing expectations for employees in positions of leadership who are perpetually *on call*³ due to the nature of their positions and responsibilities.
- d. Holding licensed educators to a higher standard than non-licensed employees due to their professional code of conduct expectations.
- e. Holding employees working directly with students to a higher standard than employees not working directly with students.

5. Recommends a method to explicitly inform employees of the consequences of violating the of-District's policy-and-the consequences of drug-abuse.

6. Recommends best practices for discipline of employees who are suspected of or violating the District's policy. ⁴

Committee members include the Superintendent or designee, the District's medical advisor/medical review officer, and employee representatives from both professional and educational support personnel. The committee is guided by Board policies, administrative procedures, and relevant State and federal statutes. See policies *5:50, Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition, 5:120, Employee Ethics; Conduct; and Conflict of Interest*, and administrative procedure *5:120-AP2, Employee Conduct Standards*.

Pandemic Planning Team

This team builds a strong relationship with the local health department and emergency medical agencies and uses their assistance to develop and implement a comprehensive pandemic influenza

The footnotes should be removed before the material is used.

² The best practice for ensuring the strongest defense when disciplining an employee for undertaking tasks while being impaired and/or under the influence of prohibited substances is a confirmed, positive, drug test used in combination with reasonable suspicion of impairment. Drug testing may be cost prohibitive and disruptive for school districts while also presenting several other legal considerations, including possible collective bargaining implications upon request by the employee representative. For example, while the Americans with Disabilities Act allows the results of such tests to be used as the basis for disciplinary action (42 U.S.C. §12114; 29 C.F.R. §1630.16 (e), drug tests may still violate other laws, e.g., Title VI and the Rehabilitation Act (42 U.S.C. §2000e et seq.; and 29 U.S.C. §706 et seq.)). Identifying and disciplining employees for cannabis use on a drug testing alone may present a unique set of challenges because cannabis can remain in a person's system for weeks.

³ See f/n 3 of policy *5:50, Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition*.

⁴ Consult the board attorney regarding any disciplinary action explored for employees based solely on a positive cannabis test result. Employee discipline options may be an item on which collective bargaining may be required.

school action plan and build awareness of the final plan among staff, students, and community. See policy 4:180, *Pandemic Preparedness*, and procedure 4:180-API, *School Action Steps for Pandemic Influenza*.

Team members may include one or two Board members, administrators, and staff members. It reports directly to the Superintendent or designee.

Sex Equity Committee

This committee supports the District's efforts to eliminate sexual harassment by advising the Superintendent or designee on prevention, intervention, and education. Committee members may include community representatives, District administrators, teachers, and students. See policies 5:10, *Equal Employment Opportunity and Minority Recruitment*; 5:20, *Workplace Harassment Prohibited*; 7:10, *Equal Educational Opportunities*; and 7:20, *Harassment of Students Prohibited*.

School Violence Prevention Team

This team builds awareness about and supports the development and implementation of the District's:

1. Targeted School Violence Prevention Program. See policy 4:190, *Targeted School Violence Prevention Program*, and procedure 4:190-API, *Targeted School Violence Prevention Program*.
2. Anti-bullying program, when and as appropriate. See policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*; and procedure 7:180-API, *Prevention, Identification, Investigation, and Response to Bullying*.

All Building Principals or their designees must be on this team. Other team members may include the District Safety Coordinator (see procedure 4:170-API, *Comprehensive Safety and Security Plan, Part C, District Safety Coordinator and Safety Team; Responsibilities*), law enforcement representatives, Board Attorney, District psychologist(s), mental health workers and/or social service agencies, faith leaders, community members, and students. It reports directly to the Superintendent or designee.

Title I Parent Advisory Committee

This committee is required if the District receives or desires to receive Title I funds. See policy 6:170, *Title I Programs*; procedure 6:170-API, E1, *District-Level Parent and Family Engagement Compact*; 20 U.S.C. §§6312(a)(1)(A), 6318(a)(2)(F). The committee supports the development and implementation of the District's Title I plan. Its activities may include, at the Superintendent or designee's directive:

1. Facilitating the active involvement of parents/guardians in their children's academic success by such activities as coordinating Title I parent-teacher conferences, providing information to help parents/guardians assist their children, coordinating volunteer or paid participation by parents/guardians in school activities, and establishing a process to respond to parents/guardians' inquiries and recommendations.
2. Distributing Title I informational materials.
3. Consulting regarding the District's Title I Plan.
4. Supporting the implementation of Board policy 6:170, *Title I Programs*.

Committee members include parents/guardians and family members of Title I children. It reports directly to the Superintendent or designee.

PERA (Performance Educational Reform Act) Joint Committee and the RIF (Reduction in Force) Joint Committee ⁵

Each committee listed below is required until its function has been fulfilled; each reports directly to the Superintendent or designee.

1. PERA joint committee. This mandatory committee develops a plan for incorporating data and indicators of student growth into the evaluation plan. The joint committee is “composed of equal representation selected by the district and its teachers, or where applicable, the exclusive bargaining representative of its teachers.” 105 ILCS 5/24A-4(b). If, within 180 calendar days of the committee’s first meeting, the committee does not reach an agreement on the plan, the District must implement ISBE’s model evaluation plan with respect to the use of data and indicators on student growth. The amendment of an evaluation plan continues to be a mandatory subject of bargaining. This committee also agrees to the panel of qualified evaluators that reviews appeals of unsatisfactory performance ratings and determines the criteria for successful appeals.⁶ 105 ILCS 5/24A-5.5, added by P.A. 101-591.
2. RIF joint committee. This mandatory committee convenes annually to consider issues identified in the statute concerning the selection of teachers for layoff. 105 ILCS 5/24-12(c). On or before December 1 each year, the RIF joint committee must be established and must hold its first meeting. It is composed of individuals appointed by the Board and the teachers (or the exclusive bargaining representative of its teachers).

Concussion Oversight Team

The Concussion Oversight Team is required until its function has been fulfilled; it reports directly to the Superintendent or designee. State law requires the team to establish protocols for return-to-play and return-to-learn for students who have suffered a concussion or head injury during interscholastic athletic activities. See policy 7:305, *Student Athlete Concussions and Head Injuries*. 105 ILCS 5/22-80(d), ~~added by P.A. 99-245, and amended by P.A.s 99-486 and 100-309.~~ The Board must appoint or approve a Concussion Oversight Team. Section 22-80(d) identifies who must be on each Concussion Oversight Team. A physician, to the extent possible, must be on the Team. If the school employs an athletic trainer and/or nurse, they must be on the Team to the extent practicable. The Team must include, at a minimum, one person who is responsible for implementing and complying with the return-to-play and return-to-learn protocols adopted by the Team. Other licensed health care professionals may be appointed to serve on the Team. If it is not practicable for a physician, athletic trainer and/or nurse to be on the Team and other licensed health care professionals are not appointed to serve on the Team, the Team may be composed of only one person who need not be a licensed healthcare professional; however, that individual may not be a coach.

The footnotes should be removed before the material is used.

⁵ These committees are not subject to OMA. 105 ILCS 5/24A-4(b) and 105 ILCS 5/24-12(c), respectively, amended by P.A. 100-768, ~~eff. 1-1-19.~~

⁶ The PERA joint committee does not determine what rating will be issued to replace an unsatisfactory rating in the event of a successful appeal; that issue must be collectively bargained. 105 ILCS 5/24A-5.5, added by P.A. 101-591.

Wellness Committee ⁷

The Wellness Committee includes at least one representative from each of the following groups: parents, students, representatives of the school food authority, teachers of physical education, school health professionals, a member of the Board,⁸ school administrators,⁹ and members of the community. It reports directly to the Superintendent or designee. Individuals of this committee will participate in the development, implementation, periodic reviews, and updates of policy 6:50, *School Wellness*. 7 C.F.R. §210.31(d)(1).

The footnotes should be removed before the material is used.

⁷ Establishing a wellness committee is optional. The preamble to 7 C.F.R. §210.31(d)(1) suggests one method to comply with the rules is by: “identifying individuals” to serve on a “local school wellness policy committee.” However, the final text of 7 C.F.R. §210.31(d)(1) does not specifically require districts to establish a local school wellness policy committee – only that they “permit [groups listed in the procedure above] to participate” See also f/n 23 in policy 6:50, *School Wellness*. If a district establishes a wellness committee, it should be listed here.

⁸ See f/n 1 above. As much of the work of developing a plan to involve local stakeholders is administrative/staff work rather than governance work, the best practice is to have a wellness committee be an administrative committee, but consult the board attorney for guidance about the application of the OMA when three or more board members serve on this committee.

⁹ If a board wants to comply with the U.S. Dept. of Agriculture’s encouragement to include Supplemental Nutrition Assistance Program Education (SNAP-ED) coordinators or educators in the group to provide input about the wellness policy, insert: “, Supplemental Nutrition Assistance Program Education (SNAP-ED) coordinators, educators,” immediately before: “, and members of the community.”

School Board

Types of School Board Meetings ¹

General

For all meetings of the School Board and its committees, the Superintendent or designee shall satisfy all notice and posting requirements contained herein as well as in the Open Meetings Act. ~~This shall include mailing meeting notifications to news media that have officially requested them and to others as approved by the Board.~~² Unless otherwise specified, all meetings are held in the District's main office.³ Board policy 2:220, *School Board Meeting Procedure*, governs meeting quorum requirements.

The Superintendent is designated on behalf of the Board and each Board committee to receive the training on compliance with the Open Meetings Act that is required by Section 1.05(a) of that Act. The Superintendent may identify other employees to receive the training.⁴ ~~In addition, each Board member must complete a course of training on the Open Meetings Act as required by Section 1.05(b) or (c) of that Act.~~ ⁵

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¹ State law controls this policy's content. The provisions of the Open Meetings Act (OMA) do not apply to collective bargaining negotiations, including negotiating team strategy sessions, and grievance arbitrations as provided in 115 ILCS 5/18, amended by P.A. 100-768.

² 5 ILCS 120/2.02. These responsibilities may be given to anyone.

³ State law only requires that meetings be held in a location convenient and open to the public and no open meeting is allowed to be held on a legal holiday unless the regular meeting day falls on that holiday. ~~(5 ILCS 120/2.01)~~. According to an Ill. Atty. Gen. Public Access Counselor Opinion, a board may not meet in a private residence because it would not be convenient and open to the public (PAO 12-8). A board meeting 26 miles away from its regular location, while open to the public, was inconvenient because "the public, as a practical matter, would be deterred from attending it." (PAO 13-14). Any person may record an open meeting. ~~(5 ILCS 120/2.05)~~. See policy 2:220, *School Board Meeting Procedure*.

⁴ Each board must designate at least one employee or member to receive training on compliance with OMA. ~~(5 ILCS 120/1.05)~~. Revise this paragraph if the board designates other individual(s) to receive the training. A list of designated individual(s) must be submitted to the Ill. Attorney General's Public Access Counselor (PAC). The designated individual(s) must successfully complete an electronic training curriculum administered by the Attorney General's Public Access Counselor PAC within 30 days after that designation, and thereafter must successfully complete an annual training program. The OMA does not specify duties for the designated individuals who receive the training but presumably they would assist the board in its OMA compliance efforts.

⁵ 5 ILCS 120/1.05(b) applies to training administered by the Ill. Attorney General's office; 1.05(c) applies to training administered by IASB. Board members elected or appointed after 1-1-12 must complete the training not later than 90 days after taking the oath of office. Even before this law, compliance with the OMA has always been considered a shared responsibility of board members. Failing to complete the OMA training does not affect the validity of an action taken by the board nor is it considered a criminal violation. ~~(5 ILCS 120/1.05(b)) and 120/4~~. However, a person found to have violated any other provisions of the OMA is guilty of a Class C misdemeanor punishable by a \$1,500 fine and/or 30 days in jail. ~~(5 ILCS 120/4)~~.

Regular Meetings

The Board announces the time and place for its regular meetings at the beginning of each fiscal year.⁶ The Superintendent shall prepare and make available the calendar of regular Board meetings. The regular meeting calendar may be changed with 10~~ten~~ days' notice in accordance with State law.⁷

A meeting agenda shall be posted at the District's main office and the Board's meeting room, or other location where the meeting is to be held, at least 48 hours before the meeting.⁸

Closed Meetings⁹

The Board and Board committees may meet in a closed meeting to consider the following subjects:

1. The appointment, employment, compensation, discipline, performance, or dismissal of specific employees, specific individuals who serve as independent contractors in a park, recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor in a park, recreational, or educational setting, or a volunteer of the public body or against legal counsel for the public body to determine its validity.¹⁰ However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and

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⁶ The OMA and the School Code have different provisions regarding the establishment of a regular meeting schedule. The OMA requires each public body to prepare and make available a regular meeting schedule at the beginning of each calendar or fiscal year.⁵ (5 ILCS 120/2.03). The School Code states that this task is accomplished during the organizational meeting. By *announcing* the schedule at the beginning of each calendar or fiscal year and by *fixing* the schedule at the organizational meeting, a board can implement both laws. Note that the phrase in this sample policy, "at the beginning of each fiscal year," can be changed to "at the beginning of each calendar year."

⁷ Regular meeting dates may be changed by giving at least 10 days' notice in a newspaper of general circulation and posting a notice at the district's main office.⁵ (5 ILCS 120/2.03). Districts with a population of less than 500, in which no newspaper is published, may give the 10~~ten~~ days' notice by posting a notice in at least three prominent places within the district, in addition to posting a notice at the district's main office. (~~Id.~~). Notice shall also be given to those news media having filed an annual request to receive notifications. (~~Id.~~).

⁸ 5 ILCS 120/2.02(a). The posting location may need modification to comply with the law's requirement that the agenda be posted at the district's main office. For agenda requirements, see policy 2:220, *School Board Meeting Procedure*.

OMA also requires that "any requested notice and agenda for the meeting be *continuously available* for public review during the entire 48-hour period preceding the meeting." Emphasis added, 5 ILCS 120/2.02(c). The requirement for *continuously available* is satisfied if the district posts any required notice and agenda on its website. However, to comply with the legislative intent, posting on the district website does not replace the posting described in this sentence. See Rep. Pihos remarks reported in *New open-meetings law; is hard-copy posting of agendas still required?*, Sept. 2012, Illinois Bar Journal.

For districts that do not post board meeting agendas on a website (because they do not have a website maintained by a fulltime staff member), add the following sentence:

The agenda shall be continuously available for public review during the entire 48-hour period preceding the meeting.

If a notice or agenda is not continuously available for the full 48-hour period due to actions outside of the district's control, the lack of availability does not invalidate any meeting or action taken.

⁹ The reasons for closed meetings are frequently addressed in court decisions and Attorney General opinions; only a few of these decisions/opinions are mentioned in the footnotes.

¹⁰ "Th[is] exception is not intended to allow private discussion of fiscal matters, notwithstanding that they may directly or indirectly impact the employees of the public body." See PAOs 12-11 and 15-03. Discussing the elimination of an employee's position for reasons unrelated to the performance of the employee is not within the scope of Section 2(c)(1). See PAO 15-07. Nor does the exception permit a public body to hold closed sessions to discuss employees in general or issues that may ultimately have an impact on employees. See PAOs [15-05](#), [16-13](#), and [18-12](#).

held in accordance with [the Open Meetings Act]. 5 ILCS 120/2(c)(1), amended by P.A. [99-646/101-459](#). ¹¹

2. Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees. 5 ILCS 120/2(c)(2). ¹²
3. The selection of a person to fill a public office, as defined in the Open Meetings Act, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance. -5 ILCS 120/2(c)(3).
4. Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in the Open Meetings Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning. -5 ILCS 120/2(c)(4).
5. The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired. 5 ILCS 120/2(c)(5).
6. The setting of a price for sale or lease of property owned by the public body. 5 ILCS 120/2(c)(6).
7. The sale or purchase of securities, investments, or investment contracts. 5 ILCS 120/2(c)(7).
8. Security procedures, school building safety and security, and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff, the public, or public property. -5 ILCS 120/2(c)(8), ~~amended by P.A. 99-235, eff. 1-1-16.~~
9. Student disciplinary cases. 5 ILCS 120/2(c)(9).
10. The placement of individual students in special education programs and other matters relating to individual students. 5 ILCS 120/2(c)(10).

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¹¹ The Local Government Wage Increase Transparency Act, 50 ILCS 155/1, ~~added by P.A. 99-646~~, allows *disclosable payments* (described below) to IMRF employees only when the school board has first discussed the specific payment to be made at a meeting open to the public and posted and held in accordance with the requirements of [the Open Meetings Act/OMA, 50 ILCS 155/5, amended by P.A. 101-228.](#)

The provisions apply only to disclosable payments made to participating employees under Article Seven of the Illinois Pension Code (IMRF) who began participation before 1-1-11 and who are not subject to a collective bargaining agreement with respect to the employment upon which the participation is based.

Disclosable payments means a payment, whether in the form of an increase in the rate of earnings or a lump-sum payment, that would:

1. Be made by a participating employer to a participating employee after the employee has expressed to the employer his or her intent to retire or withdraw from service;
2. Have the effect of increasing the employee's reportable monthly earnings from that employer by more than 6% compared to the previous month; and
3. Be made between 12 months and 90 days prior to the employee's expected termination of service.

A disclosable payment also includes payment for accumulated sick leave; ~~it~~ does not include a refund of contributions or any payment required to be paid by State or federal law.

¹² Discussing a hiring freeze is not within the scope of Section 2(c)(2). See PAO 15-07. And if a public body is not engaged in collective bargaining at the time of the meeting, discussion of a hiring freeze does not constitute a collective negotiating matter. *Id.*

11. Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting. -5 ILCS 120/2(c)(11).
12. The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, if otherwise the disposition of a claim or potential claim might be prejudiced, or the review or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the public body or any intergovernmental risk management association or self insurance pool of which the public body is a member. -5 ILCS 120/2(c)(12).
13. Self evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the public body is a member. 5 ILCS 120/2(c)(16). ¹³
14. Discussion of minutes of meetings lawfully closed under the Open Meetings Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06. 5 ILCS 120/2(c)(21).
15. Meetings between internal or external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America. 5 ILCS 120/2(c)(29).

The Board may hold a closed meeting, or close a portion of a meeting, by a majority vote of a quorum, taken at an open meeting. The vote of each Board member present, and the reason for the closed meeting, will be publicly disclosed at the time of the meeting and clearly stated in the motion and the meeting minutes. ¹⁴

A single motion calling for a series of closed meetings may be adopted when such meetings will involve the same particular matters and are scheduled to be held within three months of the vote. ¹⁵

No final Board action will be taken at a closed meeting. ¹⁶

Reconvened or Rescheduled Meetings

A meeting may be rescheduled or reconvened. Public notice of a rescheduled or reconvened meeting shall be given in the same manner as that for a special meeting, except that no public notice is required when the original meeting is open to the public and: (1) is to be reconvened within 24 hours,

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¹³ IASB field services directors are available to facilitate a board self-evaluation.

¹⁴ 5 ILCS 120/2a. Provided the open meeting was properly noticed, no additional notice is required to close the meeting. A motion to close a meeting can be as simple as, "I move that the Board hold [go into] a closed session to discuss [state one of the closed meeting grounds with reference to the specific section authorizing the closed meeting]."

The adequacy of a motion to go into closed session was discussed in Henry v. Anderson and Champaign Community Unit School Dist. No. 4, 827 N.E.2d 522 (Ill.App.4, 2005). A statutory citation is not required in the motion to go into closed session, but the OMA does require a reference to the specific exception. The *litigation* exception is tricky. If the litigation has been filed and is pending, the motion to go into closed session need only state that the board will discuss litigation that has been filed and is pending. If the litigation has not been filed, the board must: (1) find that the litigation is probable or imminent, and (2) record and enter into the minutes the basis for that finding.

¹⁵ *Id.*

¹⁶ 5 ILCS 120/2(c). See also PAOs 13-03, 13-07, and 14-01.

or (2) an announcement of the time and place of the reconvened meeting was made at the original meeting and there is no change in the agenda. 17

Special Meetings

Special meetings may be called by the President or by any three members of the Board by giving notice thereof, in writing, stating the time, place, and purpose of the meeting to remaining Board members by mail at least 48 hours before the meeting, or by personal service at least 24 hours before the meeting. 18

Public notice of a special meeting is given by posting a notice at the District's main office at least 48 hours before the meeting and by notifying the news media that have filed a written request for notice. A meeting agenda shall accompany the notice. 19

All matters discussed by the Board at any special meeting must be related to a subject on the meeting agenda. 20

Emergency Meetings

Public notice of emergency meetings shall be given as soon as practical, but in any event, before the meeting to news media that have filed a written request for notice. 21

Posting on the District Website 22

In addition to the other notices specified in this policy, the Superintendent or designee shall post the following on the District website: (1) the annual schedule of regular meetings, which shall remain posted until the Board approves a new schedule of regular meetings; (2) a public notice of all Board meetings; and (3) the agenda for each meeting which shall remain posted until the meeting is concluded.

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17 5 ILCS 120/2.02.

18 105 ILCS 5/10-16 (two members of a board of directors; 105 ILCS 5/10-6). Lawyers disagree whether three members may call a special meeting without violating the OMA, although there is general agreement that no violation occurs if three members call a special meeting while they are participating in a lawful board committee meeting with the matter on the agenda.

19 5 ILCS 120/2.02. News media that gave the board an address or telephone number within the district's territorial jurisdiction must be given notice in the same manner as given board members.

OMA requires that "any required notice and agenda be *continuously available* for public viewing during the entire 48-hour period preceding the meeting." Emphasis added, 5 ILCS 120/2.02(c). The requirement for *continuously available* is satisfied if the district posts any required notice and agenda on its website. Posting on the district website does not replace the posting described in this paragraph. See f/n 8.

For districts that do not post board meeting notices and agendas on a website (because they do not have a website maintained by a fulltime staff member), add the following sentence:

The notice and agenda shall be continuously available for public review during the entire 48-hour period preceding the meeting.

20 Lawyers disagree whether ~~the Open Meetings Act~~ OMA mandates this restriction, i.e., whether it restricts board discussions to items related to an item on the special meeting agenda. ~~OMA~~The Act limits board action to items on the agenda (5 ILCS 120/2.02(c)); it states that the validity of any action taken "which is germane to a subject on the agenda shall not be affected by other errors or omissions in the agenda." (5 ILCS 120/2.02(a)). For agenda requirements, see policy 2:220, *School Board Meeting Procedure*.

21 5 ILCS 120/2.02(a).

22 Required *only if* the district has a website that is maintained by a full-time staff member; if not, this section may be omitted. ~~(5 ILCS 120/2.02)~~. Note that 5 ILCS 120/2.02(b) requires that a notice of *all* meetings be posted on the district website, but only notices of *regular* meetings must remain posted until the *regular* meeting is concluded. As this is an obvious oversight, it is wise to leave the notice of every meeting on the website until after the meeting occurred. The agenda must remain on the district website until the meeting is concluded. ~~(Id.)~~

LEGAL REF.: 5 ILCS 120/, Open Meetings Act.
5 ILCS 140/, Freedom of Information Act.
105 ILCS 5/10-6 and 5/10-16.

CROSS REF.: 2:110 (Qualifications Term, and Duties of Board Officers), 2:120 (Board Member Development), 2:210 (Organizational School Board Meetings), 2:220 (School Board Meeting Procedure), 2:230 (Public Participation at School Board Meetings and Petitions to the Board), 6:235 (Access to Electronic Networks)

School Board

School Board Meeting Procedure 1

Agenda

The School Board President is responsible for focusing the Board meeting agendas on appropriate content.² The Superintendent shall prepare agendas in consultation with the Board President. The President shall designate a portion of the agenda as a consent agenda for those items that usually do not require extensive discussion ~~or explanation~~ before Board action. Upon the request of any Board member, an item will be withdrawn from the consent agenda and placed on the regular agenda for independent consideration.³

Each Board meeting agenda shall contain the general subject matter of any item that will be the subject of final action at the meeting.⁴ Items submitted by Board members to the Superintendent or the President shall be placed on the agenda for an upcoming meeting.⁵ District residents may suggest inclusions for the agenda.⁶ The Board will take final action only on items contained in the posted agenda; items not on the agenda may still be discussed.⁷

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¹ State law requires boards to have a policy concerning: (1) the public's right to record meetings (5 ILCS 120/2.05), and (2) if applicable, attendance by video or audio means (5 ILCS 120/7). Boards are not mandated to have a policy on the remaining topics covered in this policy. The following items are matters of local discretion: agenda preparation and contents, process for board members to have items placed on agenda, receipt and handling of residents' requests for agenda inclusions, and order of business.

² Appropriate agenda content includes: establishing board processes, clarifying the district's purpose, delegating authority, defining operating limits, monitoring district progress, and taking legally required board action. See *IASB Foundational Principles of Effective Governance*.

³ To comply with the Open Meetings Act's (OMA's) mandate that minutes contain a "summary of discussion on all matters proposed, deliberated, or decided," a board should include a list of consent items in the agenda. OMA also requires that any final action "be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." 105 ILCS 120/2(c). Some level of explanation of the consent agenda items must be verbally given before a board votes to approve a consent agenda. The Ill. Supreme Court has held that "the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance." *Bd. of Education of Springfield Sch. Dist. No. 186 v. Atty. Gen. of Ill.*, 77 N.E.3d 625 (Ill. 2017).

⁴ 5 ILCS 120/2.02(c). The Ill. Appellate Court held that the ~~Open Meetings Act~~ OMA prohibits a board from voting on a matter at a regular meeting that is not on the pre-meeting published agenda. ~~(Rice v. Board of Trustees of Adams County, 762 N.E.2d 1205 (Ill.App.4, 2002))~~ 326 Ill.App.3d 1120 (4th Dist. 2002).

⁵ An alternative follows:

Any Board member may submit suggested agenda items to the Board President for his or her consideration.

⁶ See policy 2:230, *Public Participation at School Board Meetings and Petitions to the Board*. In districts governed by a board of school directors, an appointed board official must give a person requesting consideration of a matter by the board a formal written response no later than 60 days after receiving the request. The response must establish a meeting before the board or list the reasons for denying the request. ~~(105 ILCS 5/10-6).~~

Options follow to restrict the addition of new agenda items; the phrases between [] may be used together, separately, or eliminated.

Discussion items may be added to the agenda [at the beginning of a regular meeting] [upon unanimous approval of those Board members present].

⁷ An opinion from the Ill. Public Access Counselor found no violation of the OMA when a board removed an item from the agenda within the 48-hour notice time period. ~~(PAO 14-3).~~ Removals inform the public that the board does not plan to proceed on the topic.

The Superintendent shall provide a copy of the agenda, with adequate data and background information, to each Board member at least 48 hours before each meeting, except a meeting held in the event of an emergency.⁸ The meeting agenda shall be posted in accordance with Board policy 2:200, *Types of School Board Meetings*.

The Board President shall determine the order of business at regular Board meetings. Upon consent of a majority of members present, the order of business at any meeting may be changed.

Voting Method

Unless otherwise provided by law, when a vote is taken upon any measure before the Board, with a quorum being present, a majority of the votes cast shall determine its outcome.⁹ A vote of *abstain* or *present*, or a vote other than *yea* or *nay*, or a failure to vote, is counted for the purposes of determining whether a quorum is present. A vote of *abstain* or *present*, or a vote other than *yea* or

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⁸ State law does not require this, except that 105 ILCS 5/10-16 requires members to receive a written notice of a special meeting that includes the meeting's purpose.

⁹ In most situations, the failure of a member to vote has the effect of acquiescence or concurrence with the majority of votes cast. *Prosser v. Village of Fox Lake*, 438 N.E.2d 134 (Ill., 1982); *People v. Bertrand*, 978 N.E.2d 681 (Ill. App. 1st Dist., 2012). For example, a motion passes with a vote of two *yeas*, one *nay*, and four *abstentions*. A motion fails with a vote of two *yeas*, three *nays*, and two *abstentions*. A motion fails with a vote of three *yeas*, three *nays*, and one *abstain* because there is no majority. Exceptions include when a statute requires the *affirmative vote* of a majority or extra. Statutory exceptions include the following board actions:

1. Dismissing a teacher for any reason other than reduction of staff or elimination of that position requires approval by the majority of all members. ~~(105 ILCS 5/24-12).~~
2. Directing the sale of district real property or buildings thereon must be approved by at least 2/3 of the board members (105 ILCS 5/5-22, ~~amended by P.A. 99-794, eff. 1-1-17~~), unless the sale is residential property constructed or renovated by students as part of a curricular program, in which case, the board could engage the services of a licensed real estate broker to sell the property for a commission not to exceed 7%, contingent upon the public listing of the property on a multiple listing service for a minimum of 14 calendar days and a sale of the property happens within 120 days.
3. Making or renewing a lease of school property to another school district or municipality or body politic and incorporate for a term longer than ten years, or to alter the terms of such a lease whose unexpired term exceeds 10 years, requires approval by at least 2/3 of the board's full membership. ~~(105 ILCS 5/10-22.11).~~
4. Leasing any building, rooms, grounds, and appurtenances to be used by the district for school or administration purposes for a term longer than ten years, or to alter the terms of such a lease whose unexpired term exceeds ten years, requires approval by at least 2/3 of the board's full membership. ~~(105 ILCS 5/10-22.12).~~
5. Obtaining personal property by lease or installment contract requires approval by an affirmative vote of at least 2/3 of the board members. *Personal property* includes computer hardware and software and all equipment, fixtures, and improvements to existing district facilities to accommodate computers. ~~(105 ILCS 5/10-22.25a).~~
6. Adopting a supplemental budget after a successful referendum requires approval by a majority of the full board. ~~(105 ILCS 5/17-3.2).~~
7. Petitioning the circuit court for an emergency election requires approval by a majority of the members. ~~(105 ILCS 5/2A-1.4).~~
8. Expending funds in emergency situation in the absence of required bidding requires approval by at least 3/4 of the board. ~~(105 ILCS 5/10-20.21).~~
9. Exchanging school building sites requires approval by at least a 2/3 majority of the board. ~~(105 ILCS 5/5-23).~~
10. Waiving the administrative cost cap requires approval by an affirmative vote of at least 2/3 of the board. ~~105 ILCS 5/17-1.5).~~
11. Authorizing an advisory question of public policy to be placed on the ballot at the next regularly scheduled election requires approval by a majority of the board. ~~(105 ILCS 5/9-1.5).~~

nay, or a failure to vote, however, is not counted in determining whether a measure has been passed by the Board, unless otherwise stated in law. The sequence for casting votes is rotated. ¹⁰

On all questions involving the expenditure of money and on all questions involving the closing of a meeting to the public, a roll call vote shall be taken and entered in the Board's minutes. An individual Board member may request that a roll call vote be taken on any other matter; the President or other presiding officer may approve or deny the request but a denial is subject to being overturned by a majority vote of the members present. ¹¹

Minutes

The Board Secretary shall keep written minutes of all Board meetings (whether open or closed), which shall be signed by the President and the Secretary. ¹² The minutes include: ¹³

1. The meeting's date, time, and place;
2. Board members recorded as either present or absent;
3. A summary of the discussion on all matters proposed, deliberated, or decided, and a record of any votes taken;
4. On all matters requiring a roll call vote, a record of who voted *yea* and *nay*;
5. If the meeting is adjourned to another date, the time and place of the adjourned meeting;
6. The vote of each member present when a vote is taken to hold a closed meeting or portion of a meeting, and the reason for the closed meeting with a citation to the specific exception contained in the Open Meetings Act authorizing the closed meeting;
7. A record of all motions, including individuals making and seconding motions;
8. Upon request by a Board member, a record of how he or she voted on a particular motion; ¹⁴ and
9. The type of meeting, including any notices and, if a reconvened meeting, the original meeting's date.

The minutes shall be submitted to the Board for approval or modification at its next regularly scheduled open meeting. Minutes for open meetings must be approved within 30 days after the meeting or at the second subsequent regular meeting, whichever is later. ¹⁵

At least semi-annually in an open meeting, the Board: (1) reviews minutes from all closed meetings that are currently unavailable for public release, and (2) decides which, if any, no longer require

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¹⁰ Voting sequence is at the board's discretion. A board may indicate how frequently it changes the voting sequence by adding *after each vote*, *monthly*, or *annually* to the end of the sentence. All board members, including officers, may make motions and vote.

¹¹ This paragraph's first sentence contains the requirements in 105 ILCS 5/10-7. The second sentence is optional and may be deleted or amended. Other optional provisions include:

Option 1: Any Board member may include a written explanation of his or her vote in the District file containing individual Board member statements; the explanation will not be part of the minutes.

Option 2: Any Board member may request that his or her vote be changed before the President announces the result.

¹² 105 ILCS 5/10-7 and 5 ILCS 120/2.06. The minutes are the only record showing that the board took official action, including necessary prerequisites to make such action legally sufficient. A non-member recording secretary or clerk may be given these responsibilities. -(105 ILCS 5/10-14).

¹³ All items listed are required to be recorded in minutes **except** items 7-9; other items may be included at the board's discretion. -(5 ILCS 120/2.06 and 120/2a; 105 ILCS 5/10-7). The Ill. Public Access Counselor (PAC) found a board's vague reference to a *personnel matter* insufficient to meet the requirements of #3. -(PAO 13-07).

¹⁴ The intent behind this optional item is to give an individual member a means of recording his or her support or opposition to a motion that was taken by oral vote; it will record that the individual took an alternative position to that of the majority without having the minutes recite unnecessary detail.

¹⁵ Required by 5 ILCS 120/2.06(b).

confidential treatment and are available for public inspection.¹⁶ The Board may meet in a prior closed session to review the minutes from closed meetings that are currently unavailable for public release.¹⁷

The Board's meeting minutes must be submitted to the Board Treasurer at such times as the Treasurer may require.¹⁸

The official minutes are in the custody of the Board Secretary.¹⁹ Open meeting minutes are available for inspection during regular office hours within 10~~ten~~ days after the Board's approval;²⁰ they may be inspected in the District's main office, in the presence of the Secretary, the Superintendent or designee, or any Board member.

Minutes from closed meetings are likewise available, but only if the Board has released them for public inspection, except that Board members may access closed session minutes not yet released for public inspection (1) in the District's administrative offices or their official storage location, and (2) in the presence of the Recording Secretary, the Superintendent or designated administrator, or any elected Board member.²¹ The minutes, whether reviewed by members of the public or the Board, shall not be removed from the District's administrative offices or their official storage location except by vote of the Board or by court order.²²

The Board's open meeting minutes shall be posted on the District website within ten days after the Board approves them; the minutes will remain posted for at least 60 days.²³

Verbatim Record of Closed Meetings

The Superintendent, or the Board Secretary when the Superintendent is absent, shall audio record all closed meetings.²⁴ If neither is present, the Board President or presiding officer shall assume this responsibility. After the closed meeting, the person making the audio recording shall label the recording with the date and store it in a secure location. ~~The Superintendent shall ensure that: (1) an audio recording device and all necessary accompanying items are available to the Board for every~~

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¹⁶ Required by 5 ILCS 120/2.06(c). While board notes from closed sessions may be confidential under the Freedom of Information Act, they may be discoverable by the opposing party in a lawsuit. Bobkoski v. Cary School Dist. 26, 141 F.R.D. 88 (N.D. Ill., 1992).

The failure to strictly comply with the semi-annual review does not cause the written minutes or related verbatim record to become public, provided that the board, within 60 days of discovering its failure to strictly comply, reviews the closed session minutes and reports the result of that review in open session. ~~(5 ILCS 120/2.06).~~

¹⁷ 5 ILCS 120/2 allows boards to discuss the confidentiality needs of closed meeting minutes in closed meetings.

¹⁸ Required by 105 ILCS 5/10-7.

¹⁹ Optional provision: "A copy of the minutes is kept in a secure location appropriate for valuables."

²⁰ Required by 5 ILCS 120/2.06(b).

²¹ 5 ILCS 120/2.06(c), ~~amended by P.A. 99-515~~. The listed individuals in the statute are matched to the titles in the IASB Policy Reference Manual. If the board wishes to mirror the statutory language, delete: ~~the Recording Secretary, the Superintendent or designated administrator, or any elected Board member~~ and replace with: "a records secretary, an administrative official of the public body, or any elected official of the public body."

See the discussion in paragraph two of f/n 27 below about what *in the presence of* means.

²² *Id.*

²³ Posting on the website is required *only if* the district has a website that is maintained by a full-time staff member; if not, this sentence may be omitted. ~~(5 ILCS 120/2.06(b)).~~

²⁴ Boards must keep a verbatim record of their closed meetings in the form of an audio or video recording. ~~(5 ILCS 120/2.06, amended by P.A. 99-515)~~. This sample policy uses audio recording only; a board that uses a video recording should amend this policy and exhibit 2:220-E1, *Board Treatment of Closed Meeting Verbatim Recordings and Minutes*.

The interests of continuity, efficiency, and ease of holding someone accountable suggest that the superintendent be made responsible for making and storing the verbatim recordings. If the superintendent is not present, e.g., during discussions concerning the superintendent's contract, the tasks should be given to a board member.

closed meeting, and (2) a secure location for storing closed meeting audio recordings is maintained close to the Board's regular meeting location. ²⁵

After 18 months have passed since being made, the audio recording of a closed meeting is destroyed provided the Board approved: (1) its destruction, and (2) minutes of the particular closed meeting. ²⁶

Individual Board members may access verbatim recordings in the presence of the Recording Secretary, the Superintendent or designated administrator, or any elected Board member.²⁷ Access to the verbatim recordings is available at the District's administrative offices or the verbatim recording's official storage location.²⁸ Requests shall be made to the Superintendent or Board President. While a Board member is listening to a verbatim recording, it shall not be re-recorded or removed from the District's main office or official storage location, except by vote of the Board or by court order. ²⁹

Before making such requests, Board members should consider whether such requests are germane to their responsibilities, service to District, and/or Oath of Office in policy 2:80, *Board Member Oath and Conduct*. In the interest of encouraging free and open expression by Board members during

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²⁵ Alternatively, use: "is maintained within the District's administrative offices or their official storage location."

²⁶ This paragraph paraphrases 5 ILCS 120/2.06(c). No notification to, or the approval of, a records commission or the State Archivist is needed if a recording is destroyed under the conditions listed.

²⁷ 5 ILCS 120/2.06(e), ~~amended by P.A. 99-515~~. The listed individuals align with the other titles used in the IASB Policy Reference Manual. If the board wishes to mirror the statute, delete: ~~the Recording Secretary, the Superintendent or designated administrator, or any elected Board member~~ and replace with: "a records secretary, an administrative official of the public body, or any elected official of the public body."

The intent of the *in the presence of* language is meant to protect both (1) the verbatim recordings/closed session minutes (see f/n 21 above), and (2) the board members requesting access to them. It ensures that a school district official is present at all times when a requesting board member accesses the verbatim recording/closed session minutes. The requirement is meant to prevent misuse and removal of the verbatim recording/closed session minutes from the district offices or official storage location. It is also meant to protect the board member who requests the access from being alone and in a situation where he or she could potentially be accused of tampering with or taking the verbatim recording/closed session minutes.

Consult the board attorney about:

1. The practice of sending an *appointed* board member to be present with a board member who requests access to verbatim recordings/closed session minutes. 5 ILCS 120/2.06(e) states, "any *elected* member of the Board;" appointed is not listed but is mentioned elsewhere in the language of this section of the law;
2. Access to verbatim recordings/closed session minutes by other officials employed by the district, e.g., superintendent or other high-level administrators and even the board attorney; and
3. How this law affects the sharing of closed session minutes with board members prior to a meeting at which the closed session minutes will be approved.

The intent of P.A. 99-515, which amended 5 ILCS 120/2.06(e), was to manage a board member's *individual* request for access to these items in his or her individual capacity (see 2:80, *Board Member Oath and Conduct*), not change prior practices in regard to other officials and board attorneys or the required work of school boards under various laws. While many attorneys do not interpret the new law to restrict access or change procedures for these other high-level school officials and attorneys employed by the district, some attorneys do and it is important to obtain legal advice on this specific issue.

²⁸ Id.

²⁹ Id.

closed meetings, the recordings of closed meetings should not be used by Board members to confirm or dispute the accuracy of recollections. ³⁰

Quorum and Participation by Audio or Video Means ³¹

A quorum of the Board must be physically present at all Board meetings. A majority of the full membership of the Board constitutes a quorum.

Provided a quorum is physically present, a Board member may attend a meeting by video or audio conference if he or she is prevented from physically attending because of: (1) personal illness or disability, (2) employment or District business, or (3) a family or other emergency. If a member wishes to attend a meeting by video or audio means, he or she must notify the recording secretary or Superintendent at least 24 hours before the meeting unless advance notice is impractical. The recording secretary or Superintendent will inform the Board President and make appropriate arrangements. A Board member who attends a meeting by audio or video means, as provided in this policy, may participate in all aspects of the Board meeting including voting on any item.

Rules of Order

Unless State law or Board-adopted rules apply, the Board President, as the presiding officer, will use Robert's Rules of Order, Newly Revised (11th Edition), as a guide when a question arises concerning procedure. ³²

Broadcasting and Recording Board Meetings

Any person may record or broadcast an open Board meeting.³³ Special requests to facilitate recording or broadcasting an open Board meeting, such as seating, writing surfaces, lighting, and access to electrical power, should be directed to the Superintendent at least 24 hours before the meeting.

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³⁰ This paragraph is optional. It provides boards an opportunity to discuss and encourage each member to carefully think about purposes for their requests to listen to verbatim recordings, which historically has been and should continue to be to "access information relevant to the exercise of duties" for the public body. Intra-board conflicts may escalate if the recording is used to confirm or dispute who-said-what. Prior to P.A. 99-515, the ~~Open Meetings Act~~OMA did (and still does) allow boards to release these types of information. (5 ILCS 120/2.06(e)). Further, Ill. Atty. Gen. Op. 32, 1996, opined that board members cannot be denied access to information relevant to the exercise of his or her duties. Board members should evaluate whether their requests under P.A. 99-515 5 ILCS 120/2.06(e) are "relevant to the exercise of their duties" before making such requests. Confirming or disputing who-said-what diverts resources away from operations of the district in educating its students. Additional considerations in listening to verbatim recordings may include personnel and student records confidentiality issues, which should be discussed with the board attorney.

³¹ 5 ILCS 120/2.01 and 120/7. See also 105 ILCS 5/10-6 and 5/10-12. In order to allow attendance by video or audio means, a board must adopt a policy conforming to the restrictions in the ~~Open Meetings Act~~OMA. The statute requires the board member who wishes to attend remotely to notify the "recording secretary or clerk of the public body." The policy includes the superintendent as a possible person to receive the notice. Everything in this section is required aside from provisions on the length of notification that is given the secretary and the process for accommodating the request. Alternatively, a board may: (1) prohibit members from participating by video or audio means by omitting this section, (2) add other requirements, or (3) alter the 24 hour notification. Note that the statute does not contemplate someone either *approving* or *denying* a request, only that the request be accommodated if the notification is provided.

In a non-binding opinion, the PAC found a public body violated OMA when it allowed a board member to join a closed session meeting remotely without first taking action at that particular meeting in open session to approve the remote participation. 2019 PAC 57660. Therefore, even with the adoption of this policy to approve remote participation, best practice is to ensure the public is informed of any board members that are participating remotely for a particular board meeting. Consult the board attorney for advice on whether the board should take action every time it wishes to permit a member to participate remotely or in those instances where a board member objects to such participation.

³² Boards are not required to follow any particular rules of order. Rules, however, must be in writing and available for public inspection, in order to have any legal effect. (105 ILCS 5/10-20.5).

Recording meetings shall not distract or disturb Board members, other meeting participants, or members of the public. The Board President may designate a location for recording equipment, may restrict the movements of individuals who are using recording equipment, or may take such other steps as are deemed necessary to preserve decorum and facilitate the meeting.

LEGAL REF.: 5 ILCS 120/2a, 120/2.02, 120/2.05, and 120/2.06.
105 ILCS 5/10-6, 5/10-7, 5/10-12, and 5/10-16.

CROSS REF.: 2:80 (Board Member Oath and Conduct), 2:200 (Types of School Board Meetings), 2:150 (Committees), 2:210 (Organizational School Board Meeting), 2:230 (Public Participation at School Board Meetings and Petitions to the Board)

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³³ The public's right to record meetings must be addressed in board policy. -(5 ILCS 120/2.05). However, a provision requiring advance notice to record a meeting is invalid. -(PAO 12-10).

School Board

Exhibit - Motion to Adjourn to Closed Meeting

Motion to Adjourn to Closed Meeting

Date: _____ Time: _____

Location: _____

A motion was made by _____, and seconded by _____, to adjourn to closed meeting to discuss:

- The appointment, employment, compensation, discipline, performance, or dismissal of specific employees, specific individuals who serve as independent contractors, or specific volunteers of the District or legal counsel for the District, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor, or a volunteer of the District or against legal counsel for the District to determine its validity. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act. 5 ILCS 120/2(c)(1), amended by P.A. 99-646101-459.
- Collective negotiating matters between the District and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees. -5 ILCS 120/2(c)(2).
- The selection of a person to fill a public office, including a vacancy in a public office, when the District is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the District is given power to remove the occupant under law or ordinance. -5 ILCS 120/2(c)(3).
- Evidence or testimony presented in open hearing, or in closed hearing where authorized by law, to a quasi-adjudicative body, as defined in the Open Meetings Act, provided that the body prepares and makes available for public inspection a written decision with its determinative reasoning. 5 ILCS 120/2(c)(4).
- The purchase or lease of real property for the use of the District, including meetings held for the purpose of discussing whether a particular parcel should be acquired. 5 ILCS 120/2(c)(5).
- The setting of a price for sale or lease of property owned by the District. 5 ILCS 120/2(c)(6).
- The sale or purchase of securities, investments, or investment contracts. 5 ILCS 120/2(c)(7).
- Security procedures, school building safety and security, and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff, the public, or public property. 5 ILCS 120/2(c)(8), ~~amended by P.A. 99-235.~~
- Student disciplinary cases. 5 ILCS 120/2(c)(9).
- The placement of individual students in special education programs and other matters relating to individual students. 5 ILCS 120/2(c)(10).
- Litigation, when an action against, affecting or on behalf of the particular District has been filed and is pending before a court or administrative tribunal, or when the District finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the closed meeting minutes. -5 ILCS 120/2(c)(11).
- The establishment of reserves or settlement of claims as provided in the Local Government and Governmental Employees Tort Immunity Act, if otherwise the disposition of a claim or potential claim might be prejudiced, or the review or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the District or any intergovernmental risk management association or self insurance pool of which the District is a member. 5 ILCS 120/2(c)(12).
- Self-evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the District is a member. 5 ILCS 120/2(c)(16).
- Discussion of minutes of meetings lawfully closed, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06. 5 ILCS 120/2(c)(21).
- Meetings between internal or external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America. 5 ILCS 120/2(c)(29).

Closed Meeting Roll Call:

"Yeas"	"Nays"

Motion: Carried Failed

School Board

Exhibit - Log of Closed Meeting Minutes

The purpose of this log is to facilitate the Board’s semi-annual review of closed meeting minutes. See 2:220-E5, *Semi-Annual Review of Closed Meeting Minutes*.

The Board Secretary or Recording Secretary shall maintain a list of closed meeting minutes, arranged according to the reason for the closed meeting, that have not been released for public inspection.

Closed Session Held to Discuss:	Dates of Closed Sessions		
Specific employee(s), <u>specific independent contractors, specific volunteers</u> , or District legal counsel; however, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with [the Open Meetings Act]. 5 ILCS 120/2(c)(1), amended by P.A. 99- <u>646101-459</u> .			
Collective negotiating matters or deliberations concerning salary schedules for one or more classes of employees. 5 ILCS 120/2(c)(2).			
Selection of a person to fill a vacancy on the Board. 5 ILCS 120/2(c)(3).			
Evidence or testimony presented in a hearing where authorized by law. 5 ILCS 120/2(c)(4).			
Purchase or lease of real property. 5 ILCS 120/2(c)(5).			
Setting of a price for sale or lease of District property. 5 ILCS 120/2(c)(6).			
Sale or purchase of securities, investments, or investment contracts. 5 ILCS 120/2(c)(7).			

Closed Session Held to Discuss:	Dates of Closed Sessions		
Security procedures and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger. -5 ILCS 120/2(c)(8).			
Student disciplinary cases. 5 ILCS 120/2(c)(9). <i>Minutes of meetings held for this reason shall never be released to protect the individual student's privacy.</i>			
Any matter involving an individual student. 5 ILCS 120/2(c)(10). <i>Minutes of meetings held for this reason shall never be released to protect the individual student's privacy.</i>			
Litigation, when an action against, affecting, or on behalf of the District has been filed and is pending before a court or administrative tribunal, or when the Board finds that an action is probable or imminent. 5 ILCS 120/2(c)(11).			
Establishment of reserves or settlement of claims as provided in the Local Government and Governmental Employees Tort Immunity Act or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the District or any intergovernmental risk management association or self insurance pool. -5 ILCS 120/2(c)(12).			
Self-evaluation, practices and procedures or professional ethics, when meeting with an IASB representative. -5 ILCS 120/2(c)(16).			
Minutes of meetings lawfully closed, whether for purposes of approval or semi-annual review. 5 ILCS 120/2(c)(21).			
Meetings between internal or external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America. 5 ILCS 120/2(c)(29).			

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.

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 material pertaining to the transaction of public business, regardless of physical form or characteristics, 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.

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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 Ill. Atty. Gen. 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:

www.iasb.com/law/decisions.cfm?SubjectArea=Freedom%20of%20Information%20Act%20-%20FOIA.

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 expeditiously 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(e) of FOIA 5 ILCS 140/2(e) without amendment.

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. The Superintendent or designee shall instruct District employees to immediately forward any request for inspection and copying 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 five 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

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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. If the district wants to accept oral requests, delete ~~must be made in writing~~ and from the first sentence and add the following:

Oral requests may be accepted provided personnel are available to handle them, but otherwise must be made in writing.

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; *Chicago Tribune Co. v. Dept. of Financial and Professional Regulation*, 8 N.E.3d 11 (4th Dist. 2014). However, compiling information already in the public body's possession into a different format in order to respond to a FOIA request does not constitute the creation of a new record. (PAO 15-10). See also *Hites v. Waubensee Community College*, 56 N.E.3d 1049 (Ill App. 2, 2nd Dist. 2016) (holding that databases that house aggregations of data and do not merely store documents are subject to FOIA).

7 5 ILCS 140/7, amended by P.A. 101-434, eff. 1-1-20, 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's 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; and courts may impose additional penalties of up to \$1,000 for each day the violation continues if (1) the board fails to comply with the court's order after 30 days, (2) the court's order is not on appeal or stayed, and (3) the court does not grant the public body additional time to comply with the court's order to disclose public records. 5 ILCS 140/11(i) and (j), amended by P.A. 99-586. 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.

5 ILCS 140/7(kk), added by P.A. 101-434, eff. 1-1-20, exempts from disclosure "the public body's credit card numbers, debit card numbers, bank account numbers, Federal Employer Identification Number, security code numbers, passwords, and similar account information" that could result in identity theft or fraud of a government entity or a person.

8 5 ILCS 140/3(g).

specified in Section 3 of FOIA.⁹ The Freedom of Information Officer may extend the time for a response for up to five 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

The time periods are extended for responding to requests for records made for a *commercial purpose*, requests by a *recurrent requester*, or *voluminous requests*, as those terms are defined in Section 2 of FOIA. The time periods for responding to those requests are governed by Sections 3.1, 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

Fees ¹⁴

Persons making a request for copies of public records must pay any and all applicable fees. The Freedom of Information Officer shall establish a 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 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, 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

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

⁹ 5 ILCS 140/3(d). Reasons for extensions are addressed at 5 ILCS 140/3(e). Public bodies must respond to FOIA requests. PAOs 16-05, 16-04, ~~16-04~~, and 16-03, and 16-01. Public bodies must also conduct a reasonable search for public records responsive to a FOIA request, which includes searching public employees' communications on personal devices or accounts for records pertaining to the transaction of public business. PAO 16-06.

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~~ 5 ILCS 140/3.

¹² The timelines are extended to respond to a: (1) *recurrent requester* (defined in 5 ILCS 140/2(g)); (2) request with a *commercial purpose* (defined in 5 ILCS 140/2(c-10)); and (3) *voluminous request* (defined in 5 ILCS 140/2(h)). To use the extended timelines, a district must follow the requirements in 5 ILCS 140/3.2 for responding to a *recurrent requester*; 5 ILCS 140/3.1 for responding to a request with a *commercial purpose*; and 5 ILCS 140/3.6 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, amended by P.A. 101-434, eff. 1-1-20. 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 first paragraph's intent is to be efficient and avoid paraphrasing a complex law. See 2:250-API, *Access to and Copying of District Public Records*, for a fee schedule identifying the maximum fees permitted.

5 ILCS 140/6(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, 5 ILCS 140/6(b) states that the search and review fee described in 5 ILCS 140/6(f) may be charged *only* to someone making a *commercial request*. 5 ILCS 140/6(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.

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 fees shall be charged for: (1) the first 50 pages of black and white, letter or legal sized copies, 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.

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

A public record that is the subject of an approved access request 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, 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

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

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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 paragraph 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 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-AP1, *Access to and Copying of District Public Records*.

¹⁸ 5 ILCS 140/8.5.

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)

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

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, amended by P.A. 101-434, eff. 1-1-20, 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. 100-1177, eff. 6-1-19) 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, until the Ill. Dept. of Labor (IDOL) activates an electronic database for certified payrolls no later than 4-1-20, at which time contractors will submit certified payrolls only to that database. *Id.* The public body in charge of the project must keep the records submitted before 1-1-14 for a period of not less than three years. Records submitted on or after 1-1-14 must be kept for a period of five years or until the IDOL activates the electronic database for certified payrolls, whichever is less. *Id.* Records may be retained in paper or electronic format. These records are considered public records, except for contractors' employees' addresses, telephone numbers, social security numbers, race, ethnicity, and gender, and they must be made available in accordance with FOIA. *Id.* **Note:** 820 ILCS 130/5, amended by P.A. 100-1177, eff. 6-1-19, requires contractors to maintain records of the race, ethnicity, gender, and veteran status of workers on a public works project. FOIA, however, was not similarly amended to require public bodies to redact the workers' race, ethnicity, and gender from certified payroll records before disclosure. See 5 ILCS 140/2.10. The Ill. Atty. Gen. has previously issued at least one non-binding opinion finding that disclosure of a person's gender is not an unwarranted invasion of personal privacy under 5 ILCS 140/7(1)(c). Districts should consult with their board attorneys regarding what categories of information may be properly redacted in response to a FOIA request for certified payroll records.

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/.

School Board

Administrative Procedure - Access to and Copying of District Public Records

- A. Legal Citations and Definitions
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A. Legal Citations and Definitions

The legal requirements contained in this procedure are followed by a citation to the controlling statute. Citations in parenthesis indicate the location of a named law. For additional clarification regarding a requirement, the cited law should be reviewed.

Definitions are found in the Illinois Freedom of Information Act (FOIA); (5 ILCS 140/2). For easy reference, some definitions are re-printed in this procedure. The IASB reports on Ill. Public Access Counselor (PAC) opinions concerning FOIA ~~are on its website at [Recent Decisions](#)~~ [Recent Court and Agency Decisions website, located at: \[www.iasb.com/law/courtdecisions.cfm\]\(http://www.iasb.com/law/courtdecisions.cfm\)](#).

B. FOIA Compliance

The District's Freedom of Information Officer (FOIA Officer) implements the Board policy (2:250, *Access to District Public Records*) and has the duties, without limitation, listed below:

1. Manages the District's compliance with FOIA including without limitation, performing the following duties specified in FOIA, 5 ILCS 140/3.5:
 - a. Receives FOIA requests, ensures that the District responds to requests in a timely fashion, and issues responses to FOIA requests.
 - b. Develops a list of documents or categories of records that will be immediately disclosed upon request. See 2:250-E2, *Immediately Available Public Records and Web-Posted Reports and Records*.
 - c. Upon receiving a request for a public record, (a) notes the date the District received the written request; (b) computes the day on which the period for response will expire and makes a notation of that date on the written request; (c) maintains an electronic or paper copy of a written request, including all documents submitted with the request until the request has been complied with or denied; and (d) creates a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

2. Identifies other staff members to assist with FOIA compliance and delegates specific responsibilities to them. These individuals may include the information technology specialist and department heads.
3. Informs and/or trains staff members concerning their respective responsibilities regarding FOIA. This includes explaining the requirement that all FOIA requests must be immediately forwarded to the FOIA Officer, including those that are received via email.
4. Successfully completes the annual training program developed by the [Ill. Public Access Counselor \(PAC\)](#) in the [Ill. Attorney General's](#) office. Each newly appointed FOIA Officer must successfully complete the training program within 30 days after assuming the position.

C. Availability and Posting Requirements

Full access to the District's *public records* is available to any person as provided in FOIA. The FOIA Officer approves all requests for *public records* unless: (1) the requested material does not exist, (2) the requested material is exempt from inspection and copying by FOIA, or (3) complying with the request will be unduly burdensome after extending an opportunity to the requester to reduce the request to manageable proportions.

The FOIA Officer shall:

1. Prominently display at each administrative office and school, and post on the District website, if any, the following:
 - a. A brief description of the District, and
 - b. The methods for requesting information and District public records, directory information listing the FOIA Officer and where requests for public records should be directed, and any fees. 5 ILCS 140/4. This information must be copied and mailed if requested.
2. Maintain and make available for inspection and copying a reasonably current list of all types or categories of records under the District's control. 5 ILCS 140/5. The list below contains the categories of records kept by the District; some of the records within these categories are exempt and, therefore, will not be disclosed in response to a FOIA request.
 - a. Board governance, including without limitation, Board meeting calendar and notices, Board meeting agendas and minutes, Board policy
 - b. Fiscal and business management, including without limitation, levy resolution and certificate of tax levy, audit, line-item budget, grant documents, account statements, accounts payable list, contracts, legal notices, bidding specifications, requests for proposals
 - c. Personnel, including without limitation, employee contact information, salary schedules, staff handbook, collective bargaining agreements, personnel file material
 - d. Students and instruction, including without limitation, accountability documents, calendars, student handbooks, learning outcomes, student school records

D. Fee Schedule

The FOIA Officer establishes a fee schedule (from time-to-time as appropriate) that complies with 5 ILCS 140/6, [amended by P.A. 98-1129](#), including each of the following:

1. The fees, except when otherwise fixed by statute, must: (a) 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, and (b) not exceed that maximum fee amount set by FOIA.

2. Statutory fees applicable to copies of public records when furnished in a paper format are not applicable to those records when furnished in an electronic format.
3. No fee is charged for the first 50 pages of black and white, letter or legal sized copies furnished to a requester.
4. The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page.
5. If the District provides copies in color or in a size other than letter or legal, the fee may not be more than its actual cost for reproducing the records.
6. 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 general public's health, safety, welfare, or legal rights and is not for the principal purpose of personal or commercial benefit. In setting the reduction's amount, the FOIA Officer considers the amount of materials requested and the cost of copying them.
7. In accordance with 5 ILCS 140/6(a-5), if a voluminous request is for electronic records and the responsive records are:
 - a. Not in a portable document format (PDF), the District charges up to \$20 for not more than 2two megabytes of data, up to \$40 for more than 2two but not more than 4four megabytes of data, and up to \$100 for more than 4four megabytes of data.
 - b. In a PDF, the District charges up to \$20 for not more than 80 megabytes of data, up to \$40 for more than 80 megabytes but not more than 160 megabytes of data, and up to \$100 for more than 160 megabytes of data.
 - c. In both a PDF and not in a PDF, the District separates the fees and charges the requester under both fee scales.
8. Unless the request is for a commercial purpose or a voluminous request, the costs of any search for and review of the records or other personnel costs associated with reproducing the records are not included in the fee calculation. 5 ILCS 140/6(a).

*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.

When responding to a request for commercial purposes, as defined in 5 ILCS 140/2(c-10), the District charges:

- a. Up to \$10.00 for each hour spent by personnel in searching for or retrieving a requested record or examining the record for necessary reductions. No fee is charged for the first eight hours spent by personnel in searching for or retrieving a requested record. 5 ILCS 140/6(f).

- b. 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 company under contract with the District. 5 ILCS 140/6(f).

Someone making a voluminous request may be charged the fees as described above upon the FOIA Officer's consult with the Board Attorney.

The FOIA Officer provides the requester with an accounting of all fees, costs, and personnel hours in connection with the request for public records under 7 and 8 above. 5 ILCS 140/6(a-5) and (f).

E. Response to FOIA Requests

The FOIA Officer must:

1. Comply with or deny a request for inspection or copying within five business days of receiving a records request, unless the time for response is extended. 5 ILCS 140/3. He or she may use forms prepared by the ~~Ill. Public Access Counselor~~ PAC available at: foia.ilattorneygeneral.net/foia_formssampleletters.aspx ~~www.foia.ilattorneygeneral.net/foia_formssampleletters.aspx~~.
2. Redact any and all exempt portion(s) of requested records containing both exempt and non-exempt material and release the remaining material. 5 ILCS 140/7.
3. Comply with the Personnel Record Review Act (PRRA), 820 ILCS 40/, amended by P.A. 101-531.
 - a. The response to a request for a disciplinary report, letter of reprimand, or other disciplinary action depends on the age and nature of the responsive record.
 - 1) If the responsive record is more than four years old and is not related to an incident or an attempted incident of sexual abuse or severe physical abuse, the request must be denied unless the release is ordered in a legal action or arbitration. 5 ILCS 140/7.5(q); 820 ILCS 40/8, amended by P.A. 101-531.
 - 2) If the responsive record is more than four years old and is related to an incident or an attempted incident of sexual abuse or severe physical abuse, the request cannot be denied. 820 ILCS 40/8, amended by P.A. 101-531.
 - 2)3) _____ If the responsive record is four years old or less, it must be disclosed (regardless of its nature) and the employee must be notified in writing (first class mail) or by email, if available, on or before the day any such record is released, unless notice is not required under the PRRA Personnel Record Review Act. 5 ILCS 140/7.5(q); 820 ILCS 40/7. A notice to the employee is not required if:
 - The employee specifically waived written notice as part of a written, signed employment application with another employer;
 - The disclosure is ordered to a party in a legal action or arbitration; or
 - Information is requested by a government agency as a result of a claim or complaint by an employee, or as a result of a criminal investigation by such agency.
 - b. A request for a performance evaluation(s) must be denied. 820 ILCS 40/11.

F. Extensions of Time to Respond

The District FOIA Officer may extend the time for a response for any of the reasons stated in 5 ILCS 140/3(e)(i-vii), **quoted below**:

- (i) The requested records are stored in whole or in part at other locations than the office having charge of the requested records;
- (ii) The request requires the collection of a substantial number of specified records;
- (iii) The request is couched in categorical terms and requires an extensive search for the records responsive to it;
- (iv) The requested records have not been located in the course of routine search and additional efforts are being made to locate them;
- (v) The requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under [Section 7 of FOIA 5 ILCS 140/7](#) or should be revealed only with appropriate deletions;
- (vi) The request for records cannot be complied with by the public body within the time limits prescribed by [paragraph \(c\) of Section 3 of FOIA 5 ILCS 140/3\(c\)](#) without unduly burdening or interfering with the operations of the public body; or
- (vii) There is a need for consultation, which shall be conducted with all practicable speed, with another public body or among two or more components of a public body having a substantial interest in the determination or in the subject matter of the request.

If an extension of time for a response is needed, the FOIA Officer must perform one of the following actions within five business days after receipt of the request:

1. Notify the requester that the District is extending its time for response for no longer than 5 business days from the original due date, and identify the reason for the delay and the date on which a response will be made. 5 ILCS 140/3(e) and (f); or
2. Confer with the requester in an attempt to reach an agreement on an extended compliance date. The agreement must be in writing. 5 ILCS 140/3(e).

G. Unduly Burdensome Requests

Before invoking the *unduly burdensome* exemption, the FOIA Officer must confer with the requester in an attempt to reduce the request to manageable proportions. 5 ILCS 140/3(e) and (g). A request may be unduly burdensome due, for example, to the request's breadth. The FOIA Officer must explain to the requester in writing when a request continues to be unduly burdensome, specifying the reason why the request is unduly burdensome.

H. Requests for Commercial Purposes

A request is for *commercial purposes*, according to 5 ILCS 140/2(c-10), if:

[T]he use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered to be made for a *commercial purpose* when the principal purpose of the request is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education.

The FOIA Officer responds to a request that appears to be for commercial purposes pursuant to 5 ILCS 140/3.1 by:

1. Asking the requester to identify if the record is for a commercial purpose. See 2:250-E1, *Written Request for District Public Records*. It is unlawful for a person to knowingly obtain a public record for a commercial purpose without disclosing that it is for a commercial purpose, if requested to do so by the District. 5 ILCS 140/3.1(c).
2. Responding to a request for records to be used for a commercial purpose within 21 working days after receipt. The response must be one of the following: (a) provide an estimate of the time required by the District to provide the records and an estimate of the fees, which the requester may be required to pay in full before copying the requested documents; (b) deny the request pursuant to one or more of the exemptions; (c) notify the requester that the request is unduly burdensome and extend an opportunity to attempt to reduce the request to manageable proportions; or (d) provide the records requested.
3. Complying with a request, unless the records are exempt from disclosure, within a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes.
4. Collecting a fee as described in subsection **D.** above.

I. Managing Requests from a Recurrent Requester

A request is from a *recurrent requester*, according to 5 ILCS 140/2(g), if:

[A] person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of seven requests for records within a seven-day period. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered in calculating the number of requests made in the time period in this definition when the principal purpose of the requests is (i) to access and disseminate information concerning new and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education.

For purposes of this definition, one *request* may identify multiple records to be inspected or copied.

The District complies with a request from a recurrent requester within a reasonable period considering the size and complexity of the record, unless the records are exempt from disclosure. 5 ILCS 140/3.2(c).

The FOIA Officer responds to a request from a recurrent requester by:

1. Notifying the requester within five business days after receiving a request from a recurrent requester (5 ILCS 140/3.2(b)) that:
 - a. The request is being treated as coming from a recurrent requester under 5 ILCS 140/2(g);
 - b. The reasons the request is being treated as coming from a recurrent requester;
 - c. The District will send an initial response within 21 business days after receipt of the request; and
 - d. The proposed FOIA responses that may be asserted pursuant to 5 ILCS 140/3.2(a). These are the same responses that the District can provide within 21 business days after receipt of a request.
2. Responding within 21 business days after receipt of a recurrent request with one of the following (5 ILCS 140/3.2(a)):

- a. An estimate of the time required by the District to provide the records and an estimate of the fees, which the requester is required to pay in full before the District copies the requested documents;
- b. A denial pursuant to one or more of the exemptions;
- c. Notification that the request is unduly burdensome and extend an opportunity to attempt to reduce the request to manageable proportions; or
- d. The records as requested.

J. Managing Voluminous Requests

A *voluminous request*, according to 5 ILCS 140/2(h), means:

[A] request that:

- i. Includes more than five individual requests for more than five different categories of records or a combination of individual requests that total requests for more than five different categories of records in a period of 20 business days; or
- ii. Requires the compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages. *Single requested record* may include, but is not limited to, one report, form, email, letter, memorandum, book, map, microfilm, tape, or recording.

According to 5 ILCS 140/2(h), a *voluminous request* “does not include a request made by news media and non-profit, scientific, or academic organizations if the principal purpose of the request is: (1) to access and disseminate information concerning news and current or passing events; (2) for articles of opinion or features of interest to the public; or (3) for the purpose of academic, scientific, or public research or education.”

The FOIA Officer responds to a voluminous request by:

1. Notifying the requester within ~~5~~ five business days after receiving a voluminous request that:
 - a. The District is treating the request as a voluminous request under ~~Section 3.6 of the Freedom of Information Act (FOIA)~~ [5 ILCS 140/3.6](#).
 - b. The District is treating the request as voluminous for one of the following reasons:
 - 1) Includes more than five individual requests for more than five different categories of records or a combination of individual requests that total requests for more than five different categories of records in a period of 20 business days; or
 - 2) Requires the compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages.
 - c. The requester must respond to the District within ten business days after this response is sent. The requester must specify whether the requester would like to amend the request in such a way that the District will no longer treat the request as a voluminous request.
 - d. If the requester does not respond within ten business days or if the request continues to be a voluminous request following the requester response, the District will respond to the request and assess any fees the District charges pursuant to ~~Section 6 of FOIA~~ [5 ILCS 140/6](#).
 - e. The District has five business days after receipt of the requester’s response or five business days from the last day for the requester to amend the request, whichever is sooner, to respond to the request.

- f. The District may request an additional ten business days to comply with the request.
- g. The requester has the right to review the District's determination by the public access counselor whose address and phone number follows:

Public Access Counselor
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62706
Phone: 1-877-299-3642

- h. If the requester fails to accept or collect the responsive records, the District will still charge the requester for its response pursuant to [Section 6 of FOIA 5 ILCS 140/6](#) and the requester's failure to pay will be considered a debt due and owing to the District and may be collected in accordance with applicable law.
2. Providing the requester ten business days from the date the District responded to amend the request in such a way that the District will no longer treat it as a voluminous request.
 3. If a request continues to be a voluminous request following the requester's reply or the requester fails to reply, responding within the earlier of five business days after the District receives the requester's reply or five business days after the final day for the requester to reply to the District's notification. The District's response must:
 - a. Provide an estimate of the fees to be charged, indicating whether the District requires the person to pay in full before the District copies the requested documents;
 - b. Deny the request pursuant to one or more of the exemptions sent out in FOIA;
 - c. Notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions; or
 - d. Provide the records as requested.

The District may extend the time for responding by not more than five business days from the final date for the requester to reply to the District's notification for any of the reasons provided in [subsection Section 5 ILCS 140/3\(e\) of FOIA](#).

The requester and District may agree in writing to extend the time for compliance for a period to be determined by the parties.

K. Denials

The FOIA Officer will deny a FOIA request for any of the exemptions in 5 ILCS 140/7 or 7.5. He or she will comply with 5 ILCS 140/9 by:

1. Providing the requester with a written response containing: (a) the reasons for the denial, including a detailed factual basis for the application of any exemption claimed; (b) the names and titles or positions of each person responsible for the denial; and (c) information about his or her right to review by the Public Access Counselor (include the address and phone number for the Public Access Counselor), and to judicial review under 5 ILCS 140/11, [amended by P.A. 99-586](#).
2. Specifying the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority when the denial is based on the grounds that the records are exempt under 5 ILCS 140/7.

3. Retaining copies of all denial notices in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested. 5 ILCS 140/9(b).

L. Consultation with the Board Attorney

The FOIA Officer may consult with the Board Attorney, as needed, for legal advice concerning compliance with FOIA, including without limitation:

1. Responding to specific requests,
2. Communicating with the Office of the Ill. Attorney General or ~~Public Access Counselor~~[PAC](#),
or
3. During any judicial proceeding.

LEGAL REF.: 5 ILCS 140/, Freedom of Information Act.

School Board

Administrative Procedure - Protocols for Record Preservation and Development of Retention Schedules

Legal Citations

Each legal requirement in this procedure is followed by a citation to the controlling rule and/or statute. Citations in parenthesis indicate the location of a named law. For additional clarification regarding a requirement, the cited law should be reviewed.

Actor	Action
<p>All Staff Members and School Board Members</p>	<p>Maintain all records, as defined and required in the Illinois Local Records Act (LRA). No public record shall be destroyed except as allowed by the LRA.</p> <p><i>“Public record means any book, paper, map, photograph, born-digital electronic material, digitized electronic material, electronic material with a combination of digitized and born-digital material, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, or any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein.”</i> 50 ILCS 205/3.</p> <p>Do not destroy any District record, no matter its form, if it is subject to a litigation hold. F.R.C.P. 37(e).</p> <p>In federal lawsuits there is an automatic discovery of virtually all types of electronically created or stored data that might be relevant. Attorneys will generally notify their clients at the beginning of a legal proceeding to not destroy any electronic records that might be relevant. The receipt of a <i>litigation hold</i> or preservation letter from the Board’s attorney requires all potentially relevant electronic information to be identified, located, and preserved. This includes all email, e-documents, the tapes and servers of discarded systems, and backup data stored elsewhere.</p> <p>Whenever disposing of materials containing <i>personal information</i>, render the <i>personal information</i> unreadable, unusable, and undecipherable. 815 ILCS 530/40; and 44 Ill.Admin.Code §4000.40(b).</p> <p>The Personal Information Protection Act (815 ILCS 530/) contains mandates for disposing of materials containing personal information</p>

Actor	Action
	<p>(<i>personal information</i> is defined in 815 ILCS 530/5 as either of the following: (1) an individual's first name or first initial and last name combined with any of the following data elements, when either the name or data elements are not encrypted/redacted or are encrypted/redacted but the keys to unencrypt/unredact or otherwise read the name or data elements have been acquired without authorization through a security breach; social security number; driver's license number or State identification card number; financial account information, including without limitation, credit or debit card numbers; medical information; health insurance information; or unique biometric data, including without limitation fingerprints; or (2) user name or email address, combined with a password or security question and answer that would permit access to an online account, when any of these data elements are not encrypted/redacted or are encrypted/redacted but the keys to unencrypt/unredact or otherwise read the data elements have been acquired without authorization through a security breach). The Ill. Attorney General is authorized to impose a fine and bring court action for noncompliance. 815 ILCS 530/40, amended by P.A. 99-503, eff. 1-1-17.</p>
Superintendent	<p>Assign the following activities to the Records Custodian and Head of Information Technology (IT):</p> <ol style="list-style-type: none"> 1. Develop and maintain a protocol for preserving and categorizing District records; 2. Develop and maintain a record retention and destruction schedule; and 3. Develop protocols to implement a litigation hold.
Records Custodian and Head of IT	<ol style="list-style-type: none"> 1. Develop and maintain a protocol for preserving and categorizing District records. <p>Develop and maintain a list of all District records organized in categories and sub-categories, e.g., records relating to business, students, personnel, board meetings, etc. Align this list with the list of District records required by the Freedom of Information Act. 5 ILCS 140/5.</p> <p>Paper records may be easier to locate than electronic records. Electronic records will potentially exist in all of the available clouds, servers, tapes, hard drives, computers, and similar types of electronic devices (e.g., laptops, tablets, smart phones, voicemail, etc.).</p> <p>Prepare a description of how District records stored by means of electronic data processing may be obtained in a form understandable to persons lacking computer knowledge. 5 ILCS 140/5; and Digital Reproduction, 44 Ill.Admin.Code §4000.70, <i>Digital Reproduction; and Management of Electronic Records,</i> 44 Ill.Admin.Code §4000.80.</p>

Actor	Action
	<p data-bbox="613 279 1015 306"><u>Management of Electronic Records.</u></p> <p data-bbox="657 323 1430 386">Such a description may include contact information for a person who can aid in obtaining records stored electronically.</p> <p data-bbox="613 403 1425 562">Provide for keeping only <i>records</i> and destroying non-records. Avoid filing non-record material with records. Determine what is a non-record, e.g., identical copies of documents maintained in the same file; extra copies of printed or processed materials (official copies of which are retained by the office); blank forms; and personal communications.</p> <p data-bbox="657 579 1370 642">The goal is to control excessive accumulation of material. Non-record material may be destroyed at any time. 50 ILCS 205/9.</p> <p data-bbox="657 659 1430 848">Absent a litigation hold, email must be retained only when it contains: (1) evidence of the District’s organization, function, policies, procedures, or activities, or (2) informational data appropriate for preservation. 50 ILCS 205/3. Email that is conversational, personal, or contains brainstorming may generally be deleted.</p> <p data-bbox="657 865 1430 961">A consistent email retention policy for use across the District ensures that the necessary emails are being retained and emails that are not required to be preserved are purged on a regular basis.</p> <p data-bbox="613 978 1317 1138">Determine whether each sub-category of documents should be reproduced by photography (44 Ill.Admin.Code §4000.60), microphotographic and electronic microimaging processes (44 Ill.Admin.Code §4000.50), or digitized electronic format (44 Ill.Admin.Code §4000.70).</p> <p data-bbox="657 1155 1430 1541">Any public record may be reproduced in a microfilm or digitized electronic format and the analog/paper version destroyed, provided: (a) the records are reproduced on “a durable medium that accurately and legibly reproduces the original record in all details,” and “that does not permit additions, deletions, or changes to the original document images;” and “if electronic, that are retained in a <u>trustworthy manner so that the records...are accessible and usable for subsequent reference at all times when the information must be retained.</u>” (b) <u>the reproduction is retained for the prescribed retention period,</u> and (bc) the Local Records Commission is notified when the original record is disposed of and also when the reproduced record is disposed of. Local Records Act, 50 ILCS 205/7.</p> <p data-bbox="613 1558 1430 1726">Use this web link to the Ill.inois Secretary of State’s publication, Guidelines for Using Electronic Records (<u>www.cyberdriveillinois.com/departments/archives/records_management/electrecs.html</u>) and 44 Ill.Admin.Code §§4000.APPENDIX A <i>Sustainable File Formats for Electronic Records - A Guide for</i></p>

Actor	Action
	<p><i>Government Agencies</i> www.ilga.gov/commission/jcar/admincode/044/04404000ZZ9996aR.html, and 4000.APPENDIX B <i>Reliable Storage Media for Electronic Records - A Guide for Government Agencies</i> www.ilga.gov/commission/jcar/admincode/044/04404000ZZ9996BR.html).</p> <p>Identify and index the location of each category and sub-category of District records. Organize electronic record and data storage.</p> <p>The goal is to ensure that all documents, including electronically created ones, are retained for the required timeframes and are easy to retrieve and produce if necessary.</p> <p>2. Develop and maintain a record retention and destruction schedule for submission to the Superintendent and eventually to the Local Records Commission.</p> <p>Prepare a list of public records that: (1) are not needed for current business, and (2) do not have sufficient administrative, legal, or fiscal value to warrant their further preservation. Stated differently, identify records that have no administrative, legal, or fiscal value, as this is the criteria the Commission uses to determine whether or not to authorize the records' destruction.</p> <p>Records that have no administrative, legal, or fiscal value may be destroyed according to provisions in the LRA Local Records Act. 50 ILCS 205/10.</p> <p>Prepare a schedule for record destruction by identifying the length of time a record category or series warrants retention after it has been received or produced by the District.</p> <p>The ultimate goal is to obtain permission to destroy unnecessary public records. The Local Records Commission must approve the destruction of any public record. 50 ILCS 205/7; 44 Ill.Admin.Code Part 4000 (Local Records Commission for agencies comprising counties of less than 3,000,000 inhabitants); 44 Ill.Admin.Code Part 4500 (Local Records Commission of Cook County). See the Archives Department on the Secretary of State's website: www.cyberdriveillinois.com/departments/archives/databases/home.html</p> <p>44 Ill.Admin.Code Part 4000.30 details the procedures for compiling and submitting lists and schedules of records for disposal.</p> <p>The School Code and other statutes (e.g., statutes of limitations) contain mandatory retention timelines. The Board's attorney should be consulted.</p>

Actor	Action
	<p>The e-discovery rules provide a safe harbor for parties during a lawsuit that cannot provide information because it was destroyed as a result of routine practices. F.R.C.P. 37(e).</p> <p>3. Develop protocols to implement a litigation hold.</p> <p>Understand what a <i>litigation hold</i> is.</p> <p>A litigation hold refers to the notification made by the Board’s attorney telling the District to preserve all information that may be relevant to current or anticipated litigation. While it may occur anytime in the legal process, it will usually occur during discovery, the pretrial phase of a lawsuit designed to compel the exchange of information between parties. A litigation hold triggers the need to immediately suspend destruction of electronic and other records relevant to the current or potential claim. F.R.C.P. 37(e).</p> <p>Specify how to implement a litigation hold, i.e.:</p> <ul style="list-style-type: none"> • Who can trigger a litigation hold? • How is a litigation hold communicated? • Who should gather the records? • What records are subject to a litigation hold and who determines this? • In what format should records be gathered? • Where should records be gathered? <p>Identify how to implement a litigation hold for all IT systems, including backup tapes, to ensure they are not deleted or overwritten as part of the normal tape rotation process.</p> <p>Prepare a map of potentially relevant data and otherwise assist the Board’s attorneys in locating all potentially relevant information.</p>
Superintendent	<p>Submit new or revised record retention and destruction lists and schedules to the Local Records Commission for approval.</p> <p>Disseminate the record retention schedule, along with instructions, to all affected staff members and Board members.</p> <p>Immediately inform the Records Custodian and Head of IT whenever a record must be preserved because: (1) it may be relevant to present or future litigation, or (2) the Board Attorney has notified the District to preserve a record, including electronic information (<i>litigation hold</i>).</p> <p>Authorize and/or order the destruction of District records after ensuring that the following steps have been performed:</p> <ol style="list-style-type: none"> 1. The Local Records Commission approved a schedule for continuing authority to destroy District records after the expiration of the applicable period.

Actor	Action
	<p>2. Any record is retained and removed from the disposal list if it is or may be evidence in litigation, or is otherwise subject to a <i>litigation hold</i>.</p> <p>3. Thirty days prior to disposal or destruction of any records, regardless of physical format or characteristics, submit a Local Records Disposal Certificate to the Commission and dispose only after a copy of that certificate has been reviewed and approved by the Chairman and returned to the District. -The original copy of that Local Records Disposal Certificate is kept in the files of the Commission, and the duplicate copy approved and returned by the Chairman must be retained by the District. 44 Ill.Admin.Code §§Section 4000.40(c), of the rules of the Downstate Local Records Commission and Section 4500.40(c) of the rules of the Cook County Local Records Commission.</p> <p>4. In the case of records with scheduled retention of less than one year, a single Local Records Disposal Certificate for more than one disposal event within a given year may be used. Local Records Disposal Certificates submitted with this intent must include a schedule of proposed records disposal in addition to the normally required information. The District must wait to dispose of records until receipt of approval from the Commission, as required in number 3, above. 44 Ill.Admin.Code §§Section 4000.40(d), of the rules of the Downstate Local Records Commission and Section 4500.40(d) of the rules of the Cook County Local Records Commission.</p> <p>5. For records that have been damaged by water, fire, smoke, insects or vermin, mold or some other natural disaster that poses a health or safety risk to employees, the District may apply to the Commission for permission to dispose of those records ahead of their scheduled disposal date. The request must include a Local Records Disposal Certificate accompanied by the District's explanation of why the records need early disposal. The Commission may grant the request only after physically reviewing the damaged records. 44 Ill.Admin.Code §§Section 4000.40(e), of the rules of the Downstate Local Records Commission and Section 4500.40(e) of the rules of the Cook County Local Records Commission.</p>
<p>Links to Web-based Record Management Resources:</p> <p>Cook County Local Records Commission Meetings</p> <p>Cook County Local Records Commission Rules (44 Ill.-Admin.-Code Title PARTPart 4500)</p> <p>Downstate Local Records Commission Meetings</p> <p>Rules of the Downstate Local Records Commission (44 Ill.-Admin.-Code Title PARTPart</p>	

Actor	Action
4000)	Illinois School Student Records Act (105 ILCS 10/, amended by P.A. 101-161, eff. 1-1-20) Local Records Act (50 ILCS 205/) Local Records Disposal Certificate

LEGAL REF.: Federal Rules of Civil Procedure, Rules 16, 26 and 37.
5 ILCS 140/, Freedom of Information Act.
50 ILCS 205/, Local Records Act.
105 ILCS 10/, Ill. School Student Records Act.
815 ILCS 530/, Personal Information Protection Act.
820 ILCS 40/, Ill. Personnel Record Review Act.
44 Ill.Admin.Code Part 4000, Local Records Commission.
44 Ill.Admin.Code Part 4500, Cook County Local Records Commission.

School Board

Exhibit - Immediately Available District Public Records and Web-Posted Reports and Records 1

[For use by only those Districts that have websites.]

The District’s Freedom of Information Officer designates the public records that are listed in this table as being immediately available to the public. The records that are asterisked (*) are posted on the District’s website and may be immediately inspected, downloaded, printed, and/or copied. Any asterisked public record is also immediately available for inspection or copying upon request at the District’s administrative office during its regular business hours, provided any applicable fees are paid. Records not asterisked (*) will be provided within five business days as allowed by the Freedom of Information Act, provided any applicable fees are paid.

Web-posted records and information (use of an * is explained in the paragraph above this table)	Web-posting statutory reference and special instructions
<p>*Annual schedule of regular meetings for the current school year that are posted at the beginning of each calendar or fiscal year</p> <p>*Public notice of each Board meeting that is posted at least 48 hours before the meeting and remains posted until the meeting is concluded</p> <p>*Agenda of each regular meeting that is posted at least 48 hours before a meeting and remains posted until the meeting is concluded</p> <p>Note: For school districts that do not post board meeting notices and/or agendas on a website (because they do not have a website maintained by a full time staff member), the notice and agenda must be continuously available for public review during the entire 48-hour period preceding the meeting</p>	<p>5 ILCS 120/2.02.</p>

The footnotes should be removed before the material is used.

1 This exhibit has two purposes: (1) to identify the data and documents that must be posted on a district’s website, if the district has a website; and (2) to fulfill the requirement in the Freedom of Information Act (FOIA) for the district’s FOIA officer to designate the public records that are immediately available to the public. 5 ILCS 140/3.5(a). Many attorneys agree that using the required items for web-posting is an easy and practical way for the FOIA Officer to develop a list of public records that are *immediately available*. Some attorneys prefer that the district also retain copies of its web-posted public records for immediate inspection and/or copying upon request at the administrative office. The introductory paragraph manages this issue by indicating that copies of certain identified public records will also be immediately available in the district’s administrative office. This exhibit suggests identifying public records for immediate availability that are easily reproduced and stored, i.e., not voluminous. The FOIA Officer should customize this list as appropriate to the district’s circumstances.

Note, however, that simply referring a FOIA requester to a responsive document that is available on the district’s website is not a sufficient response and that a copy must be provided on request. See reference in [III](#), Public Access Counselor binding opinion 10-1. Consult the board attorney for ideas to manage the district’s specific FOIA compliance issues.

Web-posted records and information <i>(use of an * is explained in the paragraph above this table)</i>	Web-posting statutory reference and special instructions
*Official open meeting minutes that are posted within 10 ten days of the Board’s approval and remain posted for at least 60 days	5 ILCS 120/2.06(b).
*Description of the District and its records including: Summary of the District’s purpose Functional subdivisions Total amount of operating budget Number and location of all of its separate offices Approximate number of full- and part-time employees (see also, salary and benefits information report for the Superintendent, administrators, and teachers, District’s Statement of Affairs) Identification and membership of the Board Brief description of the methods whereby the public may request information and public records Directory information for the Freedom of Information Officer Address where requests for public records should be directed Fees	5 ILCS 140/4. The District must prominently post the list at each administrative office and make it available for inspection and copying.
*A hyperlink to an email address(es) for members of the public to communicate with members of the Board	50 ILCS 205/20. The hyperlink must be easily accessible from the District’s home page.
Annual budget for current fiscal year, itemized by receipts and expenditures	105 ILCS 5/17-1.2. This may be accomplished using Ill. State Board of Education (ISBE) <i>School District Budget Form</i> (50-36) or the summary pages from it. ² The District must notify its students’ parents/guardians when the budget is web-posted along with its website address.
*District Report Card and a Report Card for each School (the Report Cards will be provided by ISBE by Oct. 31 of each year)	105 ILCS 5/10-17a, amended by P.A.s 100-364, 100-448, 100-807, and 100-1121. Annually, no more than 30 calendar days

The footnotes should be removed before the material is used.

² For school officials who are concerned that some of their district’s constituents may not have the proper software to access these documents, the Ill. State Board of Education (ISBE) provides links to free *viewer* or *reader* products that support the ISBE School District Budget Form (50-36). These products can be downloaded and used to access the budget as posted on the district’s website. See www.isbe.net/Pages/School-District-Joint-Agreement.aspx.

Web-posted records and information <i>(use of an * is explained in the paragraph above this table)</i>	Web-posting statutory reference and special instructions
	<p>after receiving the Report Cards from the State Superintendent, the District must: (1) present them at a regular Board meeting, (2) post them on the District's website, (3) make them available to a newspaper of general circulation serving the District, and (4) upon request, send them home to parents/guardians. 105 ILCS 5/10-17a(5).</p> <p>The District also must send a written notice home to parents/guardians stating: (1) that the Report Cards are available on the website, (2) the website's address, (3) that a printed copy will be sent upon request, and (4) the telephone number to request a printed copy. <i>Id.</i></p>
<p>*A list of all contracts in excess of \$25,000 and any contracts with an exclusive bargaining representative</p>	<p>105 ILCS 5/10-20.44.</p> <p>There is no statutory timeline for web-posting.</p> <p>Each year, in conjunction with the submission of the Statement of Affairs to ISBE, before Dec. 1, the District must submit to ISBE an annual report on all contracts over \$25,000 awarded during the previous fiscal year.</p>
<p>*Contract(s) with any commercial driver training school(s) for driver education</p>	<p>105 ILCS 5/27-24.2, amended by P.A. 100-465.</p> <p>The District is required to web-post this document if it has a website. If the District has no website, it must make the contract available upon request.</p>
<p>Annual Statement of Affairs</p>	<p>105 ILCS 5/10-17.</p> <p>The District is not required to web-post this document. It must, annually by Dec. 1, submit the Statement to ISBE for posting on ISBE's website, have copies of the Statement available in the main administrative office, and publish a summary of the Statement in a newspaper of general circulation published in the District.</p>
<p>*Board policy 7:180, <i>Prevention of and Response to</i></p>	<p>105 ILCS 5/27-23.7(b)(10) and (11).</p>

Web-posted records and information <i>(use of an * is explained in the paragraph above this table)</i>	Web-posting statutory reference and special instructions
<p><i>Bullying, Intimidation, and Harassment</i></p> <p>*Information developed as a result of the evaluation and assessment of the bullying policy's outcomes and effectiveness</p>	
<p><u>*Board policy 7:20, <i>Harassment of Students Prohibited</i>, and age-appropriate explanations of its contents in student handbook(s)</u></p>	<p><u>105 ILCS 5/10-20.69 (final citation pending), added by P.A. 101-418, eff. 1-1-20.</u></p> <p><u>The District must have an <i>age-appropriate</i> policy on sexual harassment (1) in the student handbook(s), (2) posted on the District's website, and (3) posted in any other area where policies, rules and standards of conduct are posted in each school.</u></p>
<p>*Board policy 7:290, <i>Suicide and Depression Awareness and Prevention</i></p>	<p>105 ILCS 5/2-3.166, added by P.A. 99-443.</p>
<p>*Administrator and Teacher Salary and Benefits Report (itemized salary report for the Superintendent and all administrators and teachers); <i>benefits</i> includes without limitation vacation days, sick days, bonuses, annuities, and retirement enhancements</p>	<p>105 ILCS 5/10-20.47.</p> <p>Annually on or before Oct. 1: (1) the information must be presented at a regular Board meeting and posted on the District's website, and (2) after the Board meeting at which the information was presented, the Report must be provided to ISBE.</p>
<p>*Information regarding a Severance Agreement entered into because an employee or contractor was found to have engaged in sexual harassment or sexual discrimination</p>	<p>50 ILCS 205/3c, added by P.A. 100-1040.</p> <p>Within 72 hours of Board approval, the District must post: (1) the name/title of person receiving payment under the severance agreement, (2) the amount of payment, (3) that the employee or contractor was found to have engaged in sexual harassment or sexual discrimination, as applicable, and (4) the date, time, and location of the meeting at which the agreement was approved.</p> <p>Note: The Government Severance Pay Act (GSPA), 5 ILCS 415/10(a)(2), added by P.A. 100-895, prohibits an employee of a school district with contract provisions for severance pay from receiving any severance if he or she is</p>

Web-posted records and information <i>(use of an * is explained in the paragraph above this table)</i>	Web-posting statutory reference and special instructions
	fired for <i>misconduct</i> by the board, which includes sexual harassment and/or discrimination. <i>Id.</i> at 415/5. For more discussion about the reconciling these laws, see f/n 6 in policy 2:260, <i>Uniform Grievance Procedure</i> .
<p>*As an employer that participates in the Ill. Municipal Retirement Fund (IMRF), a compensation report for employees who have a total compensation package that exceeds \$75,000 per year; <i>total compensation package</i> means salary, health insurance, a housing allowance, a vehicle allowance, a clothing allowance, bonuses, loans, vacation days granted, and sick days granted</p> <p>As of PRESS Issue 1020 (Oct. 2019), IASB has not received a response from the Ill. Attorney General’s office to its request for guidance concerning whether this requirement applies to employees who do not participate in IMRF, e.g., TRS participants.</p>	<p>5 ILCS 120/7.3.</p> <p>The report must be posted within six business days after the District approves a budget. The District may choose to post a physical copy of this information at its principal office in lieu of posting the information directly on the website in which case it must post directions on the website for accessing that information.</p>
<p>*As an employer that participates in the IMRF, a compensation report for employees who have a total compensation package that is equal to or in excess of \$150,000 per year; <i>total compensation package</i> means payment by the employer to the employee for salary, health insurance, a housing allowance, a vehicle allowance, a clothing allowance, bonuses, loans, vacation days granted, and sick days granted</p> <p>As of PRESS Issue 100, IASB has not received a response from the Ill. Attorney General’s office to its request for guidance concerning whether this requirement applies to employees who do not participate in IMRF, e.g., TRS participants.</p>	<p>5 ILCS 120/7.3.</p> <p>The report must be posted at least six days before the District approves an employee’s total compensation package that is equal to or in excess of \$150,000. The District may choose to post a physical copy of this information at its principal office in lieu of posting the information directly on the website in which case it must post directions on the website for accessing that information.</p>
<p>A description of activities to address intergroup conflict (an optional program authorized by Sec. 27-23.6)</p>	<p>105 ILCS 5/27-23.6(c).</p>
<p>*Names of Board members who have completed professional development leadership training</p>	<p>105 ILCS 5/10-16a requires the District to post on its website the names of all Board members who have completed professional development leadership training. The web-posting may be expanded to log all Board members’ training and development activities.</p> <p>5 ILCS 120/1.05(b) and (c) require each Board member to complete training on</p>

Web-posted records and information <i>(use of an * is explained in the paragraph above this table)</i>	Web-posting statutory reference and special instructions
	<p>the Open Meetings Act. After completing the training, each Board member must file a copy of their certificate of completion with the Board.</p> <p>105 ILCS 5/24-16.5 requires each Board member to complete a training program on performance evaluations before voting on a dismissal based on a performance evaluation pursuant to the Performance Evaluation Reform Act.</p>
<p>Immunization data reported to ISBE by each Nov. 15</p>	<p>105 ILCS 5/27-8.1(6).</p> <p>By Dec. 1, the District must annually make the immunization <i>data</i> that it must report to ISBE each year publicly available. The data, not its format, must be identical to the data reported to ISBE. Boards have control over the method(s) used to make this data publicly available. One method is to instruct the reader to ask for the data directly from ISBE.</p>
<p>Information on mental health issues and local treatment resources</p>	<p>The Ill. House of Representatives encouraged this in HR 478 (5-31-15).</p>
<p>All reliable assessments, scored by entities other than the District that are administered in each of the District's schools.</p>	<p>105 ILCS 5/22-82(b), added by P.A. 99-590.</p> <p>These must be made available to parents and/or guardians through the District's website or paper handouts.</p>

School Board

Uniform Grievance Procedure 1

A student, parent/guardian, employee, or community member should notify any District Complaint Manager if he or she believes that the School Board, its employees, or its agents have violated his or her rights guaranteed by the State or federal Constitution, State or federal statute, or Board policy², or have a complaint regarding any one of the following: ³

1. Title II of the Americans with Disabilities Act ⁴
2. Title IX of the Education Amendments of 1972
3. Section 504 of the Rehabilitation Act of 1973 ⁵
4. Title VI of the Civil Rights Act, 42 U.S.C. §2000d et seq.

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 requires this subject matter be covered by policy and 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. Employee grievance procedures are a mandatory subject of bargaining and cannot be changed without the employee exclusive representative's consent. This policy is in addition to, and not a substitute for, the employee grievance procedure contained in a collective bargaining agreement.

A grievance procedure is required by many civil rights acts and implementing regulations, including those listed. For the sake of consistency and ease of administration, this policy consolidates all board grievance procedures into one policy, except those contained in collective bargaining agreements. See the cross references for the policies referring to this uniform grievance procedure policy.

² Including the phrase "guaranteed by the State or federal Constitution, State or federal statute, or Board policy" broadens the scope of this policy beyond the items listed. Consult the board attorney regarding whether to retain this phrase and/or to otherwise limit the scope of this policy.

³ The Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §1400 et seq.) is not included in the list of statutes that may serve as the basis of a grievance, and attorneys disagree whether it should be. Many believe that IDEA provides the exclusive remedy; others believe that including IDEA allows parents an opportunity to get their position before the board. Unique and specific complaint resolution mechanisms are expressly provided under IDEA, Article 14 of the School Code, and their respective implementing regulations. These mechanisms follow: (1) IDEA at 20 U.S.C. §1415 (procedural safeguards-mediation and due process); (2) IDEA regulations at 34 C.F.R. §§300.151-300.153 (state complaints), 300.506 (mediation), and 300.507 et seq. (due process); (3) School Code at §§14/8.02a (mediation and due process) and 14/8.02b (expedited due process); and (4) special education regulations at 23 Ill.Admin.Code §§226.560 (MediationState-complaints), 226.570 (State Complaint Proceduresmediation), and Subpart G (due process). A board that would like to include IDEA should consult the board attorney.

⁴ The Americans with Disabilities Act Amendments Act (ADAAA) (Pub. L. 110-325), made significant changes to the Americans with Disabilities Act's definition of disability by broadening the scope of coverage. The ADAAA also overturned 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. The U.S. Equal Employment Opportunity Commission's (EEOC) regulations, 29 C.F.R. Part 1630, are at: www.eeoc.gov/laws/types/disability_regulations.cfm.

Boards should consult with their attorneys regarding how the ADAAA and its implementing regulations impact their districts.

Title II of the ADA of 1990 also includes website accessibility. Addressing website accessibility is complicated. Many entities addressing website accessibility use *Web Content Accessibility Guidelines* (WCAG) 2.0, a frequently cited accessibility standard that contains guidelines developed by a private group of accessibility experts. WCAG 2.0 is the standard the U.S. Dept. of Justice referenced in its recent Title II rulemaking; however, it is not adopted as the formal legal standard for public accommodation websites. While it is not adopted as the formal legal standard for public accommodation websites, it has been used in many consent decrees and settlement agreements. See www.w3.org/TR/WCAG20/.

⁵ See *f/n 4's* discussion of website accessibility above. To avoid allegations that a district violated Section 504 of the Rehabilitation Act of 1973 and Title II of the ADA of 1990, many attorneys suggest that school districts' websites meet the WCAG 2.0 guidelines. But see the discussion in *f/n 2* of policy 8:70, *Accommodating Individuals with Disabilities*.

5. Equal Employment Opportunities Act (Title VII of the Civil Rights Act), 42 U.S.C. §2000e *et seq.*
6. Sexual harassment (State Officials and Employees Ethics Act⁶, Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972)⁷

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⁶ 5 ILCS 430/70-5(a), amended by P.A. ~~§ 100-554, and 101-221~~, requires governmental entities (including school districts) to adopt an ordinance or resolution establishing a policy to prohibit sexual harassment that contains certain prescribed elements. See policy 5:20, Workplace Harassment Prohibited, at ¶n 3 and subhead Complaints of Sexual Harassment Made Against Board Members by Elected Officials in policy 2:105, Ethics and Gift Ban, for further detail. Complaints of sexual harassment made against board members by fellow board members or other elected officials of governmental units must undergo an independent review, which is not a term defined in the statute. Unlike the powers granted by the Ill. General Assembly to municipalities to pass ordinances, school boards govern by rules referred to as *policies*. 105 ILCS 5/10-20.5. Further, school boards may only exercise powers given to them that are consistent with the School Code that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board. 105 ILCS 5/10-20. School districts are also required to create, maintain, and implement an age-appropriate sexual harassment policy. 105 ILCS 5/10-20.69 (final citation pending), added by P.A. 101-418, eff. 1-1-20. See policy 7:20, Harassment of Students Prohibited, and its ¶n 7 for further information.

The policy must include, at a minimum:

- ~~(1) a prohibition on sexual harassment;~~
- ~~(2) details on how an individual can report an allegation of sexual harassment, including options for making a confidential report to a supervisor, ethics officer, Inspector General, or the Ill. Dept. of Human Rights;~~
- ~~(3) a prohibition on retaliation for reporting sexual harassment allegations, including availability of whistleblower protections under the State Officials and Employees Ethics Act, the Whistleblower Act (740 ILCS 174/), and the Ill. Human Rights Act (775 ILCS 5/); and~~
- ~~(4) the consequences:

 - ~~(a) of a violation of the prohibition on sexual harassment; and~~
 - ~~(b) for knowingly making a false report.~~~~

Id. See policy 5:20, *Workplace Harassment Prohibited*.

A new publication law, 50 ILCS 205/3c, added by P.A. 100-1040, requires a school district to post on its website and make available to news media specific information about severance agreements that it enters into because an employee or contractor was “found to have engaged in sexual harassment or sexual discrimination, as defined by the Ill. Human Rights Act or Title VII of the Civil Rights Act of 1964.” Consult the board attorney about the word *found*. It raises many practical application questions, e.g., when does the word *found* trigger a board’s compliance responsibility pursuant to this law. Such questions include, but are not limited to:

1. Must a school board make a *finding* to trigger this requirement? If the severance agreement is entered into post-termination, a record of board *findings* rarely exists.
2. Are charges for termination *findings*? Often superintendents submit charges for termination, but these are not technically *findings*.
3. Are charges based on a complaint manager’s report and determination(s) *findings* under the law when a board still has the ability to review and reject the complaint manager’s determination(s)?

Next, contrast the above publication law with the Government Severance Pay Act (GSPA), 5 ILCS 415/10(a)(2), added by P.A. 100-895, ~~eff. 1-1-19~~. GSPA prohibits an employee of a school district with contract provisions for severance pay from receiving any severance if he or she is fired for *misconduct* by the board. GSPA defines *misconduct* to include sexual harassment and/or discrimination. Id. at 415/5.

Consult the board attorney about how to reconcile whether sexual harassment and/or sexual discrimination is misconduct for which a severance would be prohibited under the GSPA, and therefore, not available to be published under 50 ILCS 205/3c, added by P.A. 100-1040. And for further discussion and other applicable transparency laws that apply to this issue, see also ¶n 119 in policy 5:20, *Workplace Harassment Prohibited*.

7. Breastfeeding accommodations for students, 105 ILCS 5/10-20.60 ⁸
8. Bullying, 105 ILCS 5/27-23.7 ⁹
9. Misuse of funds received for services to improve educational opportunities for educationally disadvantaged or deprived children ¹⁰
10. Curriculum, instructional materials, and/or programs
11. Victims' Economic Security and Safety Act, 820 ILCS 180/
12. Illinois Equal Pay Act of 2003, 820 ILCS 112/
13. Provision of services to homeless students
14. Illinois Whistleblower Act, 740 ILCS 174/ ¹¹
15. Misuse of genetic information (Illinois Genetic Information Privacy Act (GIPA), 410 ILCS 513/ and Titles I and II of the Genetic Information Nondiscrimination Act (GINA), 42 U.S.C. §2000ff et seq. ¹²

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⁷ Consult the board attorney to ensure the district's nondiscrimination coordinator and complaint managers are trained to appropriately respond to allegations of discrimination based upon bullying and/or sexual violence under Title IX's sexual harassment umbrella. In September 2017, the U.S. Dept. of Education (DOE) withdrew its sexual violence Title IX guidance issued in 2011 and 2014, which mandated procedures for processing student-on-student sexual conduct, including using a preponderance of the evidence standard for student discipline. The DOE has issued interim guidance until new rulemaking is promulgated: *Q&A on Campus Sexual Misconduct* (OCR September 2017) at: www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term. An earlier guidance document also highlights appropriate responses to sexual violence under Title IX. See *Revised Sexual Harassment Guidance: Harassment of Student by School Employees, Other Students, or Third Parties, January 2001* at: www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf www2.ed.gov/offices/OCR/archives/pdf/shguide.pdf.

Consult the board attorney regarding proper filing and storage of these investigation documents, including whether certain student-related investigation documents are *sole possession records*, a Family Policy Compliance Office (FPCO)-created an exemption to the Family Education Rights Privacy Act (FERPA) (20 U.S.C. §1232g). See *Letter to Ruscio*, 115 LRP 18601 (FPCO 12-17-14).

⁸ 105 ILCS 5/10-20.60, added by P.A. 100-29, requires schools to implement the Ill. sex equity grievance procedures when processing student complaints about breastfeeding accommodations. Complainants must be informed that the board's decision may be appealed to the Regional Superintendent and, thereafter, to the State Superintendent. 23 Ill.Admin.Code §200.40. **Note:** Certain claims brought under Sec. 10-20.60 may also be covered by the anti-discrimination protections of Title IX; consult the board attorney for further advice. Guidance from U.S. Dept. of Education on Title IX requirements for pregnant and parenting students (June 2013) is available at: www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf.

⁹ All districts must have a policy on bullying. 105 ILCS 5/27-23.7. See policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*. The inclusion of *bullying* in the list of topics that may serve as the basis of a grievance furthers the obligation to communicate this policy to students and their parents/guardians.

¹⁰ Parents/guardians of educationally disadvantaged children may sue a district for misuse of funds allocated by State law for the benefit of such children. *Noyola v. Bd. of Educ.*, 171 Ill.2d 121 (Ill. 1997) (affirming the appellate court's conclusion in *Noyola v. Bd. of Educ.*, 284 Ill.App.3d 128 (1st Dist. 1996) that parents/guardians may pursue a claim to enforce the requirements of the School Code but holding that the proper action for enforcement is by means of mandamus not an implied right of action).

¹¹ The Ill. Whistleblower Act (740 ILCS 174/) includes school districts in the definition of employer. It protects employees from employer retaliation for disclosing information to a government or law enforcement agency. Section 15 also contains language prohibiting employers from retaliating against employees who disclose 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. The Ill. Whistleblower Reward and Protection Act (740 ILCS 174.5/) includes school districts in its definition of *State*. A strict interpretation of this language appears to allow school boards to collect civil penalties and costs against someone making a false claim. Before disciplining any employee, boards should thoroughly investigate the ramifications of these acts in consultation with their attorney and liability insurance carriers.

¹² The Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. §2000ff et seq.) is a federal law. Title I addresses the use of genetic information pertaining to health insurance. Title II protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. GINA covers employers with 15 or more employees.

16. Employee Credit Privacy Act, 820 ILCS 70/ 13

The Complaint Manager will first attempt to resolve complaints without resorting to this grievance procedure. If a formal complaint is filed under this policy, the Complaint Manager will address the complaint promptly and equitably. A student and/or parent/guardian filing a complaint under this policy may forego any informal suggestions and/or attempts to resolve it and may proceed directly to this grievance procedure. The Complaint Manager will not require a student or parent/guardian complaining of any form of harassment to attempt to resolve allegations directly with the accused (or the accused's parents/guardians); this includes mediation.

Right to Pursue Other Remedies Not Impaired

The right of a person to prompt and equitable¹⁴ resolution of a complaint filed under this policy shall not be impaired by the person's pursuit of other remedies, e.g., criminal complaints, civil actions, etc. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies and use of this grievance procedure does not extend any filing deadline related to the pursuit of other remedies. If a person is pursuing another remedy subject to a complaint under this policy, the District will continue with a simultaneous investigation under this policy.

Deadlines

All deadlines under this policy may be extended by the Complaint Manager as he or she deems appropriate. As used in this policy, *school business days* means days on which the District's main office is open.

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GINA broadly defines genetic information to include information about an individual's genetic tests, their family members, and, among other things, the manifestation of a disease or disorder in the individual or the individual's family members. Information about an individual's or family member's age or gender is excluded from genetic information. Its remedies mirror those available under a Title VII of the Civil Rights Act claim: back pay, reinstatement, attorneys' fees and compensatory and punitive damages. Retaliation against an individual who brings a claim under GINA is also prohibited. Federal regulations are available at 29 C.F.R. Part 1635, and background information on these regulations is available at: www.eeoc.gov/policy/docs/qanda_geneticinfo.html. An FAQ titled, *FAQs on the Genetic Information Nondiscrimination Act* is available at: www.dol.gov/agencies/ebsa/laws-and-regulations/laws/ginawww.dol.gov/ebsa/faqs/faq_GINA.html.

The Ill. Genetic Information Protection Act (GIPA) (410 ILCS 513/, amended by P.A. 100-396) also prohibits employers from making employment decisions on the basis of any employee's genetic testing information and from penalizing employees who do not want to disclose their genetic information as part of a workplace wellness program. GIPA includes the federal GINA's definition of genetic information and creates more stringent obligations on Ill. employers. While the federal GINA exempts small employers (those with less than 15 employees), Illinois' GIPA covers all employers, even those with one employee. GIPA also provides penalties for negligent and intentional mishandling of genetic information. Note that Title II of GINA does not preempt GIPA's greater protections to Illinois employees.

Before using any sort of genetic information, consult the board attorney for guidance regarding GINA's and GIPA's specific applications to the district and how these laws integrate with other related federal laws, such as the Family Medical Leave Act and the ADA, and State laws governing time off for sickness and workers' compensation.

¹³ 820 ILCS 70/. 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, when the position's duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more. A person who is injured by a violation of this Act may bring a civil action to obtain injunctive relief and/or damages. 820 ILCS 70/25. The court must award costs and reasonable attorneys' fees to a prevailing plaintiff.

¹⁴ The phrase "prompt and equitable resolution" comes from Title IX implementing regulation 34 C.F.R. §106.8(b) which requires schools to "adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints" of sex discrimination.

Filing a Complaint

A person (hereinafter Complainant) who wishes to avail him or herself of this grievance procedure may do so by filing a complaint with any District Complaint Manager. The Complainant shall not be required to file a complaint with a particular Complaint Manager and may request a Complaint Manager of the same gender.¹⁵ The Complaint Manager may request the Complainant to provide a written statement regarding the nature of the complaint or require a meeting with a student's parent(s)/guardian(s). The Complaint Manager shall assist the Complainant as needed.

For any complaint alleging bullying and/or cyberbullying of students, the Complaint Manager shall process and review the complaint according to Board policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, in addition to any response required by this policy. For any complaint alleging sexual harassment or other violation of Board policy 5:20, *Workplace Harassment Prohibited*, the Complaint Manager shall process and review the complaint according to that policy, in addition to any response required by this policy 2:260, *Uniform Grievance Procedure*.

Investigation

The Complaint Manager will investigate the complaint or appoint a qualified person to undertake the investigation on his or her behalf.¹⁶ The Complaint Manager shall ensure both parties have an equal opportunity to present evidence during an investigation. If the Complainant is a student under 18 years of age, the Complaint Manager will notify his or her parent(s)/guardian(s) that they may attend any investigatory meetings in which their child is involved. The complaint and identity of the Complainant will not be disclosed except: (1) as required by law or this policy, (2) as necessary to fully investigate the complaint, or (3) as authorized by the Complainant.

The identity of any student witnesses will not be disclosed except: (1) as required by law or any collective bargaining agreement, (2) as necessary to fully investigate the complaint, or (3) as authorized by the parent/guardian of the student witness, or by the student if the student is 18 years of age or older.

The Complaint Manager will inform, at regular intervals, the person(s) filing a complaint under this policy about the status of the investigation. Within 30 school business days of the date the complaint was filed, the Complaint Manager shall file a written report of his or her findings with the Superintendent. The Complaint Manager may request an extension of time.

The Superintendent will keep the Board informed of all complaints.

If a complaint contains allegations involving the Superintendent or Board member(s), the written report shall be filed directly with the Board, which will make a decision in accordance with paragraph four of the following section of this policy.

Decision and Appeal

Within five school business days after receiving the Complaint Manager's report, the Superintendent shall mail his or her written decision to the Complainant and the accused by first class U.S. mail as

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¹⁵ This is a best practice.

¹⁶ This policy gives complaint managers the flexibility to appoint another individual to conduct an investigation, which may be appropriate in cases where the neutrality or efficacy of the complaint manager is an issue, and/or where the district wishes to have the expertise and related attorney-client and work product privileges that an in-house or outside attorney may afford an investigation. Such alternative appointments are often made in consultation with the superintendent or other district-level administrator (except in cases involving complaints about those individuals).

well as to the Complaint Manager. All decisions shall be based upon the *preponderance of evidence* standard. ¹⁷

Within 10 school business days after receiving the Superintendent's decision, the Complainant or the accused may appeal the decision to the Board by making a written request to the Complaint Manager. The Complaint Manager shall promptly forward all materials relative to the complaint and appeal to the Board.

Within 30 school business days, the Board shall affirm, reverse, or amend the Superintendent's decision or direct the Superintendent to gather additional information. Within five school business days of the Board's decision, the Superintendent shall inform the Complainant and the accused of the Board's action.

For complaints containing allegations involving the Superintendent or Board member(s), within 30 school business days after receiving the Complaint Manager's or outside investigator's report, the Board shall mail its written decision to the Complainant and the accused by first class U.S. mail as well as to the Complaint Manager.

This policy shall not be construed to create an independent right to a hearing before the Superintendent or Board. The failure to strictly follow the timelines in this grievance procedure shall not prejudice any party. ¹⁸

Appointing a Nondiscrimination Coordinator and Complaint Managers ¹⁹

The Superintendent shall appoint a Nondiscrimination Coordinator to manage the District's efforts to provide equal opportunity employment and educational opportunities and prohibit the harassment of employees, students, and others. The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator. ²⁰

The Superintendent shall appoint at least one Complaint Manager to administer the complaint process in this policy. If possible, the Superintendent will appoint two Complaint Managers, one of each gender. The District's Nondiscrimination Coordinator may be appointed as one of the Complaint Managers.

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¹⁷ *Preponderance of evidence* is a standard of proof in civil cases. It means "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." See *Black's Law Dictionary, 9th ed. 2009*.

¹⁸ The Ill. sex equity regulations require districts to have "specific timelines for completion of each step and rendering of a written decision, and shall provide for final appeal of grievance decisions made at the system level to the system's governing board." 23 Ill.Admin.Code §200.40. To avoid arguments over these timelines, this sample policy provides that the failure to strictly follow the timelines does not prejudice any party. The grievance procedure is worthless if complaints are not thoroughly and promptly investigated.

¹⁹ Title IX regulations require districts to identify the name, address, and telephone number of the person who is responsible for coordinating the district's compliance efforts. OCR prefers that school districts make Title IX information and coordinators visible to the community, and it has provided materials designed to remind schools of their obligation to designate a Title IX coordinator. These materials include: (1) a *Dear Colleague Letter on Title IX Coordinators*; (2) a *Letter to Title IX Coordinators* that provides them with more information about their role; and (3) a *Title IX Resource Guide* that includes an overview of Title IX's requirements with respect to several key issues. See www2.ed.gov/policy/rights/guid/ocr/title-ix-coordinators.html.

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.

²⁰ Best practice is that throughout the 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 insert into this policy and keep current the names, addresses, and telephone numbers of the Nondiscrimination Coordinator and the Complaint Managers. ²¹

Nondiscrimination Coordinator:

Name

Address

Email

Telephone

Complaint Managers:

Name

Name

Address

Address

Email

Email

Telephone

Telephone

LEGAL REF.: Age Discrimination in Employment Act, 29 U.S.C. §621 et seq.
Americans With Disabilities Act, 42 U.S.C. §12101 et seq.
Equal Employment Opportunities Act (Title VII of the Civil Rights Act), 42 U.S.C. §2000e et seq.
Equal Pay Act, 29 U.S.C. §206(d).
Genetic Information Nondiscrimination Act, 42 U.S.C. §2000ff et seq.
Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.
McKinney-Vento Homeless Assistance Act, 42 U.S.C. §11431 et seq.
Rehabilitation Act of 1973, 29 U.S.C. §791 et seq.
Title VI of the Civil Rights Act, 42 U.S.C. §2000d et seq.
Title IX of the Education Amendments, 20 U.S.C. §1681 et seq.
State Officials and Employees Ethics Act, 5 ILCS 430/70-5(a).
105 ILCS 5/2-3.8, 5/3-10, 5/10-20.7a, 5/10-20.60, 5/10-22.5, 5/22-19, 5/24-4, 5/27-1, 5/27-23.7, and 45/1-15.
Illinois Genetic Information Privacy Act, 410 ILCS 513/.
Illinois Whistleblower Act, 740 ILCS 174/.
Illinois Human Rights Act, 775 ILCS 5/.

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²¹ The board may include the following option to address publication of such contact information:

“The Superintendent or designee shall ensure that students, parents/guardians, employees, and members of the community are informed of the contact information for the District’s Nondiscrimination Coordinator and Complaint Managers on an annual basis.”

Publicizing the contact information for the Nondiscrimination Coordinator and Complaint Managers through personnel handbooks, student handbooks, and/or on the district’s website is a best practice. The Illinois Principals Association maintains a handbook service that coordinates with **PRESS** material, *Online Model Student Handbook (MSH)*, at: www.ilprincipals.org/resources/model-student-handbook.

Victims' Economic Security and Safety Act, 820 ILCS 180/, 56 Ill.Admin.Code Part 280.

Equal Pay Act of 2003, 820 ILCS 112/.

Employee Credit Privacy Act, 820 ILCS 70/.

23 Ill.Admin.Code §§1.240 and 200.40.

CROSS REF.: 2:105 (Ethics and Gift Ban), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and Criteria), 6:120 (Education of Children with Disabilities), 6:140 (Education of Homeless Children), 6:170 (Title I Programs), 6:260 (Complaints About Curriculum, Instructional Materials, and Programs), 7:10 (Equal Educational Opportunities), 7:15 (Student and Family Privacy Rights), 7:20 (Harassment of Students Prohibited), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:310 (Restrictions on Publications; Elementary Schools), 7:315 (Restrictions on Publications; High Schools), 8:70 (Accommodating Individuals with Disabilities), 8:95 (Parental Involvement), 8:110 (Public Suggestions and Concerns)