

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.

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

¹ The State Officials and Employees Ethics Act (5 ILCS 430/) requires a policy on this subject matter and controls its content (5 ILCS 430/70-5). 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 ordinance to assist units of local government and school districts. 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 State Officials and Employees Ethics Act. The first law, the Local Governmental Employees Political Rights Act, 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 (50 ILCS 135/). The other law, the Personnel Record Review Act, 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 (820 ILCS 40/9).

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 Board of Elections, Northfield Township High School Dist., 910 N.E.2d 605 (Ill.App.3d., 2009). Consult the board attorney for advice.

A Board member or employee may engage in ~~activities~~ any activity that: (1) ~~are is~~ otherwise appropriate as part of his or her official duties, or (2) ~~are is~~ undertaken by the individual on a voluntary basis that ~~are 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 ~~any 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 fund-raising 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 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.

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4 5 ILCS 430/10-10 through 10-30.

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 **by 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 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 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

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

⁶ The Attorney General's model 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 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.

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.
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

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

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; ~~or~~
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.

LEGAL REF.: 5 ILCS 430/ ~~4-1 et seq~~ State Officials and Employees Ethics Act.
10 ILCS 5/9-25.1, Election Interference Prohibition Act.

CROSS REF.: 5:120 (Ethics and Conduct)

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.

School Board

Board Member Development 1

The School Board desires that its individual members learn, understand, and practice effective governance principles. 2 The Board is responsible for Board member orientation and development. Board members have an equal opportunity to attend State and national meetings designed to familiarize members with public school issues, governance, and legislation.

The Board President and/or Superintendent shall provide all Board members with information regarding pertinent education materials, publications, and notices of training or development.

Mandatory Board Member Training 3

Each Board member is responsible for his or her own compliance with the mandatory training laws that are described below:

1. Each Board member ~~taking office after June 13, 2011~~ must complete at least 4 hours of professional development leadership training in education and labor law, financial oversight and accountability, and fiduciary responsibilities within the first year of his or her first term. ~~that begins after that date.~~ 4 This requirement is applicable to Board members who are elected after June 13, 2011 or who are appointed to fill a vacancy of at least one year's duration after that date.
2. Each Board member ~~who was in office on January 1, 2012~~ must complete training on the Open Meetings Act ~~within one year of that date. Each Board member taking office after January 1, 2012 must complete this training~~ no later than 90 days after taking the oath of office for the first time. After completing the training, each Board member must file a copy of ~~his or her~~ the certificate of completion with ~~his or her Board~~ the Board. Training on the Open Meetings Act is only required once. 5
3. ~~After the District's implementation of the Performance Evaluation Reform Act (PERA) evaluations;~~ Each Board member must complete a training program on PERA evaluations under the Performance Evaluation Reform Act (PERA) before participating in a vote on a tenured teacher's dismissal ~~based on an~~ using the optional alternative evaluative evaluation

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1 State law governs the mandatory board member training provisions in this sample policy.

2 The IASB *Foundational Principles of Effective Governance* is available online at www.iasb.com.

3 A board may omit the description of mandatory training requirements by deleting "~~that are described below~~" and deleting the numbered list.

4 105 ILCS 5/10-16a, added by P.A. 97-8.

5 5 ILCS 120/1.05(b) and (c), amended by P.A. 97-504. IASB is an authorized provider of this training.

dismissal process. [This dismissal process is available after the District's PERA implementation date.](#) ⁶

The Superintendent or designee shall maintain on the District website a log identifying the complete training and development activities of each Board member, including both mandatory and non-mandatory training. ⁷

Board Self-Evaluation

The Board will conduct periodic self-evaluations with the goal of continuous improvement. ⁸

New Board Member Orientation ⁹

The orientation process for newly elected or appointed Board members includes:

1. The Board President or Superintendent, or their designees, shall give each new Board member a copy of or online access to the Board Policy Manual, the Board's regular meeting minutes for the past year, and other helpful information including material describing the District and explaining the Board's roles and responsibilities.
2. The Board President or designee shall schedule one or more special Board meetings, or schedule time during regular meetings, for Board members to become acquainted and to review Board processes and procedures.
3. The Board President may request a veteran Board member to mentor a new member. ¹⁰
4. All new members are encouraged to attend workshops for new members conducted by the Illinois Association of School Boards.

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⁶ 105 ILCS 5/24-16.5, added by P.A. 97-8. This mandatory training requirement will be phased-in as districts phase-in teacher evaluations that incorporate student growth, otherwise known as Performance Evaluation Reform Act (PERA) evaluations. The implementation timeline for PERA evaluations varies from district to district but will be one of the following: (a) the date in an applicable grant agreement; (b) beginning Sept. 1, 2015 for those districts whose student performance ranks in the lowest 20% among all districts of their type; and (c) beginning Sept. 1, 2016 for all remaining districts. After the implementation of PERA evaluations, a district may use an optional alternative evaluative dismissal process using the PERA evaluation. Before voting on a dismissal based upon an optional alternative evaluative dismissal process, a board member must complete a training program on PERA evaluations. [IASB is an authorized provider of this training. For more information about PERA, see PERA Overview for School Board Members, \[iasb.com/law/pera.cfm\]\(http://iasb.com/law/pera.cfm\).](#)

⁷ 105 ILCS 5/10-16a, added by P.A. 97-8, requires each school district to post on its website, if any, the names of all board members who have completed the minimum of 4 hours of training described in #1. Recognizing that a board may want to highlight all training and development achievements, the sample policy extends this reporting requirement to all training and development activities. For a website reporting template, see 2:120-E2, *Website Listing of Development and Training Completed by Board Members*.

A board may choose to strictly follow the statute by using the following alternative: "The Superintendent or designee shall post on the District website the names of all Board members who have completed the professional development leadership training described in number 1, above."

⁸ Boards are not required to conduct self-evaluations, but may hold a closed meeting with representatives of a State association authorized under Article 23 of the School Code for the purpose of discussing self-evaluation practices and procedures, or professional ethics (5 ILCS 120/2(B)(6)).

⁹ New board member orientation is a critical step in helping new board members become effective and in promoting a smooth functioning *new team*. The first paragraph should be customized to add references to the IASB policy services that the district receives (e.g., **PRESS**, **PRESS Online**, **School Board Policies Online**, and **PRESS Plus**).

¹⁰ See 2:120-E1, *Guidelines for Serving as a Mentor to a New School Board Member*.

Candidates

The Superintendent or designee shall invite all current candidates for the office of Board member to attend: (1) Board meetings, except that this invitation shall not extend to any closed meetings, and (2) pre-election workshops for candidates.

LEGAL REF.: 5 ILCS 120/1.05 and 120/2.
105 ILCS 5/10-16a and 5/24-16.5.

CROSS REF.: 2:80 (Board Member Oath and Conduct), 2:125 (Board Member Expenses),
2:200 (Types of School Board Meetings)

School Board

Committees ¹

The School Board may establish committees to assist with the Board’s governance function and, in some situations, to comply with State law requirements. These committees are known as Board committees and report directly to the Board. Committee members may include both Board members and non-Board members depending on the committee’s purpose. The Board President makes all Board committee appointments unless specifically stated otherwise. ² Board committee meetings shall comply with the Open Meetings Act. ³ A Board committee may not take final action on behalf of the Board – it may only make recommendations to the Board. ⁴

Special Board Committees ⁵

A special committee may be created for specific purposes or to investigate special issues. A special committee is automatically dissolved after presenting its final report to the Board or at the Board’s discretion.

Standing Board Committees ⁶ ⁷

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¹ State or federal law controls this policy’s content in that some committees are required by State law, such as, Parent-Teacher Advisory Committee and Behavioral Interventions Committee. Board committees are *public bodies* for purposes of the Open Meetings Act (5 ILCS 120/1.02) and the Freedom of Information Act (5 ILCS 140/2). [See f/ns #7 and #11 for discussions of PERA joint committees, RIF joint committees, and superintendent committees.](#)

² Alternatively, strike the “unless” clause and substitute: “subject to Board approval.” Be sure this treatment is consistent with policy 2:110, *Qualifications, Term, and Duties of Board Officers*.

³ The Open Meetings Act (OMA) includes committees and subcommittees in its definition of *public body* (5 ILCS 120/1.02). [According to a binding opinion from the Public Access Counselor, a “committee of a public body is considered to be a separate public body for purposes of compliance with the requirements of OMA.” \(Opinion 13-002\). This means that board committees must independently fulfill the Open Meetings Act’s requirements. For example, a board committee must comply with notice and agenda requirements. Since board committees seldom meet regularly, compliance steps need careful planning. Board committees should plan for an efficient way to “approve the minutes of its open meeting within 30 days after that meeting or at \[its\] second subsequent regular meeting, whichever is later.” \(5 ILCS 120/2.06\). The only exception is when a committee is engaged in collective bargaining negotiations or grievance arbitration \(115 ILCS 5/18\).](#)

Sample policy 2:200, *Types of School Board Meetings*, designates the superintendent, on behalf of each board committee, to receive the mandatory training on compliance with the Open Meetings Act that is administered by the Ill. Attorney General’s Public Access Counselor. See policies 2:200, *Types of School Board Meetings*, and 2:220, *School Board Meeting Procedure*, for meeting requirements and protocol.

⁴ Additional committee guidelines may be added, such as:

Committees shall operate under the following guidelines:

- The Board President shall appoint no more than 2 Board members to serve on a committee.
- The President and the committee members shall establish the committee’s meeting dates, time, and place.
- The Superintendent may attend all committee meetings.

⁵ The creation of special board committees is optional. However, a board may list examples as in the following option: Examples of special committees include the following: (1) Committee to Evaluate Procurement of Architectural, Engineering, and Land Surveying Services (see 2:170-AP, *Administrative Procedure - Qualification Based Selection*), and (2) Facility Naming Committee (see policy 4:150, *Facility Management and Building Programs*).

⁶ The board may create and list other standing committees, e.g., an audit committee as authorized by 105 ILCS 5/10-22.45. Be sure that the creation of a committee in this policy aligns with the policy concerning the applicable topic. If an audit committee is included here, a board may want to reference it in policy 4:80, *Accounting and Audits*, and vice-versa.

A standing committee is created for an indefinite term although its members will fluctuate. Standing committees are:

1. Board Policy Committee. **8** This committee researches policy issues, and provides information and recommendations to the Board.
2. Parent-Teacher Advisory Committee. **9** This committee assists in the development of student discipline policy and procedure. Its members are parents/guardians and teachers, and may include persons whose expertise or experience is needed. The committee reviews such issues as administering medication in the schools, reciprocal reporting between the School District and local law enforcement agencies regarding criminal offenses committed by students, student discipline, disruptive classroom behavior, school bus safety procedures, and the dissemination of student conduct information.
3. Behavioral Interventions Committee. **10** This committee develops and monitors procedures for using behavioral interventions in accordance with Board policy 7:230, *Misconduct by Students with Disabilities*. At the Board President's discretion, the Parent-Teacher Advisory Committee shall perform the duties assigned to the Behavioral Interventions Committee.

7 Consult the board attorney concerning two mandatory committees – the PERA (Performance Educational Reform Act) joint committee and the RIF (reduction in force) joint committee (105 ILCS 5/24A-4(b) and 5/24-12(c), respectively). Attorneys disagree whether they are, (1) board committees, (2) distinct public bodies created by the legislature, (3) committees created to collectively bargain PERA or RIF, or (4) superintendent committees. If they are either (1) or (2), they must comply with the Open Meetings Act. If they are (3), the Act is not triggered to the extent the committees are engaged in collective bargaining (115 ILCS 5/18 states that the Open Meetings Act does not apply to collective bargaining negotiations pursuant to the Ill. Educational Labor Relations Act). If they are (4), the Act is not triggered (see f/n 11). If interpreted as a board committee:

1. The PERA joint committee would be a special committee because it will be dissolved once it accomplishes its purpose, i.e., to incorporate the use of data and indicators of student growth into the teacher evaluation plan pursuant to Section 24A-4. Thus, no policy change is needed.
2. The RIF joint committee would be a standing committee. Most of its meetings qualify for closed session or are exempt from the Open Meetings Act to the extent the members are engaged in collective bargaining negotiations (114 ILCS 5/18). A board should, however, consult the board attorney before including the RIF joint committee in this policy.

8 A board policy committee is optional; its creation is consistent with policy 2:240, *Board Policy Development*.

9 105 ILCS 5/10-20.14 requires all districts to establish and maintain a parent-teacher advisory committee to develop, with the board, policy guidelines on student discipline. The parents on this committee, as well as other non-staff members, may not have access to student records unless the student cannot be identified or prior consent is obtained (105 ILCS 10/6). The district's parent-teacher advisory committee must also: (1) in cooperation with local law enforcement agencies, develop guidelines for reciprocal reporting of criminal offenses committed by students (105 ILCS 5/10-20.14), and (2) in cooperation with school bus personnel, develop school bus safety procedures (105 ILCS 5/10-20.14). Completion of the statutory requirements imposed on the Parent-Teacher Advisory Committee, as well as the Behavioral Intervention Committee, should be documented.

10 Boards must establish and maintain a behavioral intervention committee to develop procedures that reflect consideration of ISBE's guidelines on the use of behavioral interventions with students with disabilities (105 ILCS 5/14-8.05). An alternative follows:

The Behavioral Interventions Committee, coordinated by the Executive Director of the Special Education Cooperative, develops and monitors procedures for using behavioral interventions in accordance with Board policy 7:230, *Misconduct by Students with Disabilities*. Committee reports and recommendations are made to the Board upon its request.

Nothing in this policy limits the authority of the Superintendent or designee to create and use committees that report to him or her or to other staff members. **11**

LEGAL REF.: 5 ILCS 120.
105 ILCS 5/10-20.14 and 5/14-8.05.

CROSS REF.: 2:110 (Qualifications, Term, and Duties of Board Officers), 2:200 (Types of School Board Meetings), 2:240 (Board Policy Development), 7:190 (Student Discipline), 7:230 (Misconduct by Students with Disabilities)

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11 The Open Meetings Act generally does not apply to *superintendent* committees. See University Professionals v. Stukel, 801 N.E.2d 1054 (Ill.App.1, 2003)(staff committees are not subject to OMA). The Act will be applicable, however, in some circumstances. For example, a staff committee containing 3 or more board members will be subject to the Open Meetings Act (5 ILCS 120/1.02). Consult the board attorney for advice. The following are examples of superintendent committees: Communicable and Chronic Infectious Disease Program Task Force, Communicable and Chronic Infectious Disease Review Team, Employee Drug Abuse Committee, Title I Advisory Committee, Student Support Committee, Food Allergy Management Committee, and Sex Equity Committee.

General Personnel

Workplace Harassment Prohibited ¹

The School District expects the workplace environment to be productive, respectful, and free of unlawful harassment. District employees shall not engage in harassment or abusive conduct on the basis of an individual's race, religion, national origin, sex, sexual orientation, age, citizenship status, disability, or other protected status identified in Board policy 5:10, *Equal Employment Opportunity and Minority Recruitment*. Harassment of students, including, but not limited to, sexual harassment, is prohibited by Board policy 7:20, *Harassment of Students Prohibited*.

Sexual Harassment Prohibited ²

The School District shall provide a workplace environment free of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct, or communications constituting harassment on the basis of sex as defined and otherwise prohibited by State and federal law.

District employees shall not make unwelcome sexual advances or request sexual favors or engage in any unwelcome conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working

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¹ State or federal law controls this policy's content. Federal law requires districts to take action to eliminate sexual harassment (29 C.F.R. §1604.11(f); 34 C.F.R. §106.9). Harassment based on a protected status is a form of discrimination that violates many State and federal laws (see the policy's Legal References).

Workplace harassment policies have typically focused on *sexual* harassment since it receives the most attention. However, the broad prohibitions against discrimination in State and federal civil rights laws will cover harassing conduct that is motivated by animus against any protected status. See *Porter v. Erie Foods International, Inc.*, 576 F.3d 629 (7th Cir. 2009) (recognizing a cause of action for race harassment). For a list of protected statuses, see policy 5:10, *Equal Employment Opportunity and Minority Recruitment*. This policy prohibiting harassment has a separate section on sexual harassment because of the extensive statutory and case law regarding it.

An employer is liable under Title VII for an employee's harassment of a co-worker if the employer was negligent with respect to the offensive behavior by, for example, failing to take remedial action when it knew or should have known about the harassment. However, when the perpetrator is the victim's supervisor, the employer will be vicariously liable for the supervisor's actions. Lack of knowledge of a supervisor's misconduct is no defense. Burlington Industries v. Ellerth, 118 S.Ct. 2257 (1998); Faragher v. City of Boca Raton, 118 S.Ct. 2275 (1998). A supervisor is someone who has the authority to demote, discharge, or take other negative job action against the victim. Vance v. Ball State University, No. 11-556 (U.S. Sup. Ct. 6/24/13). Note that the Ill. Human Rights Act, 775 ILCS 5/2-102(D), imposes strict liability on the employer when an employee has been sexually harassed by supervisory personnel regardless of whether the harasser has any authority over the complainant. Sangamon County Sheriff's Dept. v. Ill. Human Rights Com'n, 908 N.E.2d 39 (Ill., 2009).

Not all harassing conduct is unlawful discrimination, even if it is disruptive and hurtful. If a board wants to include language in this policy prohibiting employees from engaging in intimidating or offensive conduct that is *not* a civil rights violation, it should consult the board attorney.

² The Ill. Human Rights Act (775 ILCS 5/2-102(D)) provides that sexual harassment is a civil rights violation:

For any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment; provided, that an employer shall be responsible for sexual harassment of the employer's employees by non-employees or non-managerial and non-supervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.

environment. ³ Sexual harassment prohibited by this policy includes verbal or physical conduct. The terms intimidating, hostile, or offensive include, but are not limited to, conduct that has the effect of humiliation, embarrassment, or discomfort. Sexual harassment will be evaluated in light of all the circumstances.

Making a Complaint; Enforcement ⁴

A violation of this policy may result in discipline, up to and including discharge. Any person making a knowingly false accusation regarding harassment will likewise be subject to disciplinary action, up to and including discharge. An employee's employment, compensation, or work assignment shall not be adversely affected by complaining or providing information about harassment. Retaliation against employees for bringing bona fide complaints or providing information about harassment is prohibited (see Board policy 2:260, *Uniform Grievance Procedure*). ⁵

Aggrieved persons, who feel comfortable doing so, should directly inform the person engaging in the harassing conduct or communication that such conduct or communication is offensive and must stop.

Employees should report claims of harassment to the Nondiscrimination Coordinator and/or use the Board policy 2:260, *Uniform Grievance Procedure*. Employees may choose to report to a person of the employee's same sex. There are no express time limits for initiating complaints and grievances under this policy; however, every effort should be made to file such complaints as soon as possible, while facts are known and potential witnesses are available.

Whom to Contact with a Report or Complaint ⁶

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

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³ This definition is from State and federal law (775 ILCS 5/2-101(E) and 29 C.F.R. §1604.11). The harassing conduct must be severe or pervasive so as to alter the conditions of the employee's work environment by creating a hostile or abusive situation. *Williams v. Waste Management*, 361 F.3d 1021 (7th Cir. 2004). The surrounding circumstances, expectations, and relationships will distinguish between teasing or rough-housing and conduct that a reasonable person would find severely hostile or abusive. In addition, while same-sex gender harassment claims are actionable, the victim must show that s/he suffered disadvantageous employment conditions to which members of the other sex were not exposed. *Oncala v. Sundown Offshore Services*, 118 S.Ct. 998 (1998).

⁴ See *Berry v. Delta Airlines*, 260 F.3d 803, 811 (7th Cir.2001) ("If an employer takes reasonable steps to discover and rectify the harassment of its employees ... it has discharged its legal duty.")

In addition to violating other civil rights laws, a school district violates the *public accommodations* article in the Ill. Human Rights Act if it fails to take corrective action to stop severe or pervasive harassment (775 ILCS 5/5-102 and 5/5-102.2, amended by P.A. 96-814).

⁵ *Crawford v. Metro. Gov't of Nashville & Davidson County*, 129 S.Ct. 846 (2009)(holding the anti-retaliation provision in Title VII protects an employee who spoke out about harassment, not only on his or her own initiative, but also in answering questions during an employer's internal investigation).

⁶ 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. A policy should not be adopted with a person's name in it; rather, the identifying information can be added and amended as necessary.

Nondiscrimination Coordinator:

Name

Address

Telephone

Complaint Managers:

Name

Name

Address

Address

Telephone

Telephone

The Superintendent shall also use reasonable measures to inform staff members and applicants of this policy, which shall include reprinting this policy in the appropriate handbooks. ⁷

LEGAL REF.: Title VII of the Civil Rights Act, 42 U.S.C. §2000e et seq.; 29 C.F.R. §1604.11.
 Title IX of the Education Amendments, 20 U.S.C. §1681 et seq.; 34 C.F.R. §1604.11.
 Ill. Human Rights Act, 775 ILCS 5/2-101(E), 5/2-102(D), 5/5-102, and 5/5-102.2.
 56 Ill. Admin.Code Parts 2500, 2510, 5210, and 5220.
Burlington Industries v. Ellerth, 118 S.Ct. 2257 (1998).
Crawford v. Metro. Gov't of Nashville & Davidson County, 129 S. Ct. 846 (2009).
Faragher v. City of Boca Raton, 118 S.Ct. 2275 (1998).
Franklin v. Gwinnett Co. Public Schools, 112 S.Ct. 1028 (1992).
Harris v. Forklift Systems, 114 S.Ct. 367 (1993).
Jackson v. Birmingham Board of Education, 125 S.Ct. 1497 (2005).
Meritor Savings Bank v. Vinson, 106 S.Ct. 2399 (1986).
Oncale v. Sundown Offshore Services, 118 S.Ct. 998 (1998).
Porter v. Erie Foods International, Inc., 576 F.3d 629 (7th Cir. 2009).
Sangamon County Sheriff's Dept. v. Ill. Human Rights Com'n, 908 N.E.2d 39 (Ill., 2009).
Vance v. Ball State University, 133 S. Ct. 2434 (2013).

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⁷ A district must notify employees of the grievance procedure and the person(s) designated to coordinate the district's compliance with Title IX (34 C.F.R. §§106.8(a)). The nondiscrimination coordinator can be the same individual for both this policy and policy 7:10, *Equal Educational Opportunities*, as well as the complaint manager in policy 2:260, *Uniform Grievance Procedure*. A comprehensive faculty handbook can provide required notices, along with other important information to recipients. The handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and board. Any *working conditions* contained in the handbook may be subject to mandatory collective bargaining.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:10 (Equal Employment Opportunity and Minority Recruitment), 7:20 (Harassment of Students Prohibited)

Students

Student Records 1

School student records are confidential ~~and~~. Information from them shall not be released other than as provided by law. 2 A school student record is any writing or other recorded information concerning a student and by which a student may be identified individually that is maintained by a school or at its direction ~~or~~ by a school employee, regardless of how or where the information is stored, except ~~for certain records kept as provided in a staff member's sole possession; records maintained by State or federal law as summarized below: 3 enforcement officers working in the school; video and other electronic recordings that are created in part for law enforcement, security, or safety reasons or purposes; and electronic recordings made on school buses.~~

1. Records kept in a staff member's sole possession.
2. Records maintained by law enforcement officers working in the school.
3. Video and other electronic recordings (including without limitation, electronic recordings made on school buses⁴) that are created in part for law enforcement, security, or safety reasons or purposes. The content of these recordings may become part of a school student record to the extent school officials create, use, and maintain this content, or it becomes available to them by

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¹ State law requires school boards to adopt policy and procedures implementing the Illinois School Student Records Act and specifying the content of school student records (23 Ill.Admin.Code §§375.100 and 226.740). Both State and federal law address school student records. See the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, and the School Student Records Act, 105 ILCS 10/, implemented by ISBE rules at 23 Ill.Admin.Code Part 375.

Confusion persists regarding the interplay between the FERPA and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Privacy Rule implementing HIPAA, issued by the U.S. Dept. of Health and Human Services, addresses the disclosure of individuals' health information by *covered entities*. Generally speaking, a school district becomes a *covered entity*, and must comply with applicable sections in the Privacy Rule, if it provides health care and transmits health information in electronic form in connection with transactions. However, *educational records* as defined by FERPA are excluded from HIPAA's definition of *protected health information* (45 C.F.R. §164.501). In most cases this exception relieves school districts of complying with burdensome privacy notices and authorization forms. The board attorney should be consulted on all HIPAA-related questions.

² A plethora of statutory and decisional law protects student records. Aside from the laws identified in f/n #1, other laws protecting student records include:

1. Schools may not provide a student's *personal information* to a business organization or financial institution that issues credit or debit cards (105 ILCS 5/10-20.37).
2. Schools may not sell personal information concerning a child under the age of 16, with a few exceptions, unless a parent has consented (Children's Privacy Protection and Parental Empowerment Act, 325 ILCS 17/).
3. The release of confidential information given by a student to a therapist, e.g., school counselor or psychologist, is governed by the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/).
4. Schools must keep a sex offender registration form received from law enforcement separately from school student records maintained on behalf of the juvenile sex offender (730 ILCS 152/121).

Allowing students to grade each other's papers does not violate FERPA; such student work is not a *school record* until it is recorded by the teacher. *Owasso I.S.D. No. I-011 v. Falvo*, 122 S.Ct. 934 (2002). School student records are *per se* prohibited from disclosure; a district is under no obligation to redact them. *Chicago Tribune Co. v. Chicago Bd. of Ed.*, 773 N.E.2d 674 (Ill.App.1, 2002).

³ 20 U.S.C. §1232g(a)(4)(A); 34 C.F.R. §99.3; 105 ILCS 10/2(d); 705 ILCS 405/1-7 and 5-905; 23 Ill.Admin.Code §375.10. Rather than listing the exceptions in the policy, a school board may choose to end the sentence after the proviso "except as provided in State or federal law."

⁴ For an explanation, see footnotes in 7:220, *Bus Conduct*.

law enforcement officials, for disciplinary or special education purposes regarding a particular student.

4. Any information, either written or oral, received from law enforcement officials concerning a student less than the age of 17 years who has been arrested or taken into custody. 5

State and federal law grants students and parents/guardians certain rights, including the right to inspect, copy, and challenge school student records. The information contained in school student records shall be kept current, accurate, clear, and relevant. All information maintained concerning a student receiving special education services shall be directly related to the provision of services to that child. 6 The District may release directory information as permitted by law, but a parent/guardian shall have the right to object to the release of information regarding his or her child. 7 However, the District will comply with an *ex parte* court order requiring it to permit the U.S. Attorney General or designee to have access to a student's school records without notice to, or the consent of, the student's parent/guardian. 8

The Superintendent shall fully implement this policy and designate an *official records custodian* for each school who shall maintain and protect the confidentiality of school student records, inform staff members of this policy, and inform students and their parents/guardians of their rights regarding school student records. 9

Student Biometric Information Collection 10

The Superintendent or designee may recommend a student biometric information collection system solely for the purposes of identification and fraud prevention. 11 Such recommendation shall be

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5 Many lawyers believe that once these records are received by a school, they are protected as education records under the federal Family Educational Rights and Privacy Act, 20 U.S.C. §1232g. Consult the board attorney for advice.

6 23 Ill.Admin.Code §226.740.

7 This sentence is required if the board allows schools to release student directory information (20 U.S.C. §1232g; 23 Ill.Admin.Code §375.80; 34 C.F.R. §99.6(a)(4). There is at least one instance in Illinois in which parents were upset that their school district released students' names and addresses pursuant to a Freedom of Information Act (FOIA) request. FOIA contains an exemption for home addresses. Many lawyers, however, say that a district must release student information pursuant to a FOIA request when each of the following has occurred: the FOIA request seeks information that is included in the district's definition of student directory information, the district notified parents that it releases directory information, and the parents did not opt out of allowing directory information to be released concerning their child. An opinion from the Ill. Public Access Counselor supports that a district may not rely on the FOIA exemption for home addresses (PAO 12-3). The PRESS policy does not identify the components of directory information, leaving that task to implementing material. Boards may want to discuss this quagmire with the superintendent knowing that there are good reasons to release directory information (e.g., to allow the district to publish information about specific students) and good reasons to not release directory information (e.g., to avoid releasing names and addresses pursuant to a FOIA request).

8 20 U.S.C. §1232(g)(j), as added by the Sec. 507 of the U.S.A. Patriot Act of 2001.

9 Each school must have an *official records custodian* (105 ILCS 10/4(a). Districts must notify students and parents/guardians of their rights concerning school student records (105 ILCS 10/3; 23 Ill.Admin.Code §375.30; 34 C.F.R. §99.7). Comprehensive faculty and student handbooks can provide required notices, along with other important information, to recipients. Handbooks can be developed by the building principal, but should be reviewed and approved by the superintendent and board. See exhibit 7:340-AP1, E1, *Notice to Parents/Guardians and Students of Their Rights Concerning a Student's School Records*, and administrative procedure 7:340-AP1, *School Student Records*.

10 This program is optional; however, districts either wishing to implement such a program or districts that have already engaged in the collection of student biometric information must have a policy consistent with the requirements of 105 ILCS 5/10-20.40 et seq. This section restates the School Code's requirements for a student biometric information policy.

11 For districts already collecting biometric information the following is an alternative:

The Superintendent or designee shall maintain a biometric screening program that is consistent with budget requirements and in compliance with State law.

consistent with budget requirements and in compliance with State law. Biometric information means any information that is collected through an identification process for individuals based on their unique behavioral or physiological characteristics, including fingerprint, hand geometry, voice, or facial recognition or iris or retinal scans.

Before collecting student biometric information, the District shall obtain written permission from the person having legal custody **12** or the student (if over the age of 18). **13** Upon a student's 18th birthday, the District shall obtain written permission from the student to collect student biometric information. **14** Failure to provide written consent to collect biometric information shall not be the basis for refusal of any services otherwise available to a student.

All collected biometric information shall be stored and transmitted in a manner that protects it from disclosure. Sale, lease, or other disclosure of biometric information to another person or entity is strictly prohibited. **15**

The District will discontinue use of a student's biometric information and destroy all collected biometric information within 30 days after: (1) the student graduates or withdraws from the School District, or (2) the District receives a written request to discontinue use of biometric information from the person having legal custody of the student or the student (if over the age of 18). **16** Requests to discontinue using a student's biometric information shall be forwarded to the Superintendent or designee.

The Superintendent or designee shall develop procedures to implement this policy consistent with State and federal law. **17**

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12 105 ILCS 5/10-20.40(b)(1) states the definition of legal custody is the same as the definition of legal custody for purposes of residency, payment of tuition, hearings, and criminal penalties at 105 ILCS 5/10-20.12b(2)(i)-(v). Several statutes define legal custody and when a court may grant it; the term requires statutory construction/interpretation and school boards should discuss this issue with their attorney prior to adopting a policy on collection of student biometric information.

13 Based upon 105 ILCS 5/10-20.40, written permission is not required annually; it is valid until a request for discontinuation of the use of biometric information is received or until the student reaches the age of 18. See 7:340-AP1, E5, *Biometric Information Collection Authorization*.

14 Districts must reissue 7:340-AP1, E5, *Biometric Information Collection Authorization* to students turning 18 years of age during the school year. This is because all rights and privileges accorded to a parent under the Ill. School Student Records Act become exclusively those of the student upon his or her 18th birthday, graduation from secondary school, marriage, or entry into military service, whichever comes first. 105 ILCS 10/2(g).

15 State law contains two exceptions: (1) the individual who has legal custody of the student or the student (if over the age of 18) consents to the disclosure, and (2) the disclosure is required by court order. 105 ILCS 10-20.40(b)(5).

16 105 ILCS 5/10-20.40(d). No notification to or approval from the district's local records commission, pursuant to the Local Records Act, is required to destroy student biometric information.

17 Whether the student biometric information is an education record under the FERPA, 20 U.S.C. §1232g, or falls under an exception to an education record under FERPA is an issue about which school boards should consult their board attorney. Protected Health Information under the U.S. Department of Health and Human Service's interpretations of the HIPAA excludes education records covered by FERPA, and thus HIPAA requirements are not expected to be triggered by districts collecting student biometric information. However, before implementing policies and procedures to collect student biometric information, a board should discuss these issues with the board attorney.

- LEGAL REF.: Chicago Tribune Co. v. Chicago Bd. of Ed., 773 N.E.2d 674 (Ill.App.1, 2002).
Owasso I.S.D. No. I-011 v. Falvo, 122 S.Ct. 934 (2002).
Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99.
Children’s Privacy Protection and Parental Empowerment Act, 325 ILCS 17/.
105 ILCS 5/10-20.21b, 20.37, 20.40, 5/14-1.01 et seq., and 10/.
50 ILCS 205/7.
23 Ill.Admin.Code Parts 226 and 375.
- CROSS REF.: 5:100 (Staff Development Program), 5:130 (Responsibilities Concerning Internal Information), 7:15 (Student and Family Privacy Rights), 7:220 (Bus Conduct)
- ADMIN PROC.: 7:15-E (Notification to Parents of Family Privacy Rights), 7:340-AP1 (School Student Records), 7:340-AP1, E1 (Notice to Parents/Guardians and Students of Their Rights Concerning a Student’s School Records), 7:340-AP1, E3 (Letter to Parents Concerning Military Recruiters and Postsecondary Institutions Receiving Student Directory Information), 7:340-AP2 (Storage and Destruction of School Student Records), 7:340-AP2, E1 (Schedule for Destruction of School Student Records)