

Moline, Illinois

Notice of Meeting

Members of the Board of Education

Ladies and Gentlemen:

You are hereby notified that there will be a Regular Meeting of the Board of Education, School District No. 40, immediately following the Committee of the Whole Meeting on Monday, January 10, 2022, at the Coolidge Professional Development Room, 3430 Avenue of the Cities, Moline, Illinois 61265.

Kristin Sanders
Secretary, Board of Education

AGENDA AND RECOMMENDATIONS

Board of Education
Moline, Illinois
Monday, January 10, 2022

The public is invited to join the January 10, 2022, Board of Education meeting virtually via Zoom.

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to

join: <https://us02web.zoom.us/j/89987715717?pwd=ZG9rYjlkUXQvdmlvUndHbkdMa3FwZz09>
Passcode: 232657

Or One tap mobile:

+13126266799,,89987715717# US (Chicago)

Or join by phone:

Dial(for higher quality, dial a number based on your current location):

US: +1 312 626 6799 or +1 929 205 6099

Webinar ID: 899 8771 5717

Public comments may be made in person or e-mailed to the Board Secretary, Kristin Sanders, at ksanders@molineschools.org no later than 4:30 p.m. on Monday, January 10, 2022, with "Public Comment" in the subject line.

Doors will open at 5:45 p.m. for the public. Per the Illinois Department of Public Health, individuals are required to wear a face covering should they choose to attend the meeting in person.

1. Opening of Meeting - Roll Call

2. Recitation of Pledge of Allegiance

3.Approval of Minutes

A.Minutes of the Open Session of the Regular Board of Education meeting of
December 13, 2021

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The meeting of the Board of Education was called to order by Board President Erin Waldron-Smith at 7:15 p.m. at the Hamilton Elementary School, 700 32nd Avenue, Moline, IL 61265.

Roll Call

Members Present: Audrey Adamson, Justin Anderson, Chet DeSmet, Kate Schaefer,
Andrew Waeyaert, Erin Waldron-Smith

Member Present
via Zoom: Maria S. Trigueros

Absent: None

The Board of Education Members led those in attendance in reciting the Pledge of Allegiance.

APPROVAL OF BOARD OF EDUCATION MINUTES

The minutes of the Open Session of the Regular Board of Education meeting of November 08, 2021 were presented for approval as presented.

A motion was made by Andrew Waeyaert, seconded by Chet DeSmet, all in favor, that the minutes of the Open and Closed Session of the Regular Board of Education meeting of November 08, 2021 be approved as presented and placed on file.

COMMUNICATIONS, PUBLIC COMMENT AND PARTICIPATION

There was no public comment or participation.

PUBLIC HEARING – TAX LEVY

Board President Erin Waldron-Smith opened the hearing for the proposed 2021 Tax Levy at 7:17 p.m. There was no public comment or participation regarding the proposed 2021 Tax Levy.

Ms. Waldron-Smith closed the public hearing at 7:18 p.m.

CONSENT AGENDA

The Board of Education considered Consent Agenda Items A through E, G through N, O1, O2, O3, O5, O6, P3, Q1, and Q4 as presented:

A. Employment – Certified Staff

- 1) the temporary employment of the following named certified staff member for the 2021-2022 school year with wages in accordance with district schedules:

Kephart, Riley
Academic Recovery Co-Teacher, Bicentennial
B.A. Degree, Western Illinois University
To teach on a temporary contract basis
No previous teaching experience

Piehl, Tiffany
Special Education, Washington
M.A. Degree, Northern Illinois University
To teach on a temporary contract basis
Previous teaching experience

Thieme, Sarah
Cross Categorical Special Education, Hamilton
M.A. Degree, North Central University
To teach on a temporary contract basis
No previous teaching experience

- 2) the temporary employment of the following named certified substitute teachers for the 2021-2022 school year with wages in accordance with district schedules:

Anderson, Justin
Cederoth, Taylor
Daniels, Kristi
Dehnel, Jerome
Haynes, Trena
Lamb, Kelsey
Pickering, Jennifer
Schrup, Beth Ann
VanDam, Jacob
Womack, Lindsey

- 3) the temporary employment of the following named Certified Hourly Instructor for the 2021-2022 school year with wages in accordance with district schedules:

<u>Name</u>	<u>Location</u>	<u>Effective Date</u>
Davis, Karen	High School	12/01/21

B. Salary Reclassification – Certified Staff

a change in salary classification for the following Certified Staff effective for the second semester of the 2021-2022 school year:

Anderson, Rebecca from M.A. to M.A. +30
Avena, Stephanie from B.A. to B.A. +15
Chuich, Christine from M.A. to M.A. +30
Ekoh, Regine from M.A. to M.A. +30
Faith, Arika from M.A. to M.A. +30

Henkins, Karen from M.A. to M.A. +30
 Olson, Allison from M.A. to M.A. +30
 Petersen, Teri from M.A. to M.A. +30
 Villarreal, Angelica from B.A. to B.A. +15

C. Approval of Family Medical Leave Act – Certified Staff

that the Board of Education grant approval of a Family and Medical Leave for the following certified staff members:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Bisinger, Mary	Family/Consumer Science	High School	Beginning approximately 01/03/22 and lasting intermittently for up to 60 working days
Jecks, Sarah	Early Childhood Specialist	Jefferson	Beginning 11/18/21 with a tentative return date of 01/03/22

D. Appointment to Additional Assignment – Certified Staff

the appointment of the following named certified staff members to sixth assignments at Moline High School for the second semester of the 2021-2022 school year:

<u>Name</u>	<u>Position</u>
Bohnsack, Joel	Science

E. Resignation from Differential Assignment – Certified Staff

the resignation/termination of the following named certified staff member: from differential assignments:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Creech, Samantha	Head Winter Cheerleading Coach	High School	11/16/21
Gorgal, Kevin	K-12 Phys. Ed./Driver’s Ed. Subject Lvl. Chair	High School	05/27/21
Gorgal, Kevin	K-12 Phys. Ed./Driver’s Ed. Dept. Chair	High School	05/27/21
Reyes, Sylvia	Assistant Winter Cheerleading Coach	High School	11/16/21

G. Resignation/Termination – Certified Staff

the resignation/termination of the following named certified staff members:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Kerr, Tayler	Kindergarten/First Grade	Lincoln-Irving	12/17/21
McCalley, Amy	Assistant Principal	John Deere	End of the 2021-2022 school year
Moerke, Jennifer	Special Education ED	John Deere	11/30/21

H. Employment – Educational Support Personnel

- 1) the employment of the following named educational support personnel for the 2021-2022 school year with wages in accordance with district schedules:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Cebreros, Sandy	Administrative Assistant	John Deere	12/01/21
Lackey, Melissa	Certified Nursing Assistant	High School	12/14/21
Miller, Isaac	Preschool Paraprofessional	Jefferson	11/17/21
Pearson, John	Coordinator of Facility Services	Coolidge	01/01/22
Pettit, Elizabeth	Library Professional	Jane Addams	11/13/21

- 2) the temporary employment of the following named educational support personnel for the 2021-2022 school year with wages in accordance with district schedules:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Wales, Cassie	Classroom Paraprofessional	Hamilton	11/29/21
Wilson, Tara	Parent Mentor Coordinator	Washington	11/09/21

- 3) the temporary employment of the following named substitute educational support personnel for the 2021-2022 school year with wages in accordance with district schedules:

<u>Name</u>	<u>Position</u>
Bennett, Denise	Health Professional (RN)
McMillion, Joseph	Custodian
Price, Wanda	Administrative Assistant
Versluis, Aaron	Custodian

I. Approval of Family Medical Leave Act – Educational Support Personnel

that the Board of Education grant approval of a Family and Medical Leave for the following certified staff members:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Cruz, Morgan	Special Ed Paraprofessional	Hamilton	Beginning approximately 02/21/22 and ending 05/16/21
Woods, Diane	Administrative Assistant	High School	Beginning 12/30/21 and lasting intermittently for up to 60 working days

J. Resignation for the Purpose of Retirement – Educational Support Personnel

the resignation for the purpose of retirement of the following named Educational Support Personnel:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Johnson, Bradley	General Maintenance	Coolidge	01/31/23
Lerschen, William	Custodian	Butterworth/High School	06/30/22
Olson, Sherri	Administrative Assistant	High School	06/30/22
Smith, Debra	Administrative Assistant	High School	06/30/22
Urbaniak, Susan	Administrative Assistant	Allendale	07/30/22

K. Resignation/Termination – Educational Support Personnel

the resignation/termination of the following named Educational Support Personnel:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Passini, Sherri	Reading/Math Interventionist	Washington	12/03/21

L. Payments for Board Approval

approval of payments:

Fund 1 Educational	2,384,295.31
Fund 2 Operations & Maintenance	713,059.43
Fund 3 Debt Service	0.00
Fund 4 Transportation	304,450.68
Fund 5 Retirement	228,002.61
Fund 6 Capital Projects	212,010.88
Fund 7 Working Cash	0.00
Fund 8 Tort Fund	98,369.07
Fund 9 Life Safety Code	26,036.28
Fund 10 Group Insurance	771,636.12
Fund 11 Student Activity	<u>12,214.30</u>
TOTAL	4,750,074.68

See Exhibit A.

M. Freedom of Information Act Requests

- 1) A Freedom of Information Act Request was received from SmartProcure requesting a copy of any and all purchasing records from 05/20/2021 to current. The District has responded to this request.
- 2) A Freedom of Information Act Request was received from SmartProcure requesting all current employee/staff contact information. The District has responded to this request.

N. Acceptance of Gift

- 1) A donation in the amount of \$500 from the Illinois Legislative Sportsmen's Caucus to the Moline High School Bass Fishing Team.
- 2) A donation in the amount of \$10,000 from the Ontiveros Family Fund. The donation will be split between the Moline High School Wrestling program and the Moline High School Shipley track.
- 3) A donation in the amount of \$1,558.82 from the Moline, East Moline and Surrounding Communities Unit of Church Women United (MEMSCU) to the Natural Helpers at Moline High School.
- 4) A donation in the amount of \$2,800 from Curnyn Construction Co. to the Moline High School Share Joys fundraiser.

O. Facility Usage Request Recommended for Approval Subject to Compliance with Board of Education Policy 8:20

- 1) Jane Addams Elementary School modular unit on the 2nd Thursday of every month, beginning January 13, 2022, through May 12, 2022, from 2:45 p.m. until 3:45 p.m. by Reason Alliance LTD for the ASSC– After School Club. Building rental fees to be received in the amount of \$30 per hour. Custodial services required as a result of their program will be billed at \$52 per hour.
- 2) Bicentennial, Butterworth, Franklin, Lincoln-Irving, Logan, Washington and Willard Elementary gymnasiums from January 13, 2022 through March 3, 2022 between the hours of 5:00 and 9:30 p.m. by the Two Rivers YMCA for basketball and futsal (a scaled down version of outdoor soccer played indoors). Complete details of the days and times are listed in the agreement. Compensation to be received only for custodial services required as a result of their program in the amount of \$52 per hour.
- 3) Wharton Field House on Saturday, January 08, 2022 from 10 a.m. until 10 p.m. for the Iowa vs. Illinois High School Girls Shootout by the Quad City Youth Sports Foundation Inc. Custodial overtime shall be charged at the rate of \$52 per hour and a building rental fee of \$900.00. All proceeds from the sale of food and drinks will go to the Moline Booster Club.

- 5) MHS PE Facility on December 14, 2021, January 11, 2022, and February 8, 2022 from 6:30 to 8:00 p.m. by the Moline Juniors Volleyball group. Compensation to be received only for custodial services required as a result of their program in the amount of \$52 per hour.
- 6) John Deere Middle School on Mondays and Wednesdays and Wilson Middle School on Tuesdays from January 4, 2022 through March 31, 2022 from 6:30 p.m. until 9:00 p.m. by the Moline Juniors Volleyball group. Compensation to be received only for custodial services required as a result of their program in the amount of \$52 per hour.

P. Approval to Purchase

- 3) that the Board of Education approve the purchase of Literacy Footprints classroom kits for grades K-2 and online digital readers from Pioneer Valley Books, Northampton, Maine, for a cost of \$13,905. **See Exhibit D.**

Q. Award of Bid

- 1) that the Board of Education award the bid for the 2022 elementary school structured cabling to Hughes Telephone, Moline, Illinois, (the lowest corresponding bidder) at a total project cost of \$144,305 contingent upon E-Rate reimbursement approval. **See Exhibit E.**
- 4) that the Board of Education award the bid for the 2021 Maintenance Utility Truck to the lowest qualified bidder with trade in, Kunes Ford, East Moline, Illinois, for the amount of \$66,006.50. **See Exhibit H.**

A motion was made by Kate Schaefer, seconded by Chet DeSmet, that the Board of Education accept the items contained in Consent Agenda Items A through E and G through N, O1, O2, O3, O5, O6, P3, Q1, and Q4 as presented.

Ayes: Chet DeSmet, Kate Schaefer, Maria S. Trigueros, Andrew Waeyaert, Audrey Adamson, Justin Anderson, Erin Waldron-Smith

Nays: None

The Board of Education then considered Consent Agenda Item F as presented:

F. Appointment to Differential Assignment – Certified Staff

the appointment of the following named certified staff members to differential assignments:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Ehlers, Emily	Assistant Winter Cheerleading Coach	High School	12/13/21
Reyes, Sylvia	Head Winter Cheerleading Coach	High School	12/13/21

A motion was made by Audrey Adamson, seconded by Kate Schaefer, that the Board of Education accept the items contained in Consent Agenda Item F as presented.

Ayes: Justin Anderson, Chet DeSmet, Kate Schaefer, Maria S. Trigueros, Audrey Adamson, Erin Waldron-Smith

Nays: None

Abstain: Andrew Waeyaert

The Board of Education then considered Consent Agenda Item O4 as presented:

A motion was made by Chet DeSmet, seconded by Audrey Adamson, that the Board of Education accept the items contained in Consent Agenda Item O4 as presented.

O. Facility Usage Request Recommended for Approval Subject to Compliance with Board of Education Policy 8:20

- 4) MHS Swimming Pool for swim practice by the Moline Youth Swimming from December 19, 2021 through May 27, 2022. Schedules will vary Monday through Friday from 6:00 p.m. to 9:00 p.m. Custodial overtime shall be charged at a rate of \$52 per hour.

Justin Anderson, Board Member, inquired as to what Moline Youth Swimming is. Dr. Savage responded stating this will be the single feeder swim program for students in grades K-8.

Ayes: Maria S. Trigueros, Andrew Waeyaert, Audrey Adamson, Chet DeSmet, Kate Schaefer, Erin Waldron-Smith

Nays: Justin Anderson

The Board of Education then considered Consent Agenda Item P1 as presented:

A motion was made by Audrey Adamson, seconded by Kate Schaefer, that the Board of Education accept the items contained in Consent Agenda Item P1 as presented.

P. Approval to Purchase

- 1) that the Board of Education approve (for the specific instructional spaces in the Moline High School P.E. Center) the purchase of four displays, corresponding mounting hardware, audio soundbars, and labor for the Moline High School P.E. Center from Bradfield's Computer Supply, Peoria, Illinois, for a total cost of \$13,000. **See Exhibit B.**

Justin Anderson, Board Member, inquired as to why the aforementioned items were not included in the overall initial cost. Dave McDermott, Chief Financial Officer, stated that a lot of the infrastructure that was built in the PE Center with a budget started at budget under \$8 million and ended up at \$14 million. Within that \$14 million, everything was done to prioritize the infrastructure, i.e., square footage. It was stated that improvements could be made at a later date. It was understood there would not be funds available for

electronics at that time, but the area was hard wired so that could be utilized in the future. Budget constraints is the reason these items were not purchased initially. Matt DeBaene, Assistant Superintendent for Secondary Teaching and Learning, stated that the District worked with some of Title funds as it was possible to move dollars around to allocate for the purchase of these items. Now that there are students in the space, it is clear what the best placement is for these items.

Ayes: Andrew Waeyaert, Audrey Adamson, Justin Anderson, Chet DeSmet, Kate Schaefer, Maria S. Trigueros, Erin Waldron-Smith

Nays: None

The Board of Education then considered Consent Agenda Item P2 as presented:

A motion was made by Audrey Adamson, seconded by Chet DeSmet, that the Board of Education accept the items contained in Consent Agenda Item P2 as presented.

P. Approval to Purchase

- 2) that the Board of Education approve the purchase of a voice amplification and sound system for the Moline High School P.E. Center from Tri-City Electric, Davenport, Iowa, for a total cost of \$18,700. **See Exhibit C.**

Audrey Adamson, Board Member, asked what the longevity of these products is. Dr. DeBaene stated that Craig Reid, Director of the Educational Technology Department, did research on the products and the items selected are the most sustainable and they seemed like the ones the most serviceable in the future.

Ayes: Audrey Adamson, Justin Anderson, Chet DeSmet, Kate Schaefer, Maria S. Trigueros, Andrew Waeyaert, Erin Waldron-Smith

Nays: None

The Board of Education then considered Consent Agenda Item Q2 as presented:

A motion was made by Andrew Waeyaert, seconded by Kate Audrey Adamson, that the Board of Education accept the items contained in Consent Agenda Item Q2 as presented.

Q. Award of Bid

- 2) that the Board of Education award the bid for Moline High School ASPIRE furniture, not to exceed \$125,000. **See Exhibit F.**

Ayes: Chet DeSmet, Kate Schaefer, Maria S. Trigueros, Andrew Waeyaert, Audrey Adamson, Erin Waldron-Smith

Nays: None

Abstain: Justin Anderson

The Board of Education then considered Consent Agenda Item Q3 as presented:

A motion was made by Kate Schaefer, seconded by Audrey Adamson, that the Board of Education accept the items contained in Consent Agenda Item Q3 as presented.

Q. Award of Bid

- 3) that the Board of Education award the bid, as shown, for Moline High School A-Wing Abatement (ASPIRE) to the lowest qualified bidder, M&O Environmental Company, Peoria, Illinois for \$24,780, and to engage services with Morland Environmental Services, Woodhull, Illinois, for on-site air sampling and reporting in the amount of \$28,700. **See Exhibit G.**

Ayes: Kate Schaefer, Maria S. Trigueros, Andrew Waeyaert, Audrey Adamson, Chet DeSmet, Erin Waldron-Smith

Nays: None

Abstain: Justin Anderson

The Board of Education then considered Consent Agenda Item R as presented:

A motion was made by Chet DeSmet, seconded by Andrew Waeyaert, that the Board of Education accept the items contained in Consent Agenda Item R as presented.

R. Approval of IMPACT Memorandum of Understanding

that the Board of Education enter into an IMPACT Memorandum of Understanding with the Illowa Construction Labor and Management Council for the Moline High School ASPIRE Renovation. **See Exhibit I.**

Ayes: Kate Schaefer, Maria S. Trigueros, Andrew Waeyaert, Audrey Adamson, Chet DeSmet, Erin Waldron-Smith

Nays: None

Abstain: Justin Anderson

APPROVAL OF RESOLUTION FOR THE 2021 TAX LEVY

A motion was made by Justin Anderson, seconded by Kate Schaefer, that the Board of Education of Moline-Coal Valley School District No. 40, Rock Island County, Moline, Illinois, adopt the Resolution approving the official Tax Levy as listed. **See Exhibit K.**

Ayes: Maria S. Trigueros, Andrew Waeyaert, Audrey Adamson, Justin Anderson, Chet DeSmet, Kate Schaefer, Erin Waldron-Smith

Nays: None

APPROVAL OF 2020-2021 ANNUAL FINANCIAL REPORT

A motion was made by Andrew Waeyaert, seconded by Justin Anderson, that the Board of Education receive the annual financial report for the 2020-2021 fiscal year.

Ayes: Andrew Waeyaert, Audrey Adamson, Justin Anderson, Chet DeSmet, Kate Schaefer, Maria S. Trigueros, Erin Waldron-Smith

Nays: None

RESOLUTION TO ABATE WORKING CASH FUND

A motion was made by Audrey Adamson, seconded by Andrew Waeyaert, that the Board of Education approve the Resolution Abating Working Cash Fund and Authorizing Accounting Transfer of Moline-Coal Valley School District No. 40, Rock Island County, Illinois, as attached. **See Exhibit L.**

Ayes: Audrey Adamson, Justin Anderson, Chet DeSmet, Kate Schaefer, Maria S. Trigueros, Andrew Waeyaert, Erin Waldron-Smith

Nays: None

REPORTS, REQUESTS AND OPEN DISCUSSION

Superintendent's Report

Dr. Rachel Savage, Superintendent of Schools, shared that last week Share Joys took place at Moline High School. Despite struggling with pandemic, the students raised \$62,186. The District is proud of them and thankful to staff, families, and community for their efforts, generosity, and support.

The second District therapy dog up is up and running. Our first therapy dog, Cooper, at Wilson Middle School, has been a tremendous success. Smokey, owned by Sarah and Jace Teed, will be splitting his time between Hamilton and Jane Addams Elementary Schools. Ms. Teed is a counselor at Hamilton Elementary School and Mr. Teed is a counselor at Jane Addams Elementary School. All of the required documentation is complete, including parent communication. Neither Hamilton or Jane Addams families chose to opt out of the optional therapy dog program and the slow integration process has begun. Smokey is a Labradoodle that had already been specifically trained for this purpose so the onboarding process was facilitated.

Lastly, schools will be closed from December 20, 2021 and will resume January 4, 2022. The District wishes everyone a safe and happy holiday break.

OPEN DISCUSSION

Ms. Waldron-Smith thanked the Board for patience and stepping up, particularly Ms. Schaefer, during her absence through a season of medical issues. Also, as a Moline Alumni, Ms. Waldron-Smith stated Share Joys is amazing and she is proud of District parents, students, and the community. Audrey Adamson shared that the energy of the event is amazing and it is an exciting way to lead into the holiday season. Ms. Adamson thanked the staff who organized the event and all involved.

REVIEW AND DISCUSSION OF BOARD OF EDUCATION NORMS

Ms. Waldron-Smith asked each Board member to share their thoughts regarding what norms they believe the Board should followed. Ideas that were shared are:

- Understanding, as a whole, that Board members do not make decisions as individuals and the only person that answers to the Board is Dr. Savage.
- Making sure to not “reply all” to emails and understanding what the role in communicating with the public is. Rather than trying to provide solutions for someone who comes to the Board, they should provide a pathway to find the solution.
- Each Board member has a sheet that lists the “chain of command” for District leadership. We, as a Board, need to follow that and use it to direct those with questions so they receive the right answer the first time.
- Making sure we, as a Board, are always being respectful and not speaking over one another.
- It was decided to no longer send a follow-up letter to those who provide public comment, as we no longer ask them for their home address when addressing the Board.
- For future presidents and good housekeeping, if members send a question or concern to Dr. Savage, the Board President should be cc’d so they are aware of the concern.
- Sticking to the subject at hand is important.
- Will there be a student Board member again? Dr. Savage will reach out to Trista Sanders, Principal at Moline High School. The Board was in consensus that it would be nice to have two members with a two-year term. It was noted that a time commitment should be given by the potential student Board member.
- Having a norms sheet at each meeting for each Board members with the meeting protocols was suggested.

*****CLOSED SESSION*****

(to consider the appointment, employment, discipline, performance or dismissal of specific employees of the District)

A motion was made by Audrey Adamson, seconded by Maria S. Trigueros, all in favor, that the Board of Education go into Closed Session. Time: 7:50 p.m.

A motion was made by Andrew Waeyaert, seconded by Audrey Adamson, all in favor, that the Board of Education return to Open Session. Time: 8:18 p.m.

A motion was made by Andrew Waeyaert, seconded by Audrey Adamson, all in favor, that the Board of Education meeting be adjourned. Time: 8:19 p.m.

President

Secretary

B.Minutes of the Closed Session of the Regular Board of Education meeting of December 13, 2021

4.Communications, Public Comment and Participation

5.Consent Agenda

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Recommended Motion: that the Board of Education approve the actions contained in the Consent Agenda as presented.

5. **Consent Agenda**

Recommended Motion: that the Board of Education approve the actions contained in Consent Agenda Items A–M as presented:

A. Employment – Certified Staff

- 1) the temporary employment of the following named certified staff member for the 2021-2022 school year with wages in accordance with district schedules:

Hofmann, Jenifer
School Counselor, High School
B.A. Degree, Illinois State University
To teach on a temporary contract basis
Thirteen years previous experience in Illinois

- 2) the temporary employment of the following named certified substitute teachers for the 2021-2022 school year with wages in accordance with district schedules:

Haynes, Trena
Kephart, Riley
Mensah, Tara
Reich, Charlotte
Schlabowske, Haley
Schluensen, Lauren
Stoll, Marina
VandeMoortel, Mark
VanVooren, William

B. Salary Reclassification – Certified Staff

a change in salary classification for the following Certified Staff effective for the second semester of the 2021-2022 school year:

Carlin, Sarah from B.A. to B.A. +15
Gascoigne, Krystle from M.A. to M.A. +30
Iams, Hannah from B.A. to B.A. +15
Killam, Christa from M.A. to M.A. +30
Kovacic, Jamie from M.A. to M.A. +30
Lance, Kaylee from M.A. to M.A. +30
Landeros, Jasmin from M.A. to M.A. +30
Masias, Laura from M.A. to M.A. +30
Pauley, Amanda from M.A. to M.A. +30
Rasche, Adam from M.A. to M.A. +30
Ruettiger, Jacob from M.A. to M.A. +30
Santamour, Tracy from M.A. to M.A. +30
Timerman, Dawn from M.A. to M.A. +30
Watts, Christine from M.A. to M.A. +30

C. Appointment to Differential Assignment – Certified Staff

the appointment of the following named certified staff members to differential assignments:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Ryser, Alex	Assistant Director Spring Musical	High School	01/10/22
Taylor, Kyle	Drama Director’s Assistant Winter Play	High School	12/31/21

D. Transfer/Reassignment – Certified Staff

the transfer of Michele Pittington from the Principal position at Franklin Elementary to a teaching position, effective for the 2022-2023 school year.

E. Employment – Educational Support Personnel

- 1) the employment of the following named educational support personnel for the 2021-2022 school year with wages in accordance with district schedules:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Wingerter, Renee	Hall Security	High School	12/16/21

- 2) the temporary employment of the following named educational support personnel for the 2021-2022 school year with wages in accordance with district schedules:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Kuehn, Marcie	Flexible Floater Custodian	Elementary Buildings	01/03/22
Naab, Katie	Parent Coordinator	Logan	01/04/22
Wales, Cassie	Classroom Paraprofessional	Hamilton	11/29/21
Wilson, Tara	Parent Mentor Coordinator	Washington	11/09/21

- 3) the temporary employment of the following named substitute educational support personnel for the 2021-2022 school year with wages in accordance with district schedules:

<u>Name</u>	<u>Position</u>
Haskins, Zachery	Custodian
Johnson, Alicia	Health Professional (RN)

- 4) the temporary employment of the following named non-staff members as interpreters for the remainder of the 2021-2022 school year with wages in accordance with district schedules:

Chelihi, Mohamed Larbi

F. Approval of Family Medical Leave Act – Educational Support Personnel

that the Board of Education grant approval of a Family and Medical Leave for the following educational support personnel:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Lyman, Cheryl	Special Ed Para	Wilson	Beginning 01/03/22 and lasting until approximately 02/17/22
Mayberry, Kevin	Custodian	MHSCC/Deere	Beginning 12/08/21 and lasting for approximately 60 days

G. Resignation/Termination – Educational Support Personnel

the resignation/termination of the following named Educational Support Personnel:

<u>Name</u>	<u>Position</u>	<u>Location</u>	<u>Effective Date</u>
Cooper, Katherine	1:1 Special Ed Para	Hamilton	12/25/21
Smith, Stacey	Library Paraprofessional	Hamilton/Franklin	02/01/22

H. Payments for Board Approval

approval of payments:

Fund 1 Educational	1,480,167.74
Fund 2 Operations & Maintenance	207,757.38
Fund 3 Debt Service	582,625.08
Fund 4 Transportation	90,892.44
Fund 5 Retirement	223,456.80
Fund 6 Capital Projects	23,722.64
Fund 7 Working Cash	0.00
Fund 8 Tort Fund	47,759.59
Fund 9 Life Safety Code	37,871.61
Fund 10 Group Insurance	846,839.73
Fund 11 Student Activity	<u>15,074.26</u>
TOTAL	3,679,874.55

See Attachment No. 1.

I. Freedom of Information Act Requests

One Freedom of Information Act Request was received by Chicagolandconstruction.com requesting Bid Results/Tabulations or Award for the 12/07/2021 Moline-Coal Valley School District No. 40 - 2021 Moline High School A-Wing Asbestos Abatement (Rock Island County). The District has responded to this request.

J. Acceptance of Gift

- 1) A donation in the amount of \$2,000 from Deloros Young to be used for the therapy dog program in the Moline-Coal Valley School District.
- 2) A donation in the amount of \$550 from Lady Maroons Soccer to the Girls Soccer program at Moline High School.
- 3) A donation in the amount of \$2,020.90 from MHS Class of 1957 to Moline High School.

K. Facility Usage Request Recommended for Approval Subject to Compliance with Board of Education Policy 8:20

- 1) Moline High School, Wilson Middle School, and John Deere Middle School baseball/softball diamonds and fields for baseball practices and games for the 2022 season by the Moline Little League Baseball. Compensation to be received only for custodial services required as a result of their program.
- 2) Coolidge Gymnasium on Saturday, February 26, 2022 from 12:00 p.m. until 4:00 p.m. and Saturday March 5, 2022 from 12:00 p.m. until 4:00 p.m. by the Moline Little League Baseball for baseball tryouts. Compensation to be received only for custodial services required as a result of their program.
- 3) John Deere Middle School Auditorium on Thursday, April 14, 2022 from 6:00 p.m. until 8:00 p.m. for the 2022 season kickoff for Moline Little League Baseball. Compensation to be received only for custodial services required as a result of their program.
- 4) Moline High School, John Deere Middle School, various elementary schools, and Jefferson Early Childhood Center school baseball/softball diamonds and fields for softball practices and games for the 2022 season by the Moline Little League Softball. Compensation to be received only for custodial services required as a result of their program.
- 5) Willard Elementary School gymnasium from January 13, 2022 through February 24, 2022 on Thursdays from 5:45 p.m. until 7:00 p.m. for basketball practices by the Two Rivers YMCA. Compensation to be received only for custodial services required as a result of their program.
- 6) Wilson Middle School gymnasium from January 21, 2022 through February 26, 2022 on Friday evenings for basketball games by the Two Rivers YMCA from 5:30 p.m. until 9:30 p.m. Compensation to be received only for custodial services required as a result of their program.
- 7) Wilson Middle School gymnasium from January 21, 2022 through February 26, 2022 on Saturday mornings from 8:30 a.m. until 11:30 a.m. for basketball games by the Two Rivers YMCA. Compensation to be received in the amount of \$52 per hour.

L. **Approval to Purchase**

that the Board of Education approve the purchase of wireless hardware refreshes to CDWG, Vernon Hills, Illinois (the lowest bidder), for a total project cost of \$139,829.56 (approximately \$30,000 after discount).

See Attachment No. 2.

M. **Award of Bid**

that the Board of Education award the bid, as identified, for Jane Addams, Butterworth, and Logan Elementary Schools for air quality improvement, to the lowest qualified bidder for the amount of \$5,480,586, as presented. **See Attachment No. 3.**

TO: Members of the Board of Education

FROM: Dr. Matt DeBaene, Assistant Superintendent for Teaching and Learning
Craig Reid, Director for Technology

DATE: January 6, 2022

SUBJECT: E-Rate Purchase of Wireless Access Points - CDWG

Reason for Board Consideration: Board of Education approval is required.

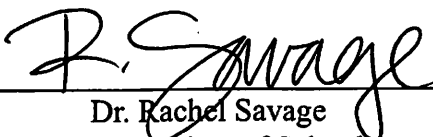
Action Necessary: Approval to purchase wireless access points to refresh aged hardware.

Facts: The District's wireless system is supported by Aruba and consists of access points strategically placed throughout each school. As part of the Federal E-Rate program, wireless hardware qualifies for Category 2 funding which provides the District with an 80 percent reimbursement of qualified expenditures. As such, the Educational Technology Department filed an E-Rate Form 470 to solicit bids for wireless access points to replace hardware older than five years throughout the district. The wireless system can be purchased after July 1, 2022.

Cost: CDWG, Vernon Hills, Illinois, provided the lowest corresponding price for 264 wireless access points, hardware, and associated licenses at a cost of \$139,829.56. The total cost of the wireless solution after the E-Rate discount is approximately \$30,000.

Recommended Action: That the Board of Education approve the purchase of wireless hardware refreshes to CDWG, Vernon Hills, Illinois (the lowest bidder), for a total project cost of \$139,829.56 (approximately \$30,000 after discount).

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

Vendor	Access Point	Hardware Only Cost	Maintenance Cost	Total Cost	Comments
CDWG	Aruba	\$132,500.86	\$7,328.70	\$139,829.56	Annual cost is maintenance
Howard	Cisco Meraki	\$128,502.00	\$12,408.00	\$140,910.00	Full annual cost for solution
LakeTec	Aruba	\$180,213.60	\$7,892.64	\$188,106.24	Annual cost is maintenance
Questivity	Aruba	\$193,882.44	\$7,819.94	\$201,702.38	Annual cost is maintenance

TO: Members of the Board of Education

FROM: Dave McDermott, Chief Financial Officer *DMD*
Keith Karstens, Director of Facilities

DATE: January 6, 2022

SUBJECT: Award of Bid – Jane Addams, Butterworth, and Logan HVAC

Reason for Board of Education Consideration: Board of Education approval is required.

Action Necessary: Board of Education approval is requested.

Facts: As part of the ESSER/CARES funding, the Board approved air quality improvements for six buildings. More specifically, three of the six, Jane Addams, Butterworth and Logan Elementary buildings, are scheduled to receive air quality improvements (i.e., HVAC) during the summer of 2022. Recall, the Board of Education approved Shive-Hattery for architectural services and Russell Construction as construction manager. Also, recall the Board approved the pre-purchase of equipment (i.e. chillers & univents) in October 2021 due to the long delivery lead times needed.


The general trades, mechanical and electric specifications were prepared and issued by Russell Construction for the remaining construction of the HVAC projects. Bids were received on December 17, 2021. The bids are as shown on the attached tabulation. Note, the pre-purchased equipment that was approved in October 2021 is included in these costs so the contractor knew exactly what was being pre-ordered.

Unfortunately, the low bid contractor for the electrical equipment, Rock River Electric, indicated now the switch gears, CT meters/sockets and transformers related to the projects were on long delivery lead times, end of July 2022. Since the projects are scheduled to be completed soon thereafter, with the prior approval from Superintendent Savage and Board President Waldron-Smith, I provided a Letter of Intent to order those parts on December 23, 2021, not to exceed \$150,000 of the \$5,480,586 total bid amounts. Therefore, it is the recommendation of the administration that the Board of Education award the bid to the lowest qualified bidder, as presented.

Cost: The cost is \$5,480,586, which will be supported with federal ESSER/CARES funds.

Recommended Motion: That the Board of Education award the bid, as identified, for Jane Addams, Butterworth, and Logan Elementary Schools for air quality improvement, to the lowest qualified bidder for the amount of \$5,480,586, as presented.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

December 17, 2021

Moline-Coal Valley School District

Jane Addams, Butterworth, Logan HVAC Replacements-Bid Package 2

Bid Category 2A General Trades	Precision	Russell	Low Bid
Jane Addams	\$495,500.00	\$547,202.55	\$495,500.00
Butterworth	\$385,200.00	\$462,451.31	\$385,200.00
Logan	\$230,000.00	\$161,485.33	\$161,485.33
Combined Bid #1 (3 Schools)	\$1,110,700.00	n/a	n/a
Total General Trade Bids			\$1,042,185.33

Bid Category 2B Mechanical	Ryan & Associates	Russell	Low Bid
Jane Addams	\$1,034,400.00	\$1,117,380.00	\$1,034,400.00
Butterworth	\$1,698,500.00	\$1,838,500.00	\$1,698,500.00
Logan	\$695,500.00	n/a	\$695,500.00
Combined Bid #1 (3 Schools)	n/a	n/a	n/a
Total Mechanical Bids			\$3,428,400.00

Bid Category 2C Electrical	Rock River Electric	Tri-City Electric	Low Bid
Jane Addams	\$442,946.00	\$537,410.00	
Butterworth	\$464,156.00	\$601,200.00	
Logan	\$111,185.00	\$164,505.00	
Combined Bid #1 (3 Schools)	\$1,010,000.00	n/a	\$1,010,000.00
Total Electrical Bids			\$1,010,000.00

Total of General Trades, Mechanical & Electrical Low Bids	\$5,480,585.33
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6. Approval of Resolution for the 2021 Tax Abatement

26

Recommended Motion: that the Board of Education approve the resolution abating all of the property taxes heretofore levied for the year 2021 to pay debt service on the General Obligations School Bonds (Alternative Revenue Source), Series 2018 of Community Unit School District Number 40, Rock Island County, Illinois. **Attachment No. 4.**

TO: Members of the Board of Education
FROM: Dave McDermott, Chief Financial Officer *DMC*
DATE: January 6, 2022
SUBJECT: 2021 Resolution for Tax Abatement

Reason for Board Consideration: Board of Education approval is required.

Action Necessary: Board of Education approval is requested.


Facts: In February 2018, the District sold approximately \$22 million in Alternate Revenue Bonds to support Moline High School HVAC, Bartlett Performing Arts Center, Franklin Elementary, LED light upgrades and Parking Lot improvement projects. These bonds were supported with the Rock Island County Schools Facilities Sales Tax (i.e. 1%) revenues, and were also supported with a property tax levy in the event the sales tax revenues were insufficient to pay the bonds. The bond covenants require the Board to abate the property tax levy each year in which the pledged sales tax revenues are sufficient to make the bond payments.

This year, the pledged sales tax revenues are sufficient to cover the bond payments next year, which amount to approximately \$2,950,650. Therefore, approval of this Resolution will ensure the RI County Clerk does not extend this amount in an additional, unnecessary debt service property tax.

Cost: No new cost. Abatement of the principal and interest of \$2,950,650 which is associated with the RI County Schools Facilities Sales Tax bonds sold in February 2018.

Recommended Motion: That the Board of Education approve the resolution abating all of the property taxes heretofore levied for the year 2021 to pay debt service on the General Obligation School Bonds (Alternate Revenue Source), Series 2018 of Community Unit School District Number 40, Rock Island County, Illinois.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

A RESOLUTION abating all of the property taxes heretofore levied for the year 2021 to pay debt service on the General Obligation School Bonds (Alternate Revenue Source), Series 2018 of Community Unit School District Number 40, Rock Island County, Illinois.

* * *

WHEREAS, the Board of Education (the "*Board*") of Community Unit School District Number 40, Rock Island County, Illinois (the "*District*"), by a resolution dated February 12, 2018 (the "*Bond Resolution*"), has heretofore issued and has outstanding its General Obligation School Bonds (Alternate Revenue Source), Series 2018 (the "*Bonds*"), and provided for the levy of a direct annual property tax sufficient to pay the principal of and interest on the Bonds; and

WHEREAS, a duly certified copy of the Bond Resolution was filed in the office of the County Clerk of Rock Island County, Illinois (the "*County Clerk*"); and

WHEREAS, the Board has determined and does hereby determine that the Pledged Revenues (as defined in the Bond Resolution) are or will be available to pay the principal of and interest on the Bonds when due on August 1, 2022 and February 1, 2023, so as to enable the abatement of the Pledged Taxes (as defined in the Bond Resolution) levied for the same; and

WHEREAS, it is necessary and in the best interests of the District that the property tax heretofore levied for the year 2021 pursuant to the Bond Resolution for the purpose of paying principal of and interest on the Bonds be abated:

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF COMMUNITY UNIT SCHOOL DISTRICT NUMBER 40, ROCK ISLAND COUNTY, ILLINOIS, AS FOLLOWS:

Section 1. Incorporation of Preambles. The Board hereby finds that all of the recitals contained in the preambles to this Resolution are full, true and correct and does incorporate them into this Resolution by this reference thereto.

Section 2. Transfer of the Pledged Revenues. To the extent require, the School Treasurer of the District is hereby authorized and directed to forthwith transfer the Pledged Revenues to the Bond Fund (as defined in the Bond Resolution) to pay the principal of and interest on the Bonds when due.

Section 3. Abatement of Tax. The property tax heretofore levied for the year 2020 in the Bond Resolution shall be abated as follows:

YEAR OF LEVY	TAX LEVIED IN THE BOND RESOLUTION	TAX TO BE ABATED	TAX TO BE EXTENDED SUFFICIENT TO PRODUCE
2021	\$2,950,650	\$2,950,650	\$0.00

Section 4. Filing of Resolution. Forthwith upon the adoption of this Resolution, the Secretary of the Board shall file a certified copy hereof with the County Clerk, and it shall be the duty of the County Clerk to abate all said taxes for the year 2021 in accordance with the provisions of this Resolution.

Section 5. Repealer. All other resolutions or orders, or parts thereof, in conflict with the provisions of this Resolution are to the extent of such conflict hereby repealed, and this Resolution shall be in full force and effect forthwith and immediately upon its adoption.

ADOPTED this 10th day of January, 2022, by a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

President, Board of Education

ATTEST:

Secretary, Board of Education

7.Approval of a Special Education Teacher

30

Recommended Motion: that the Board of Education approve one FTE special education teacher, to be shared by Bicentennial Elementary and Seton Catholic School. **Attachment No. 5.**

TO: Members of the Board of Education

FROM: Kristin Sanders, Assistant Superintendent for Pupil/Personnel Services and Special Education *YJS*

DATE: January 6, 2022

SUBJECT: Request for a shared Special Education Teacher at Bicentennial Elementary School and Seton Catholic School


Reason for Board Consideration: A special education teacher is needed at Bicentennial Elementary and Seton Catholic to provide for students with disabilities requiring direct special education services. Due to increased enrollment of students with disabilities at Bicentennial, one FTE is no longer adequate to cover all of the service minutes in the students IEPs. In addition, special education services to Seton Catholic, which are provided by the District via Nonpublic IDEA monies, have been covered by a retired teacher, who will be phasing out her services. In order to provide for the variety of student needs, this position will be .5 FTE at Bicentennial, and .5 FTE at Seton Catholic. Title and the Nonpublic Proportionate Share dollars will be utilized to pay for this position.

Action Necessary: Board of Education approval for one FTE special education teacher, to be shared by Bicentennial Elementary and Seton Catholic.

Cost: Approximately \$30,000 for the remainder of the 2021-2022 school year. The cost will be budgeted through the IDEA grant and the amended Title grant.

Recommended Action: That the Board of Education approve one FTE special education teacher, to be shared by Bicentennial Elementary and Seton Catholic School.

Approved for Submission to Board Education




Dr. Rachel Savage
Superintendent of Schools

8. Approval of Substitute Teacher Incentives

32

Recommended Motion: that the Board of Education approve the substitute teacher incentive for the remainder of the 2021-2022 school year. **See Attachment No. 6.**

TO: Members of the Board of Education

FROM: Todd DeTaeye, Assistant Superintendent for Human Resources 

SUBJECT: Approval of Substitute Teacher Incentives

DATE: January 6, 2022

Reason for Board Consideration: Board of Education approval of substitute incentives for the remainder of the 2021-22 school year.


Action Necessary: Board approval to create a new substitute teacher incentive.

Facts: The District continues to experience a substitute shortage and finding coverage for classes when teachers are out for various reasons is a challenge. This continues to be an issue across the county, state, and country. Districts in our area, and throughout the State of Illinois, are looking for creative ways to attract and keep high quality substitutes. One such way is to provide financial incentives for substitutes who work throughout the district on a regular basis. The District is proposing a \$300 incentive each time a substitute teaches a total of 20 days, 40 days, 60 days, and 80 days. A substitute teacher who teaches a total of 80 days will earn an additional \$1200. Substitute teachers will be eligible to count days beginning Tuesday, January 18th (2nd Semester).

Cost: The cost will vary depending on the number of substitute teachers who meet the eligibility requirements. Substitute costs are budgeted on a yearly basis.

Recommended Action: That the Board of Education approve the substitute teacher incentive for the remainder of the 2021-2022 school year.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

9.Approval of Compensation Structure for Paraprofessionals with a Substitute License

34

Recommended Motion: that the Board of Education approve the paraprofessional hourly wage, or the daily substitute rate, for those employees willing to substitute teach on an emergency basis. **See Attachment No. 7.**

TO: Members of the Board of Education

FROM: Todd DeTaeye, Assistant Superintendent for Human Resources

SUBJECT: Approval of Compensation Structure for Paraprofessionals with a Substitute License

DATE: January 6, 2022

Reason for Board Consideration: Board of Education approval of a new compensation structure for paraprofessionals who hold a substitute teaching license.

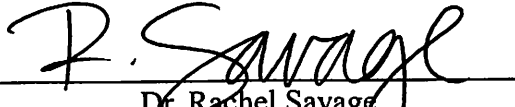
Action Necessary: Board approval to create a new compensation structure for paraprofessionals who hold a substitute teaching license.

Facts: The District continues to experience a substitute shortage and finding coverage for classes when teachers are out for various reasons is a challenge. This continues to be an issue across the county, state, and country. Principals, in emergency needs, will ask paraprofessionals, with the proper substitute license, to step in and sub for a class that needs coverage. The substitute daily rate of pay is different from the paraprofessional rate of pay. Board of Education authority is needed to pay either the paraprofessional hourly rate of pay, or the daily substitute rate, in order to assure that the proper wage is paid to our paraprofessionals when they are asked to serve as a substitute teacher.

Cost: The cost will vary depending on each paraprofessional substitute situation. The cost for substitute coverage is budgeted each year.

Recommended Action: That the Board of Education approve the paraprofessional hourly wage, or the daily substitute rate, for those employees willing to substitute teach on an emergency basis.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

10. First Reading of Revised Board of Education Policies for Section 4 Operational Services

36

Recommended Motion: that the Board of Education accept for first reading revised Board of Education Policies for Operational Services Sections 4:80 Accounting and Audits, 4:110 Transportation, 4:120 Food Services, and 4:150 Facility Management and Building Programs. **See Attachment No. 8.**

TO: Members of the Board of Education

FROM: Dave McDermott, Chief Financial Officer *DM*

DATE: January 6, 2022

SUBJECT: Approve Updated Board Policies for Section 4 Operational Services

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: That the Board of Education approve the updated Board Policies.


Facts: In the continuing quest to update the District's Board Policies, attached are a portion of Section 4 with suggested changes based on PRESS recommendations. Administration is requesting the Board accept updates for Section 4, Operational Services which are minor in stylistics, footnote or reference changes. Recall the underlined text represents suggested new additions; whereas, the strikethrough text represents suggested deletions.

Based on PRESS recommendation and administration review, it is the recommendation of administration that the Board of Education accept for first reading revised Board of Education policies for Operational Services Sections 4:80 Accounting and Audits, 4:110 Transportation, 4:120 Food Services, and 4:150 Facility Management and Building Programs.

Cost: None.

Recommended Motion: That the Board of Education accept for first reading revised Board of Education policies for Operational Services Sections 4:80 Accounting and Audits, 4:110 Transportation, 4:120 Food Services, and 4:150 Facility Management and Building Programs.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

Operational Services

Accounting and Audits 1

The School District's accounting and audit services shall comply with the *Requirements for Accounting, Budgeting, Financial Reporting, and Auditing*, as adopted by the Ill. State Board of Education (ISBE), State and federal laws and regulations, and generally accepted accounting principles. Determination of liabilities and assets, prioritization of expenditures of governmental funds, and provisions for accounting disclosures shall be made in accordance with government accounting standards as directed by the auditor designated by the Board. The Superintendent, in addition to other assigned financial responsibilities, shall report monthly on the District's financial performance, both income and expense, in relation to the financial plan represented in the budget.

Annual Audit 2

At the close of each fiscal year, the Superintendent shall arrange an audit of the District funds, accounts, statements, and other financial matters. The audit shall be performed by an independent certified public accountant designated by the Board and be conducted in conformance with prescribed standards and legal requirements. A complete and detailed written audit report shall be provided to each Board member and to the Superintendent. The Superintendent shall annually, on or before October 15, submit an original and one copy of the audit to the Regional Superintendent of Schools.

Annual Financial Report 3

The Superintendent or designee shall annually prepare and submit the Annual Financial Report on a timely basis using the form adopted by the ISBE. The Superintendent shall review and discuss the Annual Financial Report with the Board before it is submitted.

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

¹ State or federal law controls this policy's content. A board policy or resolution is required concerning revolving funds and petty cash. 23 Ill.Admin.Code §100.70. This policy is intended to facilitate the board's fiscal oversight role. The last sentence of the first paragraph should be modified to align with local conditions. The *Requirements for Accounting, Budgeting, Financial Reporting, and Auditing* at 23 Ill.Admin.Code Part 100 replaced 23 Ill.Admin.Code Part 110, *Program Accounting Manual* and 23 Ill.Admin.Code Part 125, *Student Activity Funds and Convenience Accounts*.

² Audit requirements are found in 105 ILCS 5/3-7 and 5/3-15.1, and 23 Ill.Admin.Code §100.110. The federal Single Audit Act adds audit requirements for federal programs. 31 U.S.C. §7501 *et seq.*

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

The following optional sentence establishes an audit committee: "The Board will annually establish an audit committee to help the Board select an external auditor, confer with the auditor regarding the audit's scope, and oversee the audit process." **Note:** All board committees are subject to the Open Meetings Act (5 ILCS 120/).

The following optional sentence establishes a competitive process for selecting the external auditor; it prevents a long-term relationship with an auditor and reduces the possibility of audits being too routine or friendly: "The Board will annually advertise a request for proposals to perform the external audit." Substitute "periodically" for "annually" if desired.

³ Requirements for the annual financial report are found in 105 ILCS 5/2-3.27 and 5/3-15.1; 23 Ill.Admin.Code §100.100. The last sentence of this section should be modified to align with local conditions.

Inventories ⁴

The Superintendent or designee is responsible for establishing and maintaining accurate inventory records. The inventory record of supplies and equipment shall include a description of each item, quantity, location, purchase date, and cost or estimated replacement cost, unless the supplies and equipment are acquired by the District pursuant to a federal or State grant award, in which case the inventory record shall also include the information required by 2 C.F.R. §200.313, if applicable.⁵ The Superintendent shall establish procedures for the management of property acquired by the District under grant awards that comply with federal and State law. ⁶

Capitalization Threshold ⁷

To be considered a capital asset for financial reporting purposes, a capital item must be at or above a capitalization threshold of \$5,000 and have an estimated useful life greater than one year.

Disposition of District Property ⁸

The Superintendent or designee shall notify the Board, as necessary, of the following so that the Board may consider its disposition: (1) District personal property (property other than buildings and

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

⁴ The Ill. Program Accounting Manual (IPAM) was repealed and replaced with the *Requirements for Accounting, Budgeting, Financial Reporting, and Auditing*. While these rules contain much of the IPAM information, the information about inventories was not included. That information is still useful and may be found at: www.isbe.net/Documents/ipam.pdf. The last sentence of this section should be modified to align with local conditions.

⁵ 2 C.F.R. §200.313. The uniform federal rules that govern federal grant awards in 2 C.F.R. Part 200 apply to State grant awards through the Grant Accountability Transparency Act (GATA) (30 ILCS 708/), unless exempted in whole or in part by the Governor's Office of Management of Budget. 30 ILCS 708/55. See www.isbe.net/gata for further information about the scope of GATA's application to federal awards and State-funded grant programs administered by the Ill. State Board of Education (ISBE). See 4:80-AP3, *Inventory Management for Federal and State Awards*. ISBE guidance is available at: www.isbe.net/Documents/fiscal_procedure_handbk.pdf and www.isbe.net/Pages/Audit-and-Monitoring-Review-Requirements-and-Tools.aspx.

⁶ *Id.* In connection with ISBE's grant monitoring function, ISBE published a *Checklist for Equipment and Inventory Review* which requires an approved policy (or procedure) related to the management of equipment at: www.isbe.net/Pages/Audit-and-Monitoring-Review-Requirements-and-Tools.aspx.

⁷ Optional. 23 Ill.Admin.Code §100.60 requires school boards to adopt a capitalization threshold, which can be done through policy. The capitalization threshold is a dollar figure above which the cost of an item will be included on financial statements and depreciated. A minimum threshold of \$5,000 and useful life greater than one year complies with the definition of *equipment* under federal grant rules, but may be adjusted, and/or multiple thresholds can be established, for different categories of capital assets. 2 C.F.R. §§200.33 and 200.313(e). The Government Accounting Standards Board (GASB) Statement No. 34 at para. 115(e) states that a government should disclose its policy "for capitalizing assets and for estimating the useful lives of those assets." See GASB Statement 34 and *Guide to Implementation of GASB Statement 34 on Basic Financial Statements* (p.28), both available at: www.gasb.org. There are no specific requirements for such policies; however, district auditors may require or recommend a district have a more comprehensive capitalization policy and/or procedure. Such an accounting policy or procedure should be developed in consultation with the district's accounting professional(s) and tailored to reflect local conditions.

⁸ The requirements in this section are specified in 105 ILCS 5/5-22 (allowing property constructed or renovated by students as part of a curricular program to be sold through the services of a licensed real estate broker subject to certain requirements), 5/10-22.8; and 2 C.F.R. §200.313(e) for federal awards and State awards governed by GATA. See fn 5, above, regarding grant award requirements. A board that desires to act on the disposition of property having *any* value should use the following alternative to this section's last sentence: "Notwithstanding the above, the Superintendent or designee may unilaterally dispose of worthless personal property."

The recipient (through either sale or donation) of any discarded school bus must immediately: (1) remove, cover, or conceal the "SCHOOL BUS" signs and any other insignia or words indicating the vehicle is a school bus; (2) render inoperable or remove entirely the stop signal arm and flashing signal system; and (3) paint the school bus a different color from those under Sec. 12-801 of the Ill. Vehicle Code 625 ILCS 5/12-801. 625 ILCS 5/12-806(b) added by P.A. 100-277.

land) that is no longer needed for school purposes, and (2) school site, building, or other real estate that is unnecessary, unsuitable, or inconvenient. Notwithstanding the above, the Superintendent or designee may unilaterally dispose of personal property of a diminutive value. The Superintendent shall establish procedures for the disposition of property acquired by the District under grant awards that comply with federal and State law.

Taxable Fringe Benefits⁹

The Superintendent or designee shall: (1) require that all use of District property or equipment by employees is for the District's convenience and best interests unless it is a Board-approved fringe benefit, and (2) ensure compliance with the Internal Revenue Service regulations regarding when to report an employee's personal use of District property or equipment as taxable compensation.

Controls for Revolving Funds and Petty Cash¹⁰

Revolving funds and the petty cash system are established in Board policy 4:50, *Payment Procedures*. The Superintendent shall: (1) designate a custodian for each revolving fund and petty cash fund, (2) obtain a bond for each fund custodian, and (3) maintain the funds in compliance with this policy, State law, and ISBE rules. A check for the petty cash fund may be drawn payable to the designated petty cash custodian. Bank accounts for revolving funds are limited to a maximum balance of \$500.00. All expenditures from these bank accounts must be directly related to the purpose for which the account was established and supported with documentation, including signed invoices or receipts. All deposits into these bank accounts must be accompanied with a clear description of their intended purpose. The Superintendent or designee shall include checks written to reimburse revolving funds on the Board's monthly listing of bills indicating the recipient and including an explanation.

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

⁹ The intent of this optional section is twofold: (1) to control personal use of district property and equipment; and (2) to ensure compliance with IRS rules. As to the first point, allowing personal use of district property or equipment is arguably prohibited by the Ill. Constitution, Art. VIII, Sec. 1 which states: "Public funds, property or credit shall be used only for public purposes." As to the second point, any fringe benefit an employer provides is taxable and must be included in the recipient's pay unless the law specifically excludes it. See Publication 15-B (2019), *Employer's Tax Guide to Fringe Benefits*, at: www.irs.gov/pub/irs-pdf/p15b.pdf.

¹⁰ 105 ILCS 5/10-20.19(2); 23 Ill.Admin.Code §100.70. This paragraph's contents are mandatory, except for the \$500 cap on the maximum balance of revolving funds. The cap amount may be changed or the following alternative used: "Each revolving fund shall be maintained in a bank that has been approved by the Board and established in an amount approved by the Superintendent consistent with the annual budget."

The School Code defines petty cash as a type of revolving fund. *Id.* It and other revolving funds carry a standard balance and are regularly reimbursed to maintain the standard balance amount (generally referred to as an *imprest system* of financial accounting). In practice, petty cash is paid out of a *de minimis* cash amount maintained by a fund custodian. Disbursement from a revolving fund other than petty cash is typically made against an imprest checking account, by an authorized signor who is readily available in the district, e.g., a superintendent or building principal. The authorized signor manages the revolving fund and requests the board to reimburse the fund for expenses incurred to bring the imprest account back to its standard balance.

Control Requirements for Checks ¹¹

The Board must approve all bank accounts opened or established in the District's or a District school's name or with the District's Federal Employer Identification Number. All checks issued by the School District must be signed by either the Treasurer or Board President, except that checks from accounts containing student activity funds or fiduciary funds and checks from revolving accounts may be signed by their respective account custodians.

Internal Controls ¹²

The Superintendent is primarily responsible for establishing and implementing a system of internal controls for safeguarding the District's financial condition; the Board, however, will oversee these safeguards. The control objectives are to ensure efficient business and financial practices, reliable financial reporting, and compliance with State law and Board policies, and to prevent losses from

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¹¹ This section is largely up to the local board's discretion; additional controls may be added. The following alternative to the second sentence will mandate two signatories for checks:

Two of the following individuals: the Treasurer, Board President, and/or Board Vice-President, shall sign all checks issued by the School District, except that checks from accounts containing student activity funds or fiduciary funds and checks from revolving accounts may be signed by their respective account custodians.

See policy 4:90, *Student Activity and Fiduciary Funds*, for more information about a board's responsibilities for *student activity funds* and *fiduciary funds*. A board must comply with State law requirements concerning the use of facsimile or electronic signatures on checks. The Secretary of State, Index Department, maintains certified manual signatures of officers authorized to sign checks. Uniform Facsimile Signature of Public Officials Act, 30 ILCS 320/. Electronic records and signatures are governed by the Electronic Commerce Security Uniform Electronic Transactions Act. 5 ILCS 175/5 815 ILCS 333/. added by P.A. 102-38. Attorneys disagree about the applicability of these laws to school districts.

¹² This section is largely up to the local board's discretion. The annual audit must include a "review and testing of the internal control structure." 23 Ill.Admin.Code §100.110. This review's limited scope means that boards should not rely on it to reveal uncontrolled financial risks. The board's responsibility is to establish policy to safeguard the district's financial condition. Indeed, the oath of office includes this promise: "I shall respect taxpayer interests by serving as a faithful protector of the school district's assets." In this sample policy, the board sets the control objectives and the superintendent is responsible for developing an internal controls system. In addition, ISBE has issued guidance on internal controls pursuant to its administration of the Grant Accountability and Transparency Act (GATA), 30 ILCS 708/. See the *Fiscal Procedures Handbook*, at: www.isbe.net/Documents/fiscal_procedure_handbk.pdf, which states that "to establish a strong control environment, grantees must...[d]esign internal controls that are in compliance with guidance in *Standards for Internal Control in the Federal Government* issued by the Comptroller General of the United States" (a free resource, available at: www.gao.gov/assets/670/665712.pdf) or the *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (a fee-based resource, available at: <https://www.coso.org/Pages/ic.aspx>). Boards that wish to take a larger oversight role regarding internal controls may list the numbered sentences in the IASB sample administrative procedure 4:80-AP1, *Checklist for Internal Controls*, as required inclusions in the superintendent's program for internal controls. This alternative, for insertion at the end of this section's first paragraph, follows:

The District's system of internal controls shall include the following:

1. All financial transactions must be properly authorized and documented.
2. Financial records and data must be accurate and complete.
3. Accounts payable must be accurate and punctual.
4. District assets must be protected from loss or misuse.
5. Incompatible duties should be segregated, if possible.
6. Accounting records must be periodically reconciled.
7. Equipment and supplies must be safeguarded.
8. Staff members with financial or business responsibilities must be properly trained and supervised, and must perform their responsibilities with utmost care and competence.
9. Any unnecessary weaknesses or financial risks must be promptly corrected.

fraud, waste, and abuse,¹³ as well as employee error, misrepresentation by third parties, or other imprudent employee action.

The Superintendent or designee shall annually audit the District's financial and business operations for compliance with established internal controls and provide the results to the Board. The Board may from time-to-time engage a third party to audit internal controls in addition to the annual audit.

LEGAL REF.: 2 C.F.R. §200 et seq.
30 ILCS 708/, Grant Accountability and Transparency Act, implemented by 44 Ill. Adm. Code 7000 et seq.
105 ILCS 5/2-3.27, 5/2-3.28, 5/3-7, 5/3-15.1, 5/5-22, 5/10-21.4, 5/10-20.19, 5/10-22.8, and 5/17-1 et seq.
23 Ill. Admin. Code Part 100.

CROSS REF.: 4:10 (Fiscal and Business Management), 4:50 (Payment Procedures), 4:55 (Use of Credit and Procurement Cards), 4:90 (Student Activity and Fiduciary Funds)

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¹³ Unless specifically exempted, grantees receiving funds from any State agency, including ISBE, must comply with GATA and annually complete a *Fiscal and Administrative Internal Controls Questionnaire (ICQ)*. The ICQ covers a number of different topics related to internal controls. Districts that are identified as having one or more areas of elevated risk based on their answers to the ICQ, are required to develop and implement corrective action to address the area(s). Districts that fail to take necessary corrective action to address weak areas of internal control put their grant funding at risk. One of the sections of the ICQ addresses a grantee's internal controls for fraud, waste, and abuse, including whether the grantee has a *fraud awareness program*. See 4:80-AP1, *Checklist for Internal Controls*, and 4:80-AP2, *Fraud, Waste, and Abuse Awareness Program*, which incorporate ISBE-recommended practices related to fraud, waste, and abuse.

Operational Services

Transportation 1

The District shall provide free transportation for any student in the District who resides: (1) at a distance of one and one-half miles or more from his or her assigned school, unless the School Board has certified to the Illinois State Board of Education that adequate public transportation is available,² or (2) if adequate public transportation is not available, within one and one-half miles from his or her assigned school where walking to or from school or to or from a pick-up point or bus stop would constitute a *serious safety hazard* due to either (a) vehicular traffic or rail crossing or (b) a *course or pattern of criminal activity*, as defined in the Ill. Streetgang Terrorism Omnibus Prevention Act, 740

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¹ State law controls this policy's content. 105 ILCS 5/29-1 *et seq.* and 23 Ill.Admin.Code Part 120. **Important: The board of a district that does not provide transportation must amend this policy.** F/n 2 discusses when districts must provide free transportation. Please contact an IASB Policy Consultant for *gratis* help customizing this policy. You may also need to consult the board attorney.

A district that chooses to consider locations other than individual students' residences as pick-up and drop-off locations must adopt a policy establishing this practice to receive State reimbursement. 23 Ill.Admin.Code §120.30(a)(1)(B).

Each district must have a pre-trip and post-trip inspection policy. 625 ILCS 5/12-816(a). An Ill. State Board of Education (ISBE) rule requires boards to "institute policies and practices that promote the safety and well-being of school bus passengers." 23 Ill.Admin.Code §1.510(g). To comply with these requirements, this policy lists relevant administrative procedures at the end.

The policy does not address an *automatic traffic enforcement* system which may be enacted by a municipality or county. An *automatic traffic law enforcement system* is a device that senses and records a motor vehicle that illegally fails to stop for a school bus. 625 ILCS 5/11-208.9. Each school board within that municipality or county's jurisdiction may approve the system's implementation. The board is then required to enter into an intergovernmental agreement with the municipality or county and contract with vendors for the system's installation, maintenance, and operation. Each applicable school bus must be posted with a sign indicating that it is being monitored by an automated traffic law enforcement system. The proceeds from a school district's automated traffic law enforcement system's fines shall be divided equally between the school district and the municipality or county administering the automated traffic law enforcement system.

² The one and one-half miles distance is measured from the exit of the property where the student resides to the point where pupils are normally unloaded at the attendance center to which they are assigned. 105 ILCS 5/29-3; 23 Ill.Admin.Code §120.30(a)(1)(A). Only the following districts must provide free transportation as described in the sample policy: community consolidated districts, community unit districts, consolidated districts, consolidated high school districts, and combined school districts if the combined district includes any district that was previously required to provide transportation. 105 ILCS 5/29-3, amended by P.A. 100-1142, and 23 Ill.Admin.Code §1.510(a). Districts that are not required to provide free transportation may do so. *Id.* To qualify for State reimbursement, districts electing to provide transportation when they are not required to do so must afford the same service to all students in that same situation. 23 Ill.Admin.Code §1.510(b). Districts may provide transportation within one and one-half miles and may charge for such transportation. 105 ILCS 5/29-2.

Optional provision: (105 ILCS 5/29-3.1)

The District may provide transportation to and from school-sponsored activities and may charge for such transportation.

ILCS 147/.³ A student's parent(s)/guardian(s) may file a petition with the Board requesting transportation due to the existence of a serious safety hazard.⁴ Free transportation service and vehicle adaptation is provided for a special education student if included in the student's individualized educational program.⁵ Non-public school students shall be transported in accordance with State law.⁶ Homeless students shall be transported in accordance with Section 45/1-15 of the Education for Homeless Children Act.⁷ Foster care students shall be transported in accordance with Section 6312(c)(5)(B) of the Elementary and Secondary Education Act.⁸

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³ 105 ILCS 5/29-3, amended by P.A. 100-1142 and 23 Ill.Admin.Code §1.510. The determination as to what constitutes a *serious safety hazard* regarding vehicular traffic or rail crossings is made by the board, in accordance with guidelines issued by the Ill. Dept. of Transportation, in consultation with the State Superintendent of Education. The Ill. Streetgang Terrorism Omnibus Prevention Act defines *course or pattern of criminal activity* as two or more gang-related criminal offenses committed in whole or in part within Illinois when: (1) one or more of the offenses was committed after 1-25-13, (2) both offenses were committed within five years of each other; and (3) at least one offense involved a felony or forcible felony under the Ill. Criminal Code of 1961 or 2012. 740 ILCS 147/10. It also includes criminal defacement of property that includes a streetgang sign or symbol. Id. The determination as to what constitutes a *serious safety hazard* due to a *course or pattern of criminal activity* under 105 ILCS 5/29-3 is made by the board, in accordance with guidelines determined by local law enforcement, in consultation with the State Superintendent of Education. ISBE guidance on safety hazards due to criminal gang activity is available at: www.isbe.net/transportation.

⁴ Required by 105 ILCS 5/29-3, amended by P.A. 100-1142. Another statute provides a process for *qualifying students* to seek reimbursement from ISBE for *qualified transportation expenses*. 105 ILCS 5/29-5.2; 23 Ill.Admin.Code §120.240. 23 Ill.Admin.Code §120.230 requires, among other things, that each attendance center designate a representative to assist parents/guardians with this process. This process does not need to be in board policy and is not covered herein.

⁵ 34 C.F.R. §300.34 and 23 Ill.Admin.Code §226.750.

⁶ 105 ILCS 5/29-3.2 and 5/29-4.

⁷ 105 ILCS 45/ Education for Homeless Children Act. State law implements the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §11431 *et seq.*

~~P.A. 100-332~~ amended The School Code and the Education for Homeless Children Act to permit school districts to use their State transportation funds to provide financial assistance to children that are defined as homeless or *at risk of becoming homeless*, provided certain criteria are satisfied. 105 ILCS 5/29-5, amended by P.A. 102-539; 105 ILCS 45/1-17. Financial assistance may include: (1) mortgage or rental assistance that will allow a child to remain permanently in his/her living situation or obtain a new living situation; and/or (2) assistance with unpaid bills, loans, or other financial debts that result in housing being inadequate. 105 ILCS 45/1-17(a). For further detail; see 6:140-AP, *Education of Homeless Children*.

⁸ Required if the district receives Title I funds. 20 U.S.C. §6312(c)(5)(B). The Elementary and Secondary Education Act (ESEA) requires the district to collaborate with the State or local child welfare agency to develop and implement clear written procedures governing how transportation to maintain children in foster care in the school of origin (when in their best interest) will be provided, arranged, and funded for the duration of their time in foster care. ISBE guidance on transportation procedures for students in foster care is available at: www.isbe.net/Documents/Guidance_on_Foster_Care_Transportation_Procedures.pdf#search=guidance%20on%20transportation%20procedures%20for%20students. The U.S. Depts. of Education and Health and Human Services, in *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care* (6-23-16) at: www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatoreguide.pdf www.acf.hhs.gov/cb/policy-guidance/non-regulatory-guidance-ensuring-educational-stability-children-foster-care www.acf.hhs.gov/sites/default/files/documents/cb/ed_hhs_foster_care_guidance.pdf, opine that ESEA requirements apply to students who meet the definition of *foster care* set forth at 45 C.F.R. §1355.20(a):

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the title IV-E agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

ESEA foster care transportation requirements also apply to students *awaiting* foster care placement.

If a student is at a location within the District, other than his or her residence, for child care purposes at the time for transportation to and/or from school, that location may be considered for purposes of determining the one and one-half miles from the school attended. Unless the Superintendent or designee establishes new routes, pick-up and drop-off locations for students in day care must be along the District's regular routes. The District will not discriminate among types of locations where day care is provided, which may include the premises of licensed providers, relatives' homes, or neighbors' homes.⁹

Bus schedules and routes shall be determined by the Superintendent or designee and shall be altered only with the Superintendent or designee's approval and direction. In setting the routes, the pick-up and discharge points should be as safe for students as possible.¹⁰

No school employee may transport students in school or private vehicles unless authorized by the administration.¹¹

Every vehicle regularly used for the transportation of students must pass safety inspections in accordance with State law and Illinois Department of Transportation regulations.¹² The strobe light on a school bus may be illuminated only when the bus is actually being used as a school bus and (1) is stopping or stopped for loading or discharging students on a highway outside an urban area, or (2) is bearing one or more students.¹³ The Superintendent shall implement procedures in accordance with State law for accepting comment calls about school bus driving.¹⁴

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105 ILCS 5/10-20.59 added by P.A. 100-201, amended by P.A. 102-199, requires permits school boards to, by the beginning of the 2022-2023 school year, appoint at least one employee to act as a liaison to facilitate the enrollment and transfer of records of students in the legal custody of the Ill. Department of Children and Family Services (DCFS) when enrolling in or changing schools. Liaison responsibilities may include, among other things, working with DCFS to help students maintain their school placement, if appropriate.

⁹ This paragraph should be deleted if a district will not seek State reimbursement for transportation to and from locations other than individual students' residences. As a condition for receiving State reimbursement, an ISBE rule requires boards to have a policy with the provisions in this paragraph. 23 Ill.Admin.Code §120.30(a)(1)(B). This rule also contains the non-discrimination language.

¹⁰ The paragraph is optional. As an alternative, a board may state that pick-up and discharge points "should be as safe and convenient as possible."

¹¹ Optional. This presents an opportunity for each board to discuss this issue with the superintendent and direct the superintendent to include it in the curriculum for the required in-service on educator ethics, teacher-student conduct, and school employee-student conduct for all personnel. 105 ILCS 5/10-22.39. See 5:100, *Staff Development Program* (¶n 3), and 5:120, *Employee Ethics; Conduct; and Conflict of Interest* (¶n 2), for more detailed discussions. Include policies 5:100, *Staff Development Program*, and 5:120, *Employee Ethics; Conduct; and Conflict of Interest*, in the Cross References when this sentence is used.

¹² 625 ILCS 5/13-109. The vehicle and other requirements for transporting students to and from interscholastic or school-sponsored activities, including curriculum-related activities, are found in 105 ILCS 5/29-6.3 and 625 ILCS 5/11-1414.1. These statutes also contain requirements for the use of multi-function school activity buses (defined at 625 ILCS 5/1-148.3a-5). The legislature frequently amends these statutes, along with many transportation laws; they should be double-checked before relying on them.

¹³ 625 ILCS 5/12-815. The statute, like the policy, identifies the conditions in which illuminating the strobe light is permissible instead of mandating when they must be illuminated.

¹⁴ 625 ILCS 5/12-821(b) requires districts that own school buses and multifunction school activity buses to establish procedures for accepting comment calls and responding to them. In accordance with good governance principles, this duty is delegated to the superintendent. For a sample procedure, see 4:110-AP2, *Bus Driver Communication Devices; Pre-Trip and Post-Trip Inspection; Bus Driving Comments*.

All contracts for charter bus services must contain the clause prescribed by State law regarding criminal background checks for bus drivers. ¹⁵

Pre-Trip and Post-Trip Vehicle Inspection ¹⁶

The Superintendent or designee shall develop and implement a pre-trip and post-trip inspection procedure to ensure that the school bus driver: (1) tests the two-way radio or cellular radio telecommunication device and ensures that it is functioning properly before the bus is operated, and

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¹⁵ 105 ILCS 5/10-20.21a, requires all contracts for providing charter bus services to transport students to or from interscholastic athletic or interscholastic or school sponsored activities to contain clause (A) except that a contract with an out-of-state company may contain clause (B) or clause (A). The clause must be set forth in the contract's body in at least 12-point typeface and all upper case letters:

(A) "ALL OF THE CHARTER BUS DRIVERS WHO WILL BE PROVIDING SERVICES UNDER THIS CONTRACT HAVE, OR WILL HAVE BEFORE ANY SERVICES ARE PROVIDED:

(1) SUBMITTED THEIR FINGERPRINTS TO THE DEPARTMENT OF STATE POLICE IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT OF STATE POLICE. THESE FINGERPRINTS SHALL BE CHECKED AGAINST THE FINGERPRINT RECORDS NOW AND HEREAFTER FILED IN THE DEPARTMENT OF STATE POLICE AND FEDERAL BUREAU OF INVESTIGATION CRIMINAL HISTORY RECORDS DATABASES. THE FINGERPRINTING CHECK HAS RESULTED IN A DETERMINATION THAT THEY HAVE NOT BEEN CONVICTED OF COMMITTING ANY OF THE OFFENSES SET FORTH IN SUBDIVISION (C-1)(4) OF SECTION 6-508 OF THE ILLINOIS VEHICLE CODE; AND

(2) DEMONSTRATED PHYSICAL FITNESS TO OPERATE SCHOOL BUSES BY SUBMITTING THE RESULTS OF A MEDICAL EXAMINATION, INCLUDING TESTS FOR DRUG USE, TO A STATE REGULATORY AGENCY."

(B) "NOT ALL OF THE CHARTER BUS DRIVERS WHO WILL BE PROVIDING SERVICES UNDER THIS CONTRACT HAVE, OR WILL HAVE BEFORE ANY SERVICES ARE PROVIDED:

(1) SUBMITTED THEIR FINGERPRINTS TO THE DEPARTMENT OF STATE POLICE IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT OF STATE POLICE. THESE FINGERPRINTS SHALL BE CHECKED AGAINST THE FINGERPRINT RECORDS NOW AND HEREAFTER FILED IN THE DEPARTMENT OF STATE POLICE AND FEDERAL BUREAU OF INVESTIGATION CRIMINAL HISTORY RECORDS DATABASES. THE FINGERPRINTING CHECK HAS RESULTED IN A DETERMINATION THAT THEY HAVE NOT BEEN CONVICTED OF COMMITTING ANY OF THE OFFENSES SET FORTH IN SUBDIVISION (C-1)(4) OF SECTION 6-508 OF THE ILLINOIS VEHICLE CODE; AND

(2) DEMONSTRATED PHYSICAL FITNESS TO OPERATE SCHOOL BUSES BY SUBMITTING THE RESULTS OF A MEDICAL EXAMINATION, INCLUDING TESTS FOR DRUG USE, TO A STATE REGULATORY AGENCY."

¹⁶ 625 ILCS 5/12-816(a) requires school districts to have a school bus pre- and post-trip inspection policy with the components as contained in this policy. See also 23 Ill.Admin.Code §1.510(i)(3) and 92 Ill.Admin.Code §458.1030. For a sample procedure, see 4:110-AP2, *Bus Driver Communication Devices; Pre-Trip and Post-Trip Inspection; Bus Driving Comments*. School districts that contract with a private sector school bus company must require the company to have a pre- and post-trip inspection policy that is equivalent to this section of the policy. 625 ILCS 5/12-816(b).

Each school bus must contain an operating two-way radio or cellular radio telecommunication device while the school bus driver is in possession of a school bus. 625 ILCS 5/12-813.1(e). "Cellular radio telecommunication device" means a device capable of sending or receiving telephone communications without an access line for service and which requires the operator to dial numbers manually; it does not include citizens band radios or citizens band radio hybrids. 625 ILCS 5/12-813.1(a). The two-way radio or cellular radio telecommunication device must be turned on and adjusted in a manner that would alert the driver of an incoming communication request. 625 ILCS 5/12-813.1(e). A school bus driver may not operate a school bus while using a cellular radio telecommunication device except in the following situations: (1) in an emergency situation to communicate with an emergency response operator; a hospital; a physician's office or health clinic; an ambulance service; a fire department, fire district, or fire company; or a police department; (2) in the event of a "mechanical breakdown or other mechanical problem;" (3) to communicate with school authorities about bus operation or the safety of a passenger on the bus; and (4) when the bus is parked. 625 ILCS 5/12-813.1(c). However under no circumstances may the cellular radio telecommunication device be used for anything else including personal use. 625 ILCS 5/12-813.1(c)(2).

(2) walks to the rear of the bus before leaving the bus at the end of each route, work shift, or work day, to check the bus for children or other passengers in the bus.

LEGAL REF.: 20 U.S.C. §6312(c)(5)(B), Elementary and Secondary Education Act.
42 U.S.C. §11431 et seq., McKinney-Vento Homeless Assistance Act.
105 ILCS 5/10-22.22 and 5/29-1 et seq.
105 ILCS 45/1-15 and /1-17.
625 ILCS 5/1-148.3a-5, 5/1-182, 5/11-1414.1, 5/12-813.1, 5/12-815, 5/12-816,
5/12-821, and 5/13-109.
23 Ill.Admin.Code §§1.510 and 226.750; Part 120.
92 Ill.Admin.Code Part 440.

CROSS REF.: 4:170 (Safety), 5:100 (Staff Development Program), 5:120 (Employee Ethics;
Conduct; and Conflict of Interest), 5:280 (~~Educational Support Personnel~~
Duties and Qualifications), 6:140 (Education of Homeless Children), 6:170 (Title
I Programs), 7:220 (Bus Conduct)

ADMIN. PROC.: 4:110-AP2 (Bus Driver Communication Devices; Pre-Trip and Post-Trip
Inspection; Bus Driving Comments), 4:110-AP3 (School Bus Safety Rules),
4:110-E (Emergency Medical Information for Students Having Special Needs or
Medical Conditions Who Ride School Buses), 6:140-AP (Education of Homeless
Children)

Operational Services

Food Services 1

Good nutrition shall be promoted in the District's meal programs and in other food and beverages that are sold to students during the school day. The Superintendent shall manage a food service program that complies with this policy and is in alignment with School Board policy 6:50, *School Wellness*.

Food or beverage items sold to students as part of a reimbursable meal under federal law must follow the nutrition standards specified in the U.S. Dept. of Agriculture rules that implement the National School Lunch and Child Nutrition Acts. Schools being reimbursed for meals under these laws are *participating schools*.²

The food service program in participating schools shall comply with the nutrition standards specified in the U.S. Dept. of Agriculture's *Smart Snacks rules* when it offers competitive foods to students on the school campus during the school day.³ *Competitive foods* are all food and beverages that are offered by any person, organization or entity for sale to students on the school campus during the school day that are not reimbursed under programs authorized by federal law.⁴ The food service programs in participating schools shall also comply with any applicable mandates in the Illinois State Board of Education's School Food Service rules implementing these federal laws and the Ill. School Breakfast and Lunch Program Act.

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¹ State or federal law controls this policy's content. Districts that participate in programs under the National School Lunch Act and Child Nutrition Acts must establish policies and procedures as are necessary to ensure compliance with 7 C.F.R. §210.1(b).

The Ill. State Board of Education (ISBE) limits the sale of competitive food and beverages sold to students on the school campus of any school that participates in the School Breakfast Program or the National School Lunch Program, (23 Ill.Admin.Code §305.15(a)).

This policy's first sentence provides an opportunity for a school board to consider goals for the food service program and, if appropriate, amend the sentence. For example, a board may want to address the role of parents, alignment with curriculum, or the purpose of vending machines.

² 7 C.F.R. Parts 210 & 220.

³ Russell B. National School Lunch Act, 42 U.S.C. §1751 et seq., as amended by the Healthy Hunger-Free Kids Act of 2010 (P.L. 111-296); 7 C.F.R. §210.11(c).

⁴ 7 C.F.R. §210.11(a)(2); 23 Ill. Admin. Code §305.5.

All revenue from the sale of any food or beverages sold in competition with the School Breakfast Program or National School Lunch Program to students in food service areas during the meal period shall accrue to the nonprofit school lunch program account. ⁵

LEGAL REF.: 42 U.S.C. §1751 et seq., Russell B. National School Lunch Act, ~~42 U.S.C. §1751 et seq.~~
42 U.S.C. §1771 et seq., Child Nutrition Act of 1966, ~~42 U.S.C. §1771 et seq.~~
7 C.F.R. Parts 210 and 220, Food and Nutrition Service.
105 ILCS 125/.
23 Ill.Admin.Code Part 305, School Food Service.

CROSS REF.: 4:130 (Free and Reduced-Price Food Services), 6:50 (School Wellness)

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⁵ This paragraph addresses the federal *requirements for competitive food* in 7 C.F.R. §210.11(b). This rule requires state agencies (ISBE) and/or [school districts] to “establish such policies and procedures as are necessary to ensure compliance with [the federal rules]. State agencies and/or [school districts] may impose additional restrictions on competitive foods... .” ISBE’s implementing rule, 23 Ill.Admin.Code §305.15(e), imposes additional restrictions by requiring “the revenue from any food or beverage meeting the competitive food standards sold to students in food service areas during the meal period accrue to the nonprofit school lunch program account.”

Operational Services

Facility Management and Building Programs 1

The Superintendent shall manage the District's facilities and grounds as well as facility construction and building programs in accordance with the law, the standards set forth in this policy, and other applicable School Board policies. The Superintendent or designee shall facilitate: (1) inspections of schools by the Regional Superintendent and State Fire Marshal or designee, (2) review of plans and specifications for future construction or alterations of a school if requested by the relevant municipality, county (if applicable), or fire protection district, and (3) compliance with the 10-year safety survey process required by the School Code.²

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

¹ Each district with a school having 50 or more students must have a green school cleaning policy. Green Cleaning Schools Act, 105 ILCS 140/10. See policy 4:160, *Environmental Quality of Buildings and Grounds*, which fulfills the requirement to have a procedure on compliance with the Chemical Safety Acts. 105 ILCS 5/10-20.49. Many other State and federal laws control facility management and building programs. Good subjects for administrative procedures include management of custodial services, security, and green cleaning, among others.

The federal rules implementing the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §12101 *et seq.*) prohibit discrimination on the basis of disability in services and facilities. 28 C.F.R. Parts 35 and 36. The 2010 ADA Standards for Accessible Design (28 C.F.R. Part 36, Appendix) are available from a link on the ADA home page, www.ada.gov/. Consult the board attorney about how these standards apply to alterations and new construction.

The Prevailing Wage Act (PWA) is generally applicable to all construction projects. 820 ILCS 130/~~amended by P.A. 100-1177~~. It requires, among other things, that: (1) all workers on a public works project be paid no less than the prevailing hourly rate (820 ILCS 130/1); (2) the district specify in all public works contracts that the prevailing rate must be paid (820 ILCS 130/4(e), ~~amended by P.A. 100-1177~~); and (3) all contractors must submit certain employment records, including certified payrolls, to the Ill. Dept. of Labor (IDOL) through its online portal (www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/Prevailing-Wage-Portal.aspx). Since the activation of the IDOL database in April 2020, the PWA no longer requires districts to keep these records for past or future public works projects. 820 ILCS 130/5, ~~amended by P.A. 100-1177~~. However, districts may still need to maintain employment records received from public works contractors prior to the IDOL database activation to comply with the Local Records Act (50 ILCS 205/). Consult the board attorney for guidance in this area.

105 ILCS 5/10-20.63, added by P.A. 100-163 and 102-340, requires school districts to make menstrual feminine hygiene products (defined as tampons and sanitary napkins for use in connection with the menstrual cycle) available, at no cost to students, in the bathrooms of every school buildings that is open for student use serving students in grades 4-6 through 12 during the regular school day. **Note:** The statute does not delineate between types of bathrooms (student, staff, girls, boys, unisex, etc.). Consult with the board attorney about implementing this law.

410 ILCS 35/25, added by P.A. 101-165, requires schools to identify all single-occupancy restrooms as all-gender and designated for use by no more than one person at a time or for family or assisted use. All single-occupancy restrooms must have an exterior sign that marks it as a restroom and does not indicate any specific gender, e.g., signage which reads *all genders*. *Id.* at 35/20 and 35/25. It is unclear if this law will apply only to those restrooms made available to members of the public in schools, or if it will also include facilities designated as employee-only. The Ill. Dept. of Public Health enforces this requirement and may issue regulations to address this issue.

² 105 ILCS 5/2-3.12, 105 ILCS 5/3-14.20, and 5/3-14.21, ~~amended by P.A. 100-465~~.

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

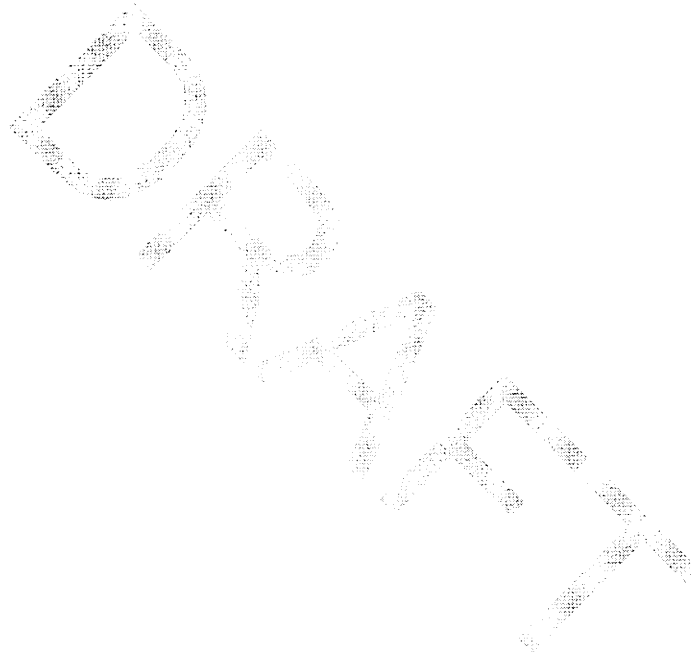
105 ILCS 5/2-3.12 and 23 Ill. Admin. Code Part 180 contain the school building code and Health/Life and Safety Code for Public Schools (HLS Code), respectively. The board must hire a licensed architect or engineer to conduct a decennial inspection of its school buildings and produce a ten-year safety survey report, which is submitted to the Regional Superintendent (ROE) or Intermediate Service Center (ISC) and the State Superintendent for approval. The board must also report to the ROE or ISC annually on its completion of the report recommendations to comply with the HLS Code. See the Health Life Safety Handbook at www.isbe.net/Pages/Health-and-Life-Safety.aspx for more information about the safety survey process.

Standards for Managing Buildings and Grounds

All District buildings and grounds shall be adequately maintained in order to provide an appropriate, safe, and energy efficient physical environment for learning and teaching. The Superintendent or designee shall provide the Board with periodic reports on maintenance data and projected maintenance needs that include cost analysis. Prior Board approval is needed for all renovations or permanent alterations to buildings or grounds when the total cost will exceed \$12,500, including the cost equivalent of staff time.³ This policy is not intended to discourage efforts to improve the appearance of buildings or grounds that are consistent with the designated use of those buildings and grounds.

Standards for Green Cleaning ⁴

For each District school with 50 or more students, the Superintendent or designee shall establish and supervise a green cleaning program that complies with the guidelines established by the Illinois Green Government Coordinating Council.



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

³This provision is optional and the amount may be changed. The \$12,500 spending limit is one-half of the bidding threshold for purchases or contracts. 105 ILCS 5/10-20.21. This provision's intent is to ensure that the board is kept informed about significant renovations and permanent alterations. A board should discuss this provision with its superintendent before including it in the policy.

⁴ Required by the Green Cleaning Schools Act (105 ILCS 140/) and Green Cleaning for Elementary and Secondary Schools (23 Ill.Admin.Code Part 2800). The Ill. Green Government Coordinating Council established *Guidelines and Specifications for the Green Cleaning Schools Act* which state: "While not mandatory, schools should implement the practices set forth in the Recommendations section of these guidelines where applicable and appropriate." See *Guidelines and Specifications for the Green Cleaning Schools Act* at: www.newsonline.com/wp-content/uploads/2014/05/Illinois-GreenCleanFinalGuidelines.pdf.

Standards for Facility Construction and Building Programs ⁵

As appropriate, the Board will authorize a comprehensive study to determine the need for facility construction and expansion. On an annual basis, the Superintendent or designee shall provide the Board with projected facility needs, enrollment trends, and other data impacting facility use. Board approval is needed for all new facility construction and expansion.

When making decisions pertaining to design and construction of school facilities, the Board will confer with members of the staff and community, the Ill. State Board of Education, and educational and architectural consultants, as it deems appropriate. The Board's facility goals are to:

1. Integrate facilities planning with other aspects of planning and goal-setting.
2. Base educational specifications for school buildings on identifiable student needs.
3. Design buildings for sufficient flexibility to permit new or modified programs.
4. Design buildings for maximum potential for community use.
5. Meet or exceed all safety requirements.
6. Meet requirements on the accessibility of school facilities to disabled persons as specified in State and federal law.
7. Provide for low maintenance costs, energy efficiency, and minimal environmental impact.

Naming Buildings and Facilities ⁶

Recognizing that the name for a school building, facility, or ground or field reflects on its public image, the Board's primary consideration will be to select a name that enhances the credibility and

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

⁵ The inclusion and identification of the facility goals listed in the second paragraph are at the board's discretion.

After 1-1-15, all "new school building construction" must include a storm shelter that meets or exceeds the ICC/NSSA Standard for the Design and Construction of Storm Shelters (ICC-500) published jointly by the International Code Council and the National Storm Shelter Association. 105 ILCS 5/2-3.12(e-5); 23 Ill.Admin.Code §180.60(b)(3). Any facility project for which the design contract is executed after 7-1-16 must meet standards of the 2015 International Building Code and its subcodes. 23 Ill.Admin.Code §180.60(a).

The Ill. Environmental Barriers Act (IEBA) (410 ILCS 25/) and the Ill. Accessibility Code (IAC) (71 Ill.Admin.Code Part 400) ensure that "the built environment in the State of Illinois is designed, constructed, and altered to be accessible to and usable by all, including individuals with disabilities." 71 Ill.Admin.Code §400.110(a). **Note:** Press boxes constructed on school property do not have to comply with the IAC if the press boxes are in bleachers that have points of entry at only one level, and the aggregate area of the press box is no more than 500 square feet. 105 ILCS 5/10-20.51; 23 Ill.Admin.Code 180.60(b)(4).

A building intended for classroom or instructional use may be constructed only after voter approval at a referendum unless the building is: (1) leased by the district, or (2) purchased with funds from the sale or disposition of other buildings or structures, or with funds received as a grant under the School Construction Law or as a gift, provided that no funds (other than lease payments) are derived from the district's bonded indebtedness or its tax levy. 105 ILCS 5/10-22.36, amended by P.A. 101-455.

A district may levy a tax for "fire prevention, safety, energy conservation, disabled accessibility, school security, and specified repair purposes." 105 ILCS 5/17-2.11. An expedited process may be available in emergency situations. 105 ILCS 5/17-2.11(a). A district may levy a tax or issue bonds if it determines: (1) it is necessary for school security purposes and the protection and safety of students and staff to hire a school resource officer, or that personnel costs for school counselors, mental health experts, or school resources officers are necessary; and (2) it does not need funds for any other purpose set forth in 105 ILCS 5/17-2.11(d), amended by P.A. 101-455. The flexibility for a board to may, subject to certain notice requirements, transfer surplus life safety taxes and interest earnings on them to the Operations and Maintenance Fund for building repair work expired on June 30, 2021 and was not renewed. 105 ILCS 5/17-2.11(j), amended by P.A.s 100-465 and 101-643.

The Green Buildings Act requires all new State-funded building construction and major renovation projects to meet specified environmental requirements. 20 ILCS 3130/. Waivers may be granted by the Capital Development Board in certain situations. 20 ILCS 3130/15(e). For environmental impact laws, see policy 4:160, *Environmental Quality of Buildings and Grounds*.

⁶ This section is optional and its contents are at the board's discretion.

stature of the school or facility. Any request to name or rename an existing facility should be submitted to the Board. When a facility is to be named or renamed, the Board President will appoint a special committee to consider nominations and make a recommendation, along with supporting rationale, to the Board.⁷ The Board will make the final selection. The Superintendent or designee may name a room or designate some area on a school's property in honor of an individual or group that has performed outstanding service to the school without using the process in this policy.

LEGAL REF.: 42 U.S.C. §12101 *et seq.*, Americans with Disabilities Act of 1990, implemented by 28 C.F.R. Parts 35 and 36.
20 ILCS 3130/, Green Buildings Act.
105 ILCS 5/2-3.12, 5/10-20.49, 5/10-22.36, 5/10-20.63, and 5/17-2.11.
105 ILCS 140/, Green Cleaning Schools Act.
105 ILCS 230/, School Construction Law.
410 ILCS 25/, Environmental Barriers Act.
410 ILCS 35/25, Equitable Restrooms Act.
820 ILCS 130/, Prevailing Wage Act.
23 Ill.Admin.Code Part 151, School Construction Program; Part 180, Health/Life Safety Code for Public Schools; and Part 2800, Green Cleaning for Elementary and Secondary Schools.
71 Ill.Admin.Code Part 400, Ill. Accessibility Code.

CROSS REF.: 2:150 (Committees), 2:170 (Procurement of Architectural, Engineering, and Land Surveying Services), 4:60 (Purchases and Contracts), 8:70 (Accommodating Individuals with Disabilities)

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

⁷ If the board wants to include criteria for the committee, insert the following:

“The committee will:

1. Encourage input from the community, staff members, and students.
2. Give consideration to names of local communities, neighborhoods, streets, landmarks, history of the area, and individuals who have made a contribution to the District, community, State, or nation.
3. Ensure that the name will not duplicate or cause confusion with the names of existing facilities in the District.”

11. First Reading of Revised Board of Education Policy 4:60, Purchases and Contracts

54

Recommended Motion: that the Board of Education accept for first reading revised Board of Education policies for Operational Services Sections 4:60, Purchases and Contracts. **See Attachment No. 9.**

TO: Members of the Board of Education

FROM: Dave McDermott, Chief Financial Officer *DMC*

DATE: January 6, 2022

SUBJECT: Approve Updated Board Policy - Section 4:60, Purchases and Contracts

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: That the Board of Education approve the updated Board Policies.

Facts: In the continuing quest to update the District's Board Policies, attached is a portion of Section 4 with suggested changes based on PRESS recommendations. Administration has reviewed and is requesting the Board accept updates for Operational Services Section 4:60, Purchases and Contracts. The policy, references and footnotes are updated in response to the Coal Tar Sealant Disclosure Act, 410 ILCS 170/, added by P.A. 102-242, and for continuous improvement related to federal awards and the Grant Accountability and Transparency Act (GATA), 30 ILCS 708/. Recall the underlined text represents suggested new additions; whereas, the strikethrough text represents suggested deletions.

Cost: None.

Recommended Motion: That the Board of Education accept for first reading revised Board of Education policies for Operational Services Sections 4:60, Purchases and Contracts.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

Operational Services

Purchases and Contracts 1

The Superintendent shall manage the District’s purchases and contracts in accordance with State law, the standards set forth in this policy, and other applicable School Board policies.

Standards for Purchasing and Contracting

All purchases and contracts shall be entered into in accordance with applicable federal and State law. The Board Attorney shall be consulted as needed regarding the legal requirements for purchases or contracts. All contracts shall be approved or authorized by the Board.

All purchases and contracts should support a recognized District function or purpose as well as provide for good quality products and services at the lowest cost, with consideration for service, reliability, and delivery promptness, and in compliance with State law.² No purchase or contract shall be made or entered into as a result of favoritism, extravagance, fraud, or corruption.

Adoption of the annual budget authorizes the Superintendent or designee to purchase budgeted supplies, equipment, and services, provided that State law is followed. Purchases of items outside budget parameters require prior Board approval, except in an emergency.³

When presenting a contract or purchase for Board approval, the Superintendent or designee shall ensure that it complies with applicable federal and State law, including but not limited to, those specified below:

1. Supplies, materials, or work involving an expenditure in excess of \$25,000 must comply with the State law bidding procedure, 105 ILCS 5/10-20.21, unless specifically exempted.⁴
2. Construction, lease, or purchase of school buildings must comply with State law and Board policy 4:150, *Facility Management and Building Programs*.
3. Guaranteed energy savings must comply with 105 ILCS 5/19b-1 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 law controls this policy’s content. 105 ILCS 5/10-20.21, amended by P.A. 101-570, contains bidding plus other requirements. Other laws also govern district contracts. For example, the Prevailing Wage Act requires, among other things, that a district specify in all contracts for public works that the prevailing wage rate must be paid. 820 ILCS 130/. When a district awards work to a contractor without a public bid, contract, or project specification, the district must provide the contractor with written notice on the purchase order or a separate document indicating that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work on the project. In addition, the district must notify all contractors of any rate changes by the Ill. Dept. of Labor (IDOL). 820 ILCS 130/4(a-2). The law allows a district to discharge this duty by including the following language in all contracts: “Any prevailing rate of wages as they are revised by the Ill. Dept. of Labor (IDOL) shall apply to this contract. You are notified that any rate changes to the prevailing wage rate are available on IDOL’s official website.” 820 ILCS 130/4(l). See 4:60-E, *Notice to Contractors*, for sample language.

² This end statement should be amended according to local board discretion.

³ An optional addition follows: “Notwithstanding the above, the Superintendent shall not commit to any single, non-customary purchase or expenditure, excluding personnel, of greater than \$ _____ without prior Board approval.” This optional provision’s intent is to provide an internal control as well as to keep the board involved when the district is making a large purchase or expenditure, e.g., copiers, computers, textbooks, or something that might not happen every year. It is intended to cover purchases/expenditures regardless of whether they were previously budgeted.

⁴ See 4:60-API, *Purchases*, for bidding exemptions and the requirements for electronic bid opening. A board may set a lower bidding threshold by policy but should first seek its attorney’s advice because such action may expand a board’s vulnerability to a bidding challenge.

4. Third party non-instructional services must comply with 105 ILCS 5/10-22.34c.⁵
5. Goods and services that are intended to generate revenue and other remunerations for the District in excess of \$1,000, including without limitation vending machine contracts, sports and other attire, class rings, and photographic services, must comply with 105 ILCS 5/10-20.21(b-5). The Superintendent or designee shall keep a record of: (1) each vendor, product, or service provided, (2) the actual net revenue and non-monetary remuneration from each contract or agreement, and (3) how the revenue was used and to whom the non-monetary remuneration was distributed. The Superintendent or designee shall report this information to the Board by completing the necessary forms that must be attached to the District's annual budget.⁶
6. Any contract to purchase food with a bidder or offeror must comply with 105 ILCS 5/10-20.21(b-10).⁷
7. The purchase of paper and paper products must comply with 105 ILCS 5/10-20.19c and Board policy 4:70, *Resource Conservation*.⁸
8. Each contractor with the District is bound by each of the following:
 - a. In accordance with 105 ILCS 5/10-21.9(f): (1) prohibit any of its employees who is or was found guilty of a criminal offense listed in 105 ILCS 5/10-21.9(c) and 5/21B-80(c)⁹ to have direct, daily contact at a District school or school-related activity with one or more student(s); (2) prohibits any of the contractor's employees from having direct, daily contact with one or more students if the employee was found guilty of any offense in 5/21B-80(b) (certain drug offenses) until seven years following the end of the employee's sentence for the criminal offense;¹⁰ and (3) require each of its employees who will have direct, daily contact with student(s) to cooperate during the District's fingerprint-based criminal history records check on him or her.¹¹
 - b. In accordance with 105 ILCS 5/24-5: (1) concerning each new employee of a contractor that provides services to students or in schools, provide the District with evidence of physical fitness to perform the duties assigned and freedom from communicable disease if the employee will have direct, daily contact with one or more student(s); and (2) require any new or existing employee who has and will have direct, daily contact with one or more student(s) to complete additional health examinations as required by the District and be subject to additional health examinations, including tuberculosis

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

⁵ Concerning collective bargaining requirements, see *McLean Co. Unit Dist. 5 v. AFSCME & IELRB*, 12 N.E.2d 120 (4th Dist. 2014) (good faith bargaining on the decision to subcontract requires notice of the consideration of the subcontract before it is finalized; meeting with the union to provide an opportunity to discuss and explain the decision; providing information to the union; and giving consideration to any counterproposal the union makes).

⁶ 105 ILCS 5/10-20.21(b-5).

⁷ 105 ILCS 5/10-20.21(b-10).

⁸ 105 ILCS 5/10-20.19c.

⁹ 105 ILCS 5/10-21.9(c), amended by P.A. 101-531; 105 ILCS 5/21B-80(c), amended by P.A. 101-531.

¹⁰ *Id.*

¹¹ The implementation process is in 4:60-AP3, *Criminal History Records Check of Contractor Employees*. See 5:30-AP2, *Investigations*, for a list of offenses which disqualify an individual from having direct, daily contact with one or more students until seven years following the end of the individual's sentence for the criminal offense.

screening, as required by the Ill. Department of Public Health rules or order of a local health official. ¹²

9. After 1-1-23, any pavement engineering project using a coal tar-based sealant product or high polycyclic aromatic hydrocarbon sealant product for pavement engineering-related use must comply with the Coal Tar Sealant Disclosure Act. ¹³

10. Purchases made with federal or State awards must comply with 2 C.F.R. Part 200 and 30 ILCS 708/, as applicable, and any terms of the award. ¹⁴

The Superintendent or designee shall: (1) execute the reporting and website posting mandates in State law concerning District contracts, and (2) monitor the discharge of contracts, contractors' performances, and the quality and value of services or products being provided. ¹⁵

LEGAL REF.: 2 C.F.R. Part 200,
105 ILCS 5/10-20.19c, 5/10-20.21, 5/10-21.9, 5/10-22.34c, 5/19b-1 et seq., and
5/24-5.
30 ILCS 708/, Grant Accountability and Transparency Act.
410 ILCS 170/, Coal Tar Sealant Disclosure Act.
820 ILCS 130/, Prevailing Wage Act.

CROSS REF.: 2:100 (Board Member Conflict of Interest), 4:70 (Resource Conservation), 4:150 (Facility Management and Building Programs), 4:175 (Convicted Child Sex Offender; Screening; Notifications)

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

¹² 105 ILCS 5/24-5, amended by P.A. 101-81. P.A. 98-716, effective 7-16-14, expanded the scope of 105 ILCS 5/24-5 by adding a definition of *employee* that includes contractors' employees for whom a criminal history records check is required. Since Aug. 2014, the Ill. Dept. of Public Health (IDPH) has not required school employees to be screened for tuberculosis other than workers in child day care and preschool settings. 77 Ill.Admin.Code §696.140(a)(3). Before requesting a contractor's employee for a health examination, contact the board attorney concerning this action's legality under other personnel laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.).

¹³ 410 ILCS 170/10(b), added by P.A. 102-242, eff. 1-1-23.

¹⁴ 2 C.F.R. §§200.318-200.327; 30 ILCS 708/. The Grant Accountability and Transparency Act (GATA) adopts the federal uniform guidance for all grants, unless the Office of the Governor grants an exception. 30 ILCS 708/55: 44 Ill.Admin.Code §7000.60. For information about the scope of GATA as it pertains to grants administered by ISBE, see www.isbe.net/gata.

¹⁵ This is an optional provision. The numerous reporting and website posting mandates are in 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*. As an alternative to the policy's default language, a board may insert the underscored:

The Superintendent or designee shall: (1) execute the reporting and website posting mandates in State law concerning District contracts and maintain a status report for monthly presentation to the Board, and (2) monitor the discharge of contracts, contractors' performances, and the quality and value of services or products being provided.

12. First Reading of Revised Board of Education Policy 4:160, Environmental Quality of Buildings and Grounds

59

Recommended Motion: that the Board of Education accept for first reading revised Board of Education policies for Operational Services sections 4:160 - Environmental Quality of Buildings and Grounds. **See Attachment No. 10.**

TO: Members of the Board of Education

FROM: Dave McDermott, Chief Financial Officer *DMC*

DATE: January 6, 2022

SUBJECT: Approve Updated Board Policy -
Section 4:160, Environmental Quality of Buildings and Grounds

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: That the Board of Education approve the updated Board Policies.

Facts: In the continuing quest to update the District's Board Policies, attached is a portion of Section 4 with suggested changes based on PRESS recommendations. Administration has reviewed and is requesting the Board accept updates for Operational Services Section 4:160, Environmental Quality of Buildings and Grounds. The policy, references and footnotes are updated in response to:

1. The Coal Tar Sealant Disclosure Act 410 ILCS 170/, added by P.A. 102-242, eff. 1-1-23;
2. The Illinois Pesticide Act 415 ILCS 60/14 3.F., amended by P.A. 102-548; and
3. Continuous improvement; footnote 1 now references that 40 C.F.R. 763.93(g)(4) and 77 Ill.Admin.Code 855.300(a)(3) require annual notice to parents and employees of the availability of the district's asbestos management plan, along with a reference to the (Ill Principals Associations) IPA model handbook service.

Recall the underlined text represents suggested new additions; whereas, the strikethrough text represents suggested deletions.

Cost: None.

Recommended Motion: That the Board of Education accept for first reading revised Board of Education policies for Operational Services Sections 4:160, Environmental Quality of Buildings and Grounds.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

Operational Services

Environmental Quality of Buildings and Grounds 1

The Superintendent shall take all reasonable measures to protect: (1) the safety of District personnel, students, and visitors on District premises from risks associated with hazardous materials, and (2) the environmental quality of the District's buildings and grounds. ²

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

¹ State and/or federal law control this policy's content and require districts to:

1. Have a procedure to comply with the Structural Pest Control Act (225 ILCS 235/) and the Lawn Care Products Application and Notice Act (415 ILCS 65/). See 4:160-AP, *Environmental Quality of Buildings and Grounds*.
2. Designate a staff person to be responsible for district compliance with the safety acts listed in #1 above. This policy designates the superintendent or designee.

Many State and federal laws regulate the environmental quality of schools. For example:

1. Several federal laws regulate asbestos as a hazardous substance, the most significant for schools being the Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. § 2641 *et seq.* The Asbestos Abatement Act, 105 ILCS 105/, requires schools to perform a variety of functions regarding asbestos. Federal and State regulations also require annual notice to parents and employees of the availability of the district's asbestos management plan. 40 C.F.R. §763.93(e)(4); 77 Ill.Admin.Code §855.300(a)(3). This can be inserted in student handbooks; the Ill. Principals Association (IPA) maintains a handbook service that coordinates with PRESS material. Online Model Student Handbook (MSH), at: www.ilprincipals.org/resources/model-student-handbook.
2. The Indoor Air Quality Act, 410 ILCS 87/. The Ill. Dept. of Public Health Guidelines for Indoor Air Quality are advisory, i.e., not enforceable. See www.idph.state.il.us/envhealth/factsheets/indoorairqualityguide_fs.htm.
3. The Smoke-Free Illinois Act, 410 ILCS 82/, bans tobacco smoking inside schools.
4. The Structural Pest Control Act, 225 ILCS 235/ requires the Ill. Dept. of Public Health to establish guidelines for an integrated pest management program for schools. See www.idph.state.il.us/envhealth/ipm/index.htm, or www.idph.state.il.us/envhealth/entpestfshts.htm.
5. Notices to employees and parents/guardians before pesticide applications are required by the Structural Pest Control Act. 225 ILCS 235/10.3. The Lawn Care Products Application and Notice Act requires similar notices but only to parents/guardians. 415 ILCS 65/3.
6. The Green Cleaning School Act, 105 ILCS 140/, and Green Cleaning for Elementary and Secondary Schools, 23 Ill.Admin.Code Part 2800, contain guidelines for green cleaning. See policy 4:150, *Facility Management and Building Programs*.
7. The Green Buildings Act requires all new State-funded building construction and major renovation projects to meet specified environmental requirements. 20 ILCS 3130/. Waivers may be granted by the Capital Development Board in certain situations. *Id.*
8. The Ill. legislature recommended that each occupied school building be tested every five years for radon and provided a process for the screening in 105 ILCS 5/10-20.48.
Employers must provide all employees with an education and training program with respect to all toxic substances to which an employee is routinely exposed while working. 820 ILCS 255/16; 23 Ill.Admin.Code §1.330. However, this section and most of the Toxic Substances Disclosure to Employees Act (820 ILCS 255/) are **inoperative**; its implementing rules (56 Ill.Admin.Code Part 205) were repealed. Instead, the Ill. Dept. of Labor enforces the federal Occupational Safety and Health Administration Hazard Communication Standards at 29 C.F.R. §1910.1200. 820 ILCS 255/1.5. Thus, school districts must follow the federal disclosure and training requirements.

² A board persuaded by #8 in the above footnote may add the following option:

If economically feasible, the Superintendent or designee shall manage the testing of each occupied school building for radon pursuant to Section 10-20.48 of the School Code.

A board may want to add the following option if it is concerned that employees who are eligible for district-paid hepatitis B vaccination are unaware of their eligibility:

The Superintendent or designee shall notify all employees who must be offered, according to State or federal law, District-paid hepatitis B vaccine and vaccination.

Pesticides

Restricted use pesticides will not be applied on or within 500 feet of school property during normal school hours.³ Before pesticides are used on District premises, the Superintendent or designee shall notify employees and parents/guardians of students as required by the Structural Pest Control Act, 225 ILCS 235/, and the Lawn Care Products Application and Notice Act, 415 ILCS 65/.⁴

Coal Tar Sealant⁵

Beginning on 1-1-23, before coal tar-based sealant products or high polycyclic aromatic hydrocarbon sealant products are used on District premises, the Superintendent or designee shall notify employees and parents/guardians of students in writing or by telephone as required by the Coal Tar Sealant Disclosure Act.

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

³ 415 ILCS 60/14 3.F., amended by P.A. 102-548. Normal school hours means Monday through Friday from 7 a.m. until 4 p.m., excluding days when classes are not in session. The statute prohibits restricted pesticide applications during normal hours but defines normal school hours. This policy uses normal school hours. State Restricted Pesticide Use is defined as any pesticide use which the Director (Ill. Dept. of Agriculture or his or her authorized representative) determines, subsequent to public hearing, that an additional restriction for that use is needed to prevent unreasonable adverse effects. Id. at 60/4 36.

⁴ Different requirements pertain to the notices in the Structural Pest Control Act (225 ILCS 235/10.3) and the Lawn Care Products Application and Notice Act (415 ILCS 65/3(f)). Both require notice to parents/guardians. Notice to employees is only required by the Structural Pest Control Act. For the sake of simplicity, the sample policy requires notice to employees before pesticides are used. Notice at least four business days before application is required by Lawn Care Products Application and Notice Act; notice at least two business days is required by the Structural Pest Control Act; and the Illinois Pesticide Act (415 ILCS 60/14 3.F., amended by P.A. 102-548) makes it unlawful to apply a restricted use pesticide on or within 500 feet of school property during normal hours, except for whole structure fumigation, and if the pesticide application information listed on the pesticide label is more restrictive than the law, then the more restrictive provision applies.

If a registry is maintained, replace the last sentence with this alternative:

The Superintendent or designee shall maintain a registry of employees and parents/guardians of students requesting notification before the application of pesticide(s) and notify those people as required by the Structural Pest Control Act, 225 ILCS 235/, and the Lawn Care Products Application and Notice Act, 415 ILCS 65/.

Be sure the notice provisions in the policy and its implementing administrative procedure are consistent.

⁵ 410 ILCS 170(a)(1)-(4), added by P.A. 102-242, eff. 1-1-23, requires schools to provide written or telephonic notification to employees and parents/guardians of students prior to any application of a coal tar-based sealant product or a high polycyclic aromatic hydrocarbon sealant product. Written notifications must: (1) be included in newsletters, bulletins, calendars, or other correspondence currently published by the district (this is the only prong of written notice that is permissive); (2) be given at least 10 business days before the application and should identify the intended date and location of the application of the coal tar-based sealant product or high polycyclic aromatic hydrocarbon sealant; (3) include the name and telephone contact number for the school or day care center (if the district has one) personnel responsible for the application; and (4) include any health hazards associated with coal tar-based sealant product or high polycyclic aromatic hydrocarbon sealant product, as provided by a corresponding safety data sheet.

Districts may want to include numbers (3) and (4) in their student handbooks. The IPA maintains a handbook service that coordinates with PRESS material. Online Model Student Handbook (MSH), at: www.ilprincipals.org/resources/model-student-handbook.

LEGAL REF.: 105 ILCS 5/10-20.17a; 5/10-20.48.
29 C.F.R. §1910.1030, Occupational Exposure to Bloodborne Pathogens, as adopted by the Illinois Department of Labor, 56 Ill.Admin.Code §350.700(b).
29 C.F.R. §1910.1200, Occupational Safety and Health Administration Hazard Communication Standards, as adopted by 820 ILCS 255/1.5, Toxic Substances Disclosure to Employees Act.
20 ILCS 3130/, Green Buildings Act.
~~405 ILCS 5/10-20.17a; 5/10-20.48.~~
105 ILCS 135/, Toxic Art Supplies in Schools Act.
105 ILCS 140/, Green Cleaning School Act.
225 ILCS 235/, Structural Pest Control Act.
415 ILCS 60/14, Illinois Pesticide Act.
415 ILCS 65/, Lawn Care Products Application and Notice Act.
410 ILCS 170/, Coal Tar Sealant Disclosure Act.
820 ILCS 255/, Toxic Substances Disclosure to Employees Act. (*inoperative*)
23 Ill.Admin.Code §1.330.


CROSS REF.: 4:150 (Facility Management and Building Programs), 4:170 (Safety)

13. First Reading of New Board of Education Policy 4:165, Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors

64

Recommended Motion: that the Board of Education accept for first reading revised Board of Education policies for Operational Services Sections 4:165, Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors. **See Attachment No. 11.**

TO: Members of the Board of Education

FROM: Dave McDermott, Chief Financial Officer 

DATE: January 6, 2022

SUBJECT: Approve Updated Board Policy - Section 4:165, Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors

Reason for Board Consideration: The Board of Education approves updated Board Policy.


Action Necessary: That the Board of Education approve the updated Board Policies.

Facts: In the continuing quest to update the District's Board Policies, attached is a portion of Section 4 with suggested changes based on PRESS recommendations. Administration has reviewed and is requesting the Board accept updates for Operational Services Sections for **NEW** 4:165, Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors. This policy is created in response to 105 ILCS 5/10-23.13 (*Erin's Law*), amended by P.A. 102-610, requiring districts to adopt and implement a policy addressing sexual abuse of children that includes as age-appropriate and evidence-informed curriculum for pre-K-12 students, evidence-informed training for school personnel on child sexual abuse, and evidence-informed educational information for parents/guardians in school handbooks.

Cost: None.

Recommended Motion: That the Board of Education accept for first reading revised Board of Education policies for Operational Services Sections 4:165, Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

Operational Services

Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors 1

Child sexual abuse and grooming behaviors harm students, their parents/guardians, the District's environment, its school communities, and the community at large, while diminishing a student's ability to learn. The Board has a responsibility and obligation to increase awareness and knowledge of:² (1) issues regarding child sexual abuse, (2) likely warning signs that a child may be a victim of sexual abuse, (3) grooming behaviors related to child sexual abuse and grooming, (4) how to report child sexual abuse, (5) appropriate relationships between District employees and students based upon State law, and (6) how to prevent child sexual abuse.

To address the Board's obligation to increase awareness and knowledge of these issues, prevent sexual abuse of children,³ and define prohibited grooming behaviors,⁴ the Superintendent or designee shall implement an Awareness and Prevention of Sexual Abuse and Grooming Behaviors Program. The Program will:

1. Educate students with:

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

¹ Required by *Erin's Law*, 105 ILCS 5/10-23.13, amended by P.A. 102-610. Also infused into this policy are concepts from HB 1975 text, which did not pass in the first half of the 102nd Ill. General Assembly; however, its content (a) includes the results of collaboration to implement some of the recommendations of the *Make Sexual and Severe Physical Abuse Fully Extinct (Make S.A.F.E.) Taskforce* and was endorsed by Stop Educator Sexual Abuse Misconduct & Exploitation (S.E.S.A.M.E.), a national organization working to prevent sexual exploitation, abuse, and harassment of students by teachers and other school staff, and (b) provides helpful guidance for districts to implement P.A. 102-610 due to P.A. 102-610's vagueness. Three additional statutes address a district's responsibility to provide age-appropriate sexual abuse and assault awareness and prevention education programs:

1. 105 ILCS 110/3, Critical Health Problems and Comprehensive Health Education Act (requires districts to establish a Comprehensive Health Education Program that includes age-appropriate sexual abuse and assault awareness and prevention education in grades pre-K through 12) (see sample policy 6:60, *Curriculum Content*, and administrative procedure 6:60-AP1, *Comprehensive Health Education Program*);
2. 105 ILCS 5/27-9.1a(b), added by P.A. 102-552 (requires comprehensive personal health and safety and comprehensive sexual health education a/k/a National Sex Education Standards (NSES) to: (a) be age and developmentally appropriate, medically accurate, complete, culturally appropriate, inclusive, and trauma informed, (b) replicate evidence-based or evidence-informed programs or substantially incorporate elements of evidence-based programs or evidence-informed programs or characteristics of effective programs, (c) provide information about local resources where students can obtain additional information and confidential services related to sexual violence (including sexual abuse and assault), and (d) provide information about State laws related to mandated reporting of child abuse and neglect, and school policies addressing the prevention of and response to sexual violence) (see sample policy 6:60, *Curriculum Content*, and administrative procedure 6:60-AP2, *Comprehensive Personal Health and Safety and Sexual Health Education Program (National Sex Education Standards (NSES))*); and
3. 105 ILCS 5/27-13.2 (addresses (a) written objections to sexual abuse prevention instruction and notice provisions (minimum five days) for students in grades K through 8, and (b) distribution by the Ill. State Board of Education (ISBE) and Ill. Dept. of Children and Family Services (DCFS) of information for districts to provide to their communities about this instruction) (see sample policy 6:60, *Curriculum Content*, and administrative procedure exhibit 6:60-AP1, E1, *Notice to Parents/Guardians of Sexual Abuse and Assault Awareness and Prevention Education; Requests to Examine Materials; Written Objection(s) and/or Opt-outs*).

² 105 ILCS 5/10-23.13, amended by P.A. 102-610, at (b)(1).

³ *Id.* at (b).

⁴ *Id.* at (b).

- a. An age-appropriate and evidence-informed health and safety education⁵ curriculum that includes methods for how to report child sexual abuse and grooming behaviors to authorities,⁶ through policy 6:60, *Curriculum Content*; ⁷
 - b. Information in policy 7:250, *Student Support Services*, about: (i) District counseling options, assistance, and intervention for students who are victims of or affected by sexual abuse,⁸ and (ii) community-based Children’s Advocacy Centers and sexual assault crisis centers and how to access those serving the District. ⁹
2. Train District employees about child sexual abuse and grooming behaviors by January 31 of each school year with materials that include: ¹⁰
 - a. A definition of prohibited grooming behaviors and boundary violations pursuant to policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*;
 - b. Evidence-informed¹¹ content on preventing, recognizing, reporting, and responding to child sexual abuse, grooming behaviors, and boundary violations pursuant to policies 2:260, *Uniform Grievance Procedure*; 2:265, *Title IX Sexual Harassment Grievance Procedure*; 5:90, *Abused and Neglected Child Reporting*; 5:100, *Staff Development Program*; and 5:120, *Employee Ethics; Conduct; and Conflict of Interest*; and
 - c. How to report child sexual abuse, grooming behaviors, and/or boundary violations pursuant to policies 2:260, *Uniform Grievance Procedure*; 2:265, *Title IX Sexual Harassment Grievance Procedure*; and 5:90, *Abused and Neglected Child Reporting*.
 3. Provide information to parents/guardians in student handbooks about the warning signs¹² of child sexual abuse, grooming behaviors, and boundary violations with evidence-informed educational information that also includes: ¹³

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

⁵ *Id.* at (b)(1).

⁶ *Id.* at (b)(4).

⁷ 105 ILCS 5/10-23.13(b). See policy 6:60, *Curriculum Content*, and administrative procedure 6:60-AP1, *Comprehensive Health Education Program*, for information on school board choices related to health and safety education, including sex education.

⁸ *Id.* at (b)(2) and (3).

⁹ *Id.* at (b)(5). See policy 5:90, *Abused and Neglected Child Reporting*, and administrative procedure 5:90-AP, *Coordination with Children’s Advocacy Center*, for more information on Children’s Advocacy Centers.

¹⁰ Citations for each letter:

- a. 105 ILCS 5/10-23.13(b).
- b. *Id.* at (b), (b)(1.5), and (c).
- c. *Id.* at (b) and (b)(1.5).

¹¹ Two Illinois laws address “evidence-informed.” *Evidence-informed* per *Erin’s Law* means modalities that were created utilizing components of evidence-based treatments or curriculums. 105 ILCS 5/10-23.13(a), added by P.A. 102-610. Contrast with NSES at 105 ILCS 5/27-9.1a(a), added by P.A. 102-552, which defines an *evidence-informed program* as “a program that uses the best available research and practice knowledge to guide program design and implementation.”

¹² 105 ILCS 5/10-23.13(b) and (b)(1); warning signs and *likely* warning signs are mentioned twice in the law. This policy uses *likely* in the purpose introduction. The Ill. Principals Association (IPA) maintains a handbook service that coordinates with PRESS material, Online Model Student Handbook (MSH), at: www.ilprincipals.org/resources/model-student-handbook.

¹³ This information is listed in 7:190-E2, *Student Handbook Checklist*. Citations for each letter:

- a. 105 ILCS 5/10-23.13(b) and (b)(1).

- a. Assistance, referral, or resource information, including how to recognize grooming behaviors,¹⁴ appropriate relationships between District employees and students based upon policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*, and how to prevent child sexual abuse from happening;
 - b. Methods for how to report child sexual abuse, grooming behaviors, and/or boundary violations to authorities; and
 - c. Available counseling and resources for children who are affected by sexual abuse, including both emotional and educational support for students affected by sexual abuse, so that the student can continue to succeed in school pursuant to policy 7:250, *Student Support Services*.
4. Provide parents/guardians of students in any of grades K through 8 with not less than five days' written notice before commencing any class or course providing instruction in recognizing and avoiding sexual abuse, as well as the opportunity to object in writing.¹⁵

LEGAL REF.: 105 ILCS 5/10-23.13, 5/27-9.1a, and 5/27-13.2.
 105 ILCS 110/3, Critical Health Problems and Comprehensive Health Education Act.
 325 ILCS 5/, Abused and Neglected Child Reporting Act.
 720 ILCS 5/11-25, Criminal Code of 2012.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 2:265 (Title IX Sexual Harassment Grievance Procedure), 4:175 (Convicted Child Sex Offender; Screening; Notifications), 5:90 (Abused and Neglected Child Reporting), 5:100 (Staff Development Program), 5:120 (Employee Ethics; Conduct; and Conflict of Interest), 6:60 (Curriculum Content), 7:20 (Harassment of Students Prohibited), 7:250 (Student Support Services)

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

- b. *Id.* at (b)(4) and (5).
- c. *Id.* at (b).

¹⁴ Providing information to parents/guardians about how to recognize grooming behaviors is not in *Erin's Law*; it only addresses informing parents/guardians about the methods for increasing their awareness and knowledge of grooming behaviors. 105 ILCS 5/10-23.13(b)(1). This policy requires the district to provide information to parents/guardians about how to recognize grooming behaviors to: (1) effect the purpose of *Erin's Law*, (2) align with the intent of the statutes cited in *f/n* 1, above (educating all students to recognize and avoid sexual abuse and assault), and (3) align with the notification requirements in 105 ILCS 5/27-13.2 (parents/guardians of K-8 students prior to commencing instruction in recognizing and avoiding sexual abuse (see *f/n* 15, below)).

¹⁵ Required by 105 ILCS 5/27-13.2. See 6:60-API, E1, *Notice to Parents/Guardians of Sexual Abuse and Assault Awareness and Prevention Education; Requests to Examine Materials; Written Objection(s) and/or Opt-outs*. Delete for high school districts.

14. First Reading of Revised Board of Education Policy 4:170, Safety

69

Recommended Motion: that the Board of Education accept for first reading revised Board of Education policies for Operational Services Sections 4:170, Safety. **See Attachment No. 12.**

TO: Members of the Board of Education
FROM: Dave McDermott, Chief Financial Officer *D.M.D.*
DATE: January 6, 2022
SUBJECT: Approve Updated Board Policy - Section 4:170, Safety

Reason for Board Consideration: The Board of Education approves updated Board Policy.

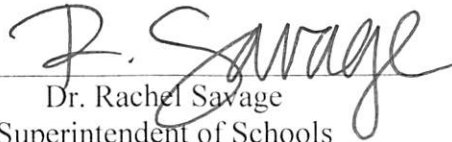
Action Necessary: That the Board of Education approve the updated Board Policies.

Facts: In the continuing quest to update the District's Board Policies, attached is a portion of Section 4 with suggested changes based on PRESS recommendations. Administration has reviewed and is requesting the Board accept updates for Operational Services Section 4:170, Safety. The policy, references and footnotes are updated in response to 105 ILCS 128/20(c), amended by P.A. 102-395, requiring schools to notify and allow parents/guardians to opt their children out of *lockdown drills* involving student participation. Recall the underlined text represents suggested new additions; whereas, the strikethrough text represents suggested deletions.

Cost: None.

Recommended Motion: That the Board of Education accept for first reading revised Board of Education policies for Operational Services Sections 4:170, Safety.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

Operational Services

Safety 1

Safety and Security

All District operations, including the education program, shall be conducted in a manner that will promote the safety and security of everyone on District property or at a District event.² The Superintendent or designee shall develop, implement, and maintain a comprehensive safety and security plan that includes, without limitation:

1. An emergency operations and crisis response plan(s) addressing prevention, preparation, response, and recovery for each school;³

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

¹ State law requires a policy on several topics in this policy and otherwise controls this policy's content. Topics previously assigned to this code number were moved in May 2014 and placed in 4:100, *Insurance Management* and 4:175, *Convicted Child Sex Offender: Screening; Notifications*.

Grants may be available from the Ill. State Board of Education (ISBE) to support school security improvements, including professional development, safety-related upgrades to school buildings, equipment, and facilities. 105 ILCS 5/2-3.180, 2-3.18176, added by P.A. 101-413, eff. 1-1-20.

Based upon the recommendation of the Federal Commission on School Safety in 2018 (www2.ed.gov/documents/school-safety/school-safety-report.pdf), the U.S. Depts. of Homeland Security, Education, Justice, and Health and Human Services created a central school safety clearinghouse website at: www.schoolSafety.gov, to share actionable recommendations to help schools prevent, protect, mitigate, respond to, and recover from emergency situations. Topics include bullying/cyberbullying, student mental health, school climate, threat assessment, emergency planning, security, recovery, and drills.

² This simple end statement should be discussed and altered accordingly before board adoption. Ask: what effect or impact will this statement have on the students and the community?

³ The term *emergency operations and crisis response plan* is used because federal agencies refer to school *emergency operations plans* and the School Safety Drill Act (105 ILCS 128/) refers to *emergency and crisis response plans*.

See administrative procedure 4:170-AP1, *Comprehensive Safety and Security Plan*. This procedure follows the recommendations in the *Guide for Developing High-Quality School Emergency Operations Plans*, produced by a collaboration of federal agencies in June 2013 at: www.rems.ed.gov/docs/REMS_K-12_Guide_508.pdf. The *Guide* informs schools what they *need* to do, not *what* to do. It recommends a process for developing, implementing, and continually refining a school emergency operations plan as well as a discussion of its form, function, and content. See also *The Role of Districts in Developing High-Quality School Emergency Operations Plans: A Companion to the School Guide*, at: https://rems.ed.gov/docs/District_Guide_508C.pdf.

ISBE maintains a comprehensive website on school emergency and crisis response planning in compliance with the School Safety Drill Act and Joint Rules of the Office of the State Fire Marshal and ISBE (29 Ill.Admin.Code Part 1500), at www.isbe.net/Pages/School-Emergency-and-Crisis-Response-Plan-Guide.aspx. ISBE's website includes a *Sample School Emergency Operations Plan* which aligns with the federal *Guide for Developing High-Quality School Emergency Operations Plans*.

105 ILCS 128/45, added by P.A. 101-455, requires school districts to implement a threat assessment procedure by 12-6-19, and to establish a threat assessment team by 2-19-20. The threat assessment procedure may be part of a board policy on targeted school violence prevention that includes the creation of a threat assessment team. For more discussion, see policy 4:190, *Targeted School Violence Prevention Program*.

105 ILCS 5/10-20.7269 (final citation pending), added by P.A. 101-548, allows school districts to install a door security locking means on a door of a school building to prevent unwanted entry through the door only if the door security locking means is used: (1) by a trained school district employee; (2) during an emergency that threatens the health and safety of students and employees or during an active shooter drill; and (3) when local law enforcement officials and the local fire department have been notified of its installation prior to its use. *Id.*

2. Provisions for a coordinated effort with local law enforcement and fire officials, emergency medical services personnel, and the Board Attorney;
3. A school safety drill plan;
4. Instruction in safe bus riding practices;⁴ and
5. A clear, rapid, factual, and coordinated system of internal and external communication.

In the event of an emergency that threatens the safety of any person or property, students and staff are encouraged to follow the best practices discussed for their building regarding the use of any available cellular telephones.⁵

School Safety Drill Plan⁶

During every academic year, each school building that houses school children shall conduct, at a minimum, each of the following in accordance with the School Safety Drill Act (105 ILCS 128/):

1. Three school evacuation drills to address and prepare students and school personnel for fire incidents. One of these three drills shall require the participation of the local fire department or district.
2. One bus evacuation drill.
3. One severe weather and shelter-in-place drill to address and prepare students and school personnel for possible tornado incidents.
4. One law enforcement lockdown drill to address a school shooting incident and to evaluate the preparedness of school personnel and students. This drill shall occur no later than 90 days after the first day of school of each year, and shall require the participation of all school

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

⁴ Required by 105 ILCS 128/20(b) and 105 ILCS 5/10-20.14(c) for all students. See 4:110-AP3, *School Bus Safety Rules*.

⁵ 105 ILCS 5/10-20.28. Consider discussing with local law enforcement what its preference would be and encourage staff and students to follow the recommendation. A wave of 911 cell phone calls can jam phone lines. Student use of cell phones is addressed in 7:190, *Student Behavior*.

625 ILCS 5/12-610.1(c) prohibits wireless telephone use at any time while operating a motor vehicle on a roadway in a school speed zone except for: (1) highway construction or maintenance workers within their work zones; (2) any use for emergency purposes; (3) law enforcement officers or emergency responders performing their duties; (4) a person using a wireless telephone in voice-operated mode with or without use of a headset; (5) a person with technology that uses a single button to initiate or terminate a voice communication, e.g., *HandsFreeLink*®; and (6) a person using an electronic communication device solely to report an emergency and for continued communication with emergency personnel. 625 ILCS 5/12-813.1 limits cell phone use by school bus drivers; see policy 4:110, *Transportation*.

⁶ Each of the listed drills is required by the School Safety Drill Act. Each drill's requirements are comprehensively covered in 4:170-AP1, *Comprehensive Safety and Security Plan*. For information about documenting minimum compliance with the School Safety Drill Act, see www.isbe.net/Pages/School-Emergency-and-Crisis-Response-Plan-Guide.aspx.

105 ILCS 5/2-3.12(f) authorizes the Ill. State Fire Marshal or a qualified fire official to whom the Ill. State Fire Marshal has delegated his or her authority to conduct an annual fire safety inspection of each school building, provided the inspection is coordinated with the regional superintendent. See also 105 ILCS 5/3-14.21(c) and 23 Ill.Admin.Code §180.300(b). To effectively implement this law and ensure the education of students in the district is not disturbed, school officials should discuss with the Ill. State Fire Marshal and regional superintendent whether written notice may be provided to the principal requesting to schedule a mutually agreed upon time.

personnel and students present at school at the time of the drill, except for those exempted by administrators, ~~or school support personnel, or a parent/guardian.~~⁷

Annual Review

The Board or its designee will annually review each school building's emergency operations and crisis response plan(s), protocols, and procedures, as well as each building's compliance with the school safety drill plan. This annual review shall be in accordance with the School Safety Drill Act (105 ILCS 128/) and the Joint Rules of the Office of the State Fire Marshal and the Ill. State Board of Education (ISBE). 29 Ill.Admin.Code Part 1500.⁸

Automated External Defibrillator (AED)⁹

The Superintendent or designee shall implement a written plan for responding to medical emergencies at the District's physical fitness facilities in accordance with the Fitness Facility Medical Emergency Preparedness Act and shall file a copy of the plan with the Ill. Dept. of Public Health (IDPH). The plan shall provide for at least one automated external defibrillator (AED) to be available at every physical fitness facility on the premises according to State law requirements.

The District shall have an AED on site as well as a trained AED user: (1) on staff during staffed business hours; and (2) available during activities or events sponsored and conducted or supervised by the District.¹⁰ The Superintendent or designee shall ensure that every AED on the District's premises is properly tested and maintained in accordance with rules developed by the IDPH.¹¹ This policy does not create an obligation to use an AED.

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

⁷ 105 ILCS 128/20(c), amended by P.A. 100-996/102-395. While 105 ILCS 128/20(c) uses both *lockdown drill* and *walk-through lockdown drill*, the terms are synonymous. For brevity, this material uses the term *lockdown drill*. Schools must (1) notify parents/guardians in advance of any lockdown drill that involves student participation, and (2) allow parents/guardians to exempt their child(ren) from participating for any reason. For students who do not participate in the lockdown drill, districts must provide alternative safety education and instruction related to an active threat or active shooter event. For students who do participate in the lockdown drill, districts must allow them to ask questions related to it.

Law enforcement may only run an active shooter simulation, including simulated gun fire drills, on school days when students are not present. 105 ILCS 128/20(c)(5)-(8), added by P.A. 102-395.

⁸ The School Safety Drill Act requires each school board or its designee to conduct one annual meeting at which it reviews each building's emergency and crisis response plan, protocols, and procedures, including procedures regarding the school district's threat assessment team, the efficacy and effects of law enforcement drills, and each building's compliance with the school safety drill plan. 105 ILCS 128/25, amended by P.A. 102-395/401-455, and 128/30; 29 Ill.Admin.Code Part 1500. If the board uses a designee, it should preferably be someone other than the District Safety Coordinator to assure an unbiased audit. The statute contains detailed requirements. The board or its designee must: (1) complete a one-page report certifying that the review took place, among other things; (2) send a copy of the report to each participating party; and (3) send a copy of the report to the appropriate Regional Superintendent. 105 ILCS 128/25(c), (d). ISBE's website contains a suggested annual review checklist and a report form to document compliance at: www.isbe.net/Pages/School-Emergency-and-Crisis-Response-Plan-Guide.aspx.

⁹ Each indoor and outdoor physical fitness facility serving at least 100 individuals must "adopt and implement a written plan for responding to medical emergencies that occur at the facility during the time that the facility is open for use by its members or by the public." 210 ILCS 74/10(a). The facility must file the plan with the Ill. Dept. of Public Health (IDPH). *Id.* In addition, each indoor facility must have at least one AED on the premises, and each outdoor facility must house an AED in a building, if any, that is within 300 feet of the outdoor facility. 210 ILCS 74/15. See the statute and administrative rules for the other numerous mandates: 210 ILCS 74/, Physical Fitness Facility Medical Emergency Preparedness Act; 77 Ill.Admin.Code Part 527. Also see 4:170-AP6, *Plan for Responding to a Medical Emergency at a Physical Fitness Facility with an AED*.

¹⁰ 77 Ill.Admin.Code §527.600(d), (f).

¹¹ 210 ILCS 74/15(c); 77 Ill.Admin.Code §527.700.

Carbon Monoxide Alarms ¹²

The Superintendent or designee shall implement a plan with the District's local fire officials to:

1. Determine which school buildings to equip with approved *carbon monoxide alarms* or *carbon monoxide detectors*,
2. Locate the required carbon monoxide alarms or carbon monoxide detectors within 20 feet of a carbon monoxide emitting device, and
3. Incorporate carbon monoxide alarm or detector activation procedures into each school building that requires a carbon monoxide alarm or detector. The Superintendent or designee shall ensure each school building annually reviews these procedures.

Soccer Goal Safety ¹³

The Superintendent or designee shall implement the Movable Soccer Goal Safety Act in accordance with the guidance published by the IDPH. Implementation of the Act shall be directed toward improving the safety of movable soccer goals by requiring that they be properly anchored.

Unsafe School Choice Option ¹⁴

The unsafe school choice option allows students to transfer to another District school or to a public charter school within the District. The unsafe school choice option is available to:

1. All students attending a persistently dangerous school, as defined by State law and identified by the ISBE.

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

¹² 105 ILCS 5/10-20.57. *Carbon monoxide detector* and *detector* mean a device having a sensor that responds to carbon monoxide gas and that is connected to an alarm control unit and approved in accordance with rules adopted by the Ill. State Fire Marshal. 105 ILCS 5/10-20.57(a). *Approved carbon monoxide alarm* or *alarm* means a carbon monoxide alarm that complies with all the requirements of the rules and regulations of the Ill. State Fire Marshal, bears the label of a nationally recognized testing laboratory, and complies with the most recent standards of the Underwriters Laboratories or the Canadian Standard Association. 430 ILCS 135/5.

Consult both the board attorney and the local fire officials about whether a school building is exempt from this law. Remove this subhead if the board attorney determines that every building across the entire school district is exempt. The law applies to school buildings that have or are close to any *sources of carbon monoxide*; however, it does not specifically define what that means. 430 ILCS 135/20 defines exemptions for residential units and may provide guidance on the exemption for schools. The law also fails to define *carbon monoxide emitting device*, which triggers the placement point in a school building for a carbon monoxide alarm or carbon monoxide detector.

¹³ Include this section only if the school district owns and controls a movable soccer goal Movable Soccer Goal Safety Act, a/k/a *Zach's Law*, 430 ILCS 145/. The Act requires: (1) organizations that own and control a movable soccer goal to create a soccer goal safety and education policy that outlines how the organization will specifically address the safety issues associated with movable soccer goals; and (2) the IDPH to provide technical assistance materials. 430 ILCS 145/10, 20. See www.dph.illinois.gov/topics-services/prevention-wellness/injury-violence-prevention/soccer-goal-safety.

¹⁴ This topic must be covered in board policy. 105 ILCS 5/10-21.3a. See also 20 U.S.C. §7912. ISBE maintains a list of persistently dangerous schools. Districts having only one school may substitute the following for this paragraph:

The unsafe school choice option provided in State law permits students to transfer to another school within the District in certain situations. This transfer option is unavailable in this District because the District has only one school or attendance center. A student, who would otherwise have qualified for the choice option, or such a student's parent/guardian, may request special accommodations from the Superintendent or designee.

Districts with each grade in only one attendance center may substitute the following for this paragraph:

The unsafe school choice option provided in State law permits students to transfer to another school within the District in certain situations. This transfer option is unavailable in this District because each grade is in only one attendance center. A student, who would otherwise have qualified for the choice option, or such a student's parent/guardian, may request special accommodations from the Superintendent or designee.

2. Any student who is a victim of a violent criminal offense, as defined by 725 ILCS 120/3, that occurred on school grounds during regular school hours or during a school-sponsored event.

The Superintendent or designee shall develop procedures to implement the unsafe school choice option.

Lead Testing in Water ¹⁵

The Superintendent or designee shall implement testing for lead in each source of drinking water in school buildings in accordance with the Ill. Plumbing License Law and guidance published by the IDPH.¹⁶ The Superintendent or designee shall notify parent(s)/guardian(s) about the sampling results from their children's respective school buildings.¹⁷

Emergency Closing

The Superintendent is authorized to close school(s) in the event of hazardous weather or other emergency that threatens the safety of students, staff members, or school property.¹⁸

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

¹⁵ 225 ILCS 320/35.5—amended by P.A. 100-103. Requires that each source of potable water in school buildings constructed on or before 1-1-00, which may be occupied by more than 10 children in grades pre-K through 5, be tested for lead. Testing for buildings constructed prior to 1-1-87 must have been conducted by 12-31-17. 225 ILCS 320/35.5(c)(4). Testing for buildings constructed between 1-2-87 and 1-1-00 must have been conducted by 12-31-18. *Id.* By 6-30-19, the IDPH was to determine whether it is necessary and appropriate to require testing for buildings constructed after 1-1-00; however, no determination was made as of the publication of PRESS Issue 102 (Oct. 2019). 225 ILCS 320/35.5(d). IDPH recommends that all schools constructed in whole or in part from 1-2-00 through 1-4-14 test all sources of potable water for lead. See IDPH's recommendations at: www.isbc.net/Documents/Improving-Water-Quality-Illinois-Schools.pdf. For high school districts, delete this subhead if no lead testing occurs.

Boards may, by resolution, use excess taxes levied for fire prevention, safety, energy conservation, and school security purposes for sampling lead in drinking water in schools and for repair and mitigation due to lead levels in the drinking water supply. 105 ILCS 5/17-2.11(j)(1).

¹⁶ 225 ILCS 320/35.5(e) requires the IDPH to post on its website guidance on mitigation actions for lead in drinking water, and ongoing water management practices, in schools. On 5-9-17, the IDPH posted *Mitigation Strategies for Lead Found in School Drinking Water* at: www.dph.illinois.gov/sites/default/files/publications/school-lead-mitigation-strategies-050917.pdf. Note: Page 2 of *Mitigation Strategies* states "IDPH is requiring the mitigation strategies and requirements contained in this guidance document to be followed for all plumbing fixtures identified with any level of lead," however the statute does not authorize the IDPH to impose such additional requirements.

¹⁷ If any samples taken in the school exceed five parts per billion, a district must provide individual notification of sampling results, via written or electronic communication, to parents/guardians of all enrolled students that must include: (1) the corresponding sampling location within the school building; and (2) the U.S. Environmental Protection Agency's website for information about lead in drinking water at: www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water. 225 ILCS 320/35.5(c)(3). If any samples taken in the school are at or below five parts per billion, notification may be made in the same manner or by posting on the school's website. *Id.*

¹⁸ When a school is closed or its starting time is delayed due to adverse weather conditions or a health or safety threat, the district may count a partial day of attendance as a full day for State aid purposes, provided: (1) at least one hour of instruction was provided or the normal start time was delayed; and (2) the superintendent provides the Regional Superintendent or the Suburban Cook County Intermediate Service Center, whichever is appropriate, with a written report in support of the partial day within 30 days. 105 ILCS 5/18-12—amended by P.A. 100-863.

105 ILCS 5/18-12.5 governs claiming State aid if a district closes one or more schools, but not all schools, during the public health emergency, as determined by ISBE in consultation with the IDPH.

LEGAL REF.: 105 ILCS 5/10-20.2, 5/10-20.57, 5/18-12, and 5/18-12.5.
105 ILCS 128/, School Safety Drill Act; ~~implemented by 29 Ill.Admin.Code Part 1500.~~
210 ILCS 74/, Physical Fitness Facility Medical Emergency Preparedness Act.
225 ILCS 320/35.5, Ill. Plumbing License Law.

CROSS REF.: 4:110 (Transportation), 4:175 (Convicted Child Sex Offender; Screening; Notifications), 4:180 (Pandemic Preparedness; Management; and Recovery), 5:30 (Hiring Process and Criteria), 8:30 (Visitors to and Conduct on School Property), 8:100 (Relations with Other Organizations and Agencies)

DRAFT

15. First Reading of Revised Board of Education Policy 4:175, Convicted Child Sex Offender; Screening; Notifications

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Recommended Motion: that the Board of Education accept for first reading revised Board of Education policies for Operational Services Sections 4:175, Convicted Child Sex Offender; Screening; Notifications. **See Attachment No. 13.**

TO: Members of the Board of Education

FROM: Dave McDermott, Chief Financial Officer *AMD.*

DATE: January 6, 2022

SUBJECT: Approve Updated Board Policy -
Section 4:175, Convicted Child Sex Offender; Screening; Notifications

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: That the Board of Education approve the updated Board Policies.

Facts: In the continuing quest to update the District's Board Policies, attached is a portion of Section 4 with suggested changes based on PRESS recommendations. Administration has reviewed and is requesting the Board accept updates for Operational Services Sections 4:175, Convicted Child Sex Offender; Screening; Notifications. The policy references and footnotes are updated in response to:


1. The Sex Offender Community Notification Law, 730 ILCS 152/121(b), amended by P.A. 102-197, the school counselor terminology change; and
2. 725 ILCS 191/15, added by P.A. 102-652, creating the Privacy of Adult Victims of Criminal Sexual Offenses Act.

Recall the underlined text represents suggested new additions; whereas, the strikethrough text represents suggested deletions.

Cost: None.

Recommended Motion: That the Board of Education accept for first reading revised Board of Education policies for Operational Services Sections 4:175, Convicted Child Sex Offender: Screening; Notifications.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

Operational Services

Convicted Child Sex Offender; Screening; Notifications 1

Persons Prohibited on School Property without Prior Permission

State law prohibits a child sex offender from being present on school property or loitering within 500 feet of school property when persons under the age of 18 are present, unless the offender meets either of the following two exceptions: ²

1. The offender is a parent/guardian of a student attending the school and has notified the Building Principal of his or her presence at the school for the purpose of: (i) attending a conference with school personnel to discuss the progress of his or her child academically or socially, (ii) participating in child review conferences in which evaluation and placement decisions may be made with respect to his or her child regarding special education services, or (iii) attending conferences to discuss other student issues concerning his or her child such as retention and promotion; or
2. The offender received permission to be present from the School Board, Superintendent, or Superintendent's designee. If permission is granted, the Superintendent or Board President shall provide the details of the offender's upcoming visit to the Building Principal.

In all cases, the Superintendent or designee shall supervise a child sex offender whenever the offender is in a child's vicinity.³ If a student is a sex offender, the Superintendent or designee shall develop guidelines for managing his or her presence in school. ⁴

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

¹ The topic covered by this policy was previously a part of 4:170, *Safety*.

² 720 ILCS 5/11-9.3 contains these requirements concerning a child sex offender's presence on school property. An Illinois federal court denied a father's request to enjoin a school's policy that prohibited him, as a child sex offender, from attending his children's school activities in *Doe v. Paris Union Sch. Dist.*, 2006 WL 44304 (C.D.Ill. 2006). See also 8:30, *Visitors to and Conduct on School Property*.

³ 720 ILCS 5/11-9.3(a). The statute assigns the child sex offender the "duty to remain under the direct supervision of a school official." In order to ensure this happens and to protect students, the sample policy requires the superintendent or designee to supervise a child sex offender whenever the offender is in a child's vicinity. See also 8:30, *Visitors to and Conduct on School Property*.

⁴ Aside from rumor and notoriety, there are three ways that school officials may learn that an enrolled student is a sex offender or a violent offender against youth:

1. By being informed by the student or the student's parent/guardian.
2. Through the Ill. Dept. of State Police (ISP) Sex Offender Registry, www.isp.state.il.us/sor. A juvenile sex offender is listed there after the juvenile becomes 17 years old and will be listed for the remaining registration period. 730 ILCS 150/2. The database is updated daily and allows searching by name, city, county, zip code, compliance status, or any combination thereof.
3. By receiving notification from a law enforcement agency that a juvenile sex offender or juvenile violent offender against youth is enrolled in a school. The law enforcement agency having jurisdiction to register the juvenile must provide a copy of the offender registration form to the building principal and guidance school counselor designated by the principal; the school must keep the registration form separately from the student's school records. 730 ILCS 152/121(b), amended by P.A. 102-197.

Screening⁵

The Superintendent or designee shall perform fingerprint-based criminal history records information checks and/or screenings required by State law or Board policy for employees; student teachers; students doing field or clinical experience other than student teaching; contractors' employees who have direct, daily contact with one or more children; and resource persons and volunteers. The Board President shall ensure that these checks are completed for the Superintendent. He or she shall take appropriate action based on the result of any criminal background check and/or screen.⁶

Notification to Parents/Guardians

The Superintendent shall develop procedures for the distribution and use of information from law enforcement officials under the Sex Offender Community Notification Law and the Murderer and

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

If a sex offender is enrolled in a school, guidelines for managing the sex offender's presence in school should be prepared. The components will depend on the situation but generally should include asking the parent/guardian of a sex offender below the age of 17 years for permission to share the information with certain staff for the protection of both the student and other students. In addition, the guidelines should include a supervision plan providing supervision for the student during all aspects of his or her school day. Finally, the guidelines must respect the privacy of juvenile records and comply with the Ill. School Student Records Act (105 ILCS 10/). The board attorney should be consulted.

⁵ The law is silent with regard to *screening* volunteers and individuals in the proximity of a school. Screening and fingerprint-based criminal history records checks are different. See procedure 4:175-AP1, *Criminal Offender Notification Laws; Screening*, for further distinctions.

The School Code requires school districts to perform a *fingerprint-based criminal history records check* through (a) the ISP for an individual's Criminal History Records Information (CHRI) and (b) the Federal Bureau of Investigation's national crime information databases. 105 ILCS 5/10-21.9(a), (a-5) and (a-6), amended by P.A. 101-531.

Screening only involves checking an individual's name and address against publicly-available databases and information provided for local law enforcement like the: (1) Illinois Sex Offender Registry, www.isp.state.il.us/sor/, and (2) the Violent Offender Against Youth Registry maintained by the ISP, www.isp.state.il.us/cmvo/. Screening must be done for employment applicants and repeatedly at least once every five years that an individual remains employed by the district. 105 ILCS 5/10-21.9(a-5) and (a-6), amended by P.A. 101-531. See policy 5:30, *Hiring Process and Criteria*; procedure 5:30-AP2, *Investigations*; policy 6:250, *Community Resource Persons and Volunteers*; and procedure 6:250-AP, ~~*Securing and Screening-Resource Persons and/or School Volunteers; Screening*~~.

⁶ If permitted by federal or State law, when a fingerprint-based criminal history records check returns a *conviction* of a crime set forth in 105 ILCS 5/21B-80 or when a screening finds a *registration* for an individual licensed by the Ill. State Board of Education (ISBE), the superintendent or regional superintendent must notify the ISBE Superintendent in writing within 15 business days. 105 ILCS 5/10-21.9(e), amended by P.A.s 101-531 and 101-643. Contact the board attorney for guidance regarding disclosures permitted by federal or State law.

By comparison, when a fingerprint-based criminal history records check returns a *pending* criminal charge for an offense set forth in 105 ILCS 5/21B-80, the superintendent, regional office of education, or entity that provides background checks, must notify the ISBE Superintendent within 10 days. Id. 105 ILCS 5/10-21.9(e), amended by P.A. 101-643, does not state whether the notice requirement is *calendar days* or *business days*. Support for it being *business days* is found later in 105 ILCS 5/10-21.9(e), which requires that notice for *convictions* be provided within 15 business days. Additionally, while notice for *pending* criminal charges is not required to be "in writing," for ease of use, consistency in administration, alignment with the requirement to provide written notice for *convictions*, and best practices this sample text states the State Superintendent will also be notified of *pending* criminal charges in writing. Consult the board attorney for further guidance.

If an indicated report by the Ill. Dept. of Children and Family Services or by a child welfare agency of another jurisdiction is found, the board must consider the individual's status as a condition of student teaching or employment. 105 ILCS 5/10-21.9(c) and (g), amended by P.A. 101-531. The statute does bar an individual with an indicated finding from student teaching; however, that is the most logical interpretation.

When a criminal sexual offense is committed or alleged to have been committed by a district employee or contractor, law enforcement shall immediately transmit a copy of the criminal history record information relating to the investigation of the offense/alleged offense to the superintendent. This transmission will occur either upon the superintendent's request or, if the law enforcement agency knows the offender/alleged offender is employed by a district, automatically. 725 ILCS 191/15, added by P.A. 102-652. See 4:175-AP1, *Criminal Offender Notification Laws; Screening*.

Violent Offender Against Youth Community Notification Law.⁷ The Superintendent or designee shall serve as the District contact person for purposes of these laws. The Superintendent and Building Principal shall manage a process for schools to notify the parents/guardians during school registration that information about sex offenders is available to the public as provided in the Sex Offender Community Notification Law.⁸ This notification must occur during school registration and at other times as the Superintendent or Building Principal determines advisable.

LEGAL REF.: 20 U.S.C. §7926, Elementary and Secondary Education Act.
20 ILCS 2635/, Uniform Conviction Information Act.
720 ILCS 5/11-9.3, Criminal Code of 2012.
730 ILCS 152/, Sex Offender Community Notification Law.
730 ILCS 154/75-105, Murderer and Violent Offender Against Youth Community Notification Law.

CROSS REF.: 2:110 (Qualifications, Term, and Duties of Board Officers), 3:40 (Superintendent), 3:50 (Administrative Personnel Other Than the Superintendent), 3:60 (Administrative Responsibility of the Building Principal), 4:165 (Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors), 5:30 (Hiring Process and Criteria), 5:260 (Student Teachers), 6:250 (Community Resource Persons and Volunteers), 8:30 (Visitors to and Conduct on School Property), 8:100 (Relations with Other Organizations and Agencies)

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

⁷ Sex Offender Community Notification Law, 730 ILCS 152/; Murderer and Violent Offender Against Youth Community Notification Law, 730 ILCS 154/75-154/105. Law enforcement officials must notify school districts of the names, addresses, and offenses of registered offenders residing in their respective jurisdictions who have committed sex offenses and violent offenses against youth. 730 ILCS 152/120 and 154/95. These laws are silent with regard to what, if anything, districts do with the information. The Sex Offender Community Notification Law, however, provides immunity for "any person who provides or fails to provide information relevant to the procedures set forth in this Law." 730 ILCS 152/130.

Naming a contact person will facilitate communication and cooperation with local law enforcement agencies. Any school official may be used as the contact person, and boards may wish to have a contact person from each building. See administrative procedure 4:175-API, *Criminal Offender Notification Laws; Screening*, for implementing procedures.

Upon arrest after commencement of a prosecution for a sex offense against an individual known to be a school employee, the State's Attorney must provide the superintendent or school administrator of the employing school with a copy of the complaint, information, or indictment. 725 ILCS 5/111-1(e), added by P.A. 101-521.


⁸ 730 ILCS 152/120(g) requires a principal or teacher to notify the parents/guardians during school registration or parent-teacher conferences that information about sex offenders is available to the public as provided in the Sex Offender Community Notification Law. In an effort to keep this policy aligned with good governance practices, the responsibility is given to the superintendent and building principal to manage. While State law allows the notification to be made during registration or parent-teacher conferences, the sample policy makes a notification mandatory just during registration to be sure that all parents/guardians are informed.

16. First Reading of Revised Board of Education Policies 5:10 - Equal Employment Opportunity and Minority Recruitment, 5:20 - Workplace Harassment Prohibited, 5:30 - Hiring Process and Criteria, and 5:185 - Family and Medical Leave

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Recommended Motion: that the Board of Education accept for first reading the revised Board of Education policies 5:10 - Equal Employment Opportunity and Minority Recruitment, 5:20 - Workplace Harassment Prohibited, 5:30 - Hiring Process and Criteria, and 5:185 - Family and Medical Leave, as presented. **See Attachment No. 14.**

TO: Members of the Board of Education

FROM: Todd DeTaeye, Assistant Superintendent for Administration and Human Resources 

DATE: January 6, 2022

SUBJECT: Approve Updated Board Policy Section 5 - General Personnel

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: Approve the updated Board Policy.

Facts: In the continuing quest to update the District's Board Policies, attached are Board Policies 5:10 – Equal Employment Opportunity and Minority Recruitment, 5:20 - Workplace Harassment Prohibited, 5:30 - Hiring Process and Criteria, and 5:185 - Family and Medical Leave, which were included as part of the November 2021 PRESS update review.

Revised policy 5:10 adds discrimination on the basis of work authorization status as a civil rights violation as a legally protected category. This revision also expands the Victims' Economic Security and Safety Act to employees impacted by other crimes of violence.

Revised policy 5:20 adds discrimination (including harassment) on the basis of work authorization status as a civil rights violation as a legally protected category.

Revised policy 5:30 requires a Board (formerly ISBE) to provide written notice to TRS when it learns a teacher has been convicted of a felony.


Revised policy 5:185 updates are in response to lowering the threshold for FMLA eligibility for school employees to 1,000 hours work in the preceding 12-months. The former threshold was 1,250 hours worked in the preceding 12-months.

Recall the underlined text represents suggested new additions; whereas, the ~~struckthrough~~ text represents suggested deletions.

Cost: None.

Recommended Action: That the Board of Education accept for first reading the revised Board of Education Policy for Section 5:10 – Equal Employment Opportunity and Minority Recruitment, 5:20 - Workplace Harassment Prohibited, 5:30 – Hiring Process and Criteria, and 5:185 – Family and Medical Leave, as presented.

Approved for Submission to the Board of Education


Dr. Rachel Savage
Superintendent of Schools

General Personnel

Equal Employment Opportunity and Minority Recruitment 1

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

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

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

² *Equal employment opportunities* apply to virtually all terms and conditions of employment, e.g., discharge, hire, promotion, pay, demotion, and benefits (see the policy's Legal References). The Ill. Constitution protects the following categories from discrimination in employment: race, color, creed, national ancestry, sex, and handicap. Art. I, §§17, 18, and 19. The Ill. Human Rights Act (IHRA) protects the following categories from discrimination in employment, whether *actual* or *perceived*: race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability, military status, order of protection status, sexual orientation, pregnancy, unfavorable discharge from military service, and citizenship status. 775 ILCS 5/1-102 and 5/1-103, amended by P.A. 101-221. The IHRA requires employers to annually disclose to the Ill. Dept. of Human Rights (IDHR) certain information about adverse judgments and administrative rulings where there was a finding of sexual harassment or unlawful discrimination under any federal, State, or local law, as well as data regarding settlement agreements, if requested by an IDHR investigator. 775 ILCS 5/2-108, added by P.A. 101-221, scheduled to be repealed on 1-1-30.

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

Under the Workplace Transparency Act (WTA) (820 ILCS 96/, added by P.A. 101-221), employers may not, as a condition of employment or continued employment, prevent prospective or current employees from making truthful statements or disclosures about alleged unlawful employment practices, including discrimination. *Id.* at 96/1-25.

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

The Ill. Equal Pay Act of 2003 (EPA) offers additional protection by prohibiting the payment of wages to one sex less than the opposite sex or to an African-American less than a non-African-American *for the same or substantially similar work*. 820 ILCS 112/, amended by P.A. ~~100-1140~~ and 101-177. The Ill. Dept. of Labor (IDOL) enforces the EPA. The EPA also prohibits employers from requesting or requiring applicants to disclose wage or salary history as a condition of being considered for employment or as a condition of employment. *Id.* at 112/10(b-5), added by P.A. 101-177. If an applicant voluntarily offers such information without prompting, an employer still cannot use that information in making an offer or determining future pay. See administrative procedure 5:30-AP1, *Interview Questions*, for sample permissible inquiries on this topic. Employers may seek wage or salary history from an applicant's current or former employer if that information is a matter of public record under the Freedom of Information Act (FOIA); however, districts that wish to undertake such searches should exercise caution; the fact a district seeks out publicly available wage information could still be used against it in a pay discrimination claim. *Id.* at 112/10(b-10), added by P.A. 101-177. Consult the board attorney for further guidance.

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

arrest record;⁸ military status; order of protection status;⁹ unfavorable military discharge;¹⁰ citizenship status provided the individual is authorized to work in the United States;¹¹ work

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

³ 775 ILCS 5/2-102 of the IHRA, amended by P.A.s ~~100-100~~, 100-588, and 101-221, contains a *religious discrimination* subsection. It expressly prohibits employers from requiring a person to violate a sincerely held religious belief to obtain or retain employment unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious belief, practice, or observance without undue hardship on the conduct of the employer's business. Religious beliefs include, but are not limited to: the wearing of any attire, clothing, or facial hair in accordance with the requirements of his/her religion. 775 ILCS 5/2-102(E-5). Employers may, however, enact a dress code or grooming policy that restricts attire, clothing, or facial hair to maintain workplace safety or food sanitation. *Id.*

In addition to the IHRA and the federal EEOA (discussed in f/n 2), see 775 ILCS 35/, Religious Freedom Restoration Act.

⁴ Discrimination on the basis of sex under the EEOA includes discrimination on the basis of sexual orientation or transgender status. *Bostock v. Clayton Cnty.*, 140 S.Ct. 1731 (2020); *Hively v. Ivy Tech*, 853 F.3d 339 (7th Cir. 2017). In addition to the IHRA and the federal EEOA (discussed in f/n 2), see Title IX of the Education Amendments of 1972 (Title IX). 20 U.S.C. §1681 *et seq.*; 34 C.F.R. Part 106. See policy 2:265, *Title IX Sexual Harassment Grievance Procedure*. The federal Equal Pay Act prohibits an employer from paying persons of one sex less than the wage paid to persons of the opposite sex for equal work. 29 U.S.C. §206(d). See f/n 2 above for more information on State equal pay protections, including on the basis of sex. The LLFPA defines *date of underpayment* as each time wages are underpaid. Employees have one year from the time they become aware of the underpayment to file a complaint with the IDOL. 820 ILCS 112/15(b).

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

⁶ Age Discrimination in Employment Act (ADEA) (29 U.S.C. §621 *et seq.*), amended by LLFPA (see f/n 2). 29 C.F.R. Part 1625, amended the EEOC regulations under ADEA to reflect the U.S. Supreme Court's decision in *General Dynamic Systems, Inc. v. Cline*, 540 U.S. 581 (2004), holding the ADEA to permit employers to favor older workers because of age. Thus, favoring an older person over a younger person is not unlawful discrimination, even when the younger person is at least 40 years old.

⁷ 105 ILCS 5/10-22.4 and 775 ILCS 5/1-103(Q), amended by P.A. 101-221. The term *marital status* means an individual's legal status of being married, single, separated, divorced, or widowed. 775 ILCS 5/1-103(J). This statutory definition does not encompass the identity of one's spouse. Thus, school districts may adopt no-spouse policies. *Boaden v. Dept. of Law Enforcement*, 171 Ill.2d 230 (Ill. 1996).

⁸ Districts may not make employment decisions on the basis of arrest history, but may use job-disqualifying criminal convictions provided specific conditions are met. 775 ILCS 5/2-103 and 5/2-103.1, added by P.A. 101-656. See f/n 18, below. The Job Opportunities for Qualified Applicants Act prohibits an employer from asking about a criminal record until the employer determines that the applicant is qualified for the position; however, this does not apply when employers are required to exclude applicants with certain criminal convictions from employment. School employers should limit their requests for criminal convictions to *job-disqualifying* convictions, as permitted by the IHRA. 775 ILCS 5/2-103.1, added by P.A. 101-656; 820 ILCS 75/15. See also the IDHR's guidance, *Conviction Record Protection – Frequently Asked Questions*, at www2.illinois.gov/dhr/Pages/Conviction_Record_Protection_Frequently_Asked_Questions.aspx and the EEOC's guidance, *Consideration of Arrest and Conviction Records in Employment Decisions*, at: www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

⁹ 775 ILCS 5/1-103(Q), amended by P.A. 101-221. The term *order of protection status* means a person protected under an order of protection issued pursuant to the Ill. Domestic Violence Act of 1986, Article 112A of the Code of Criminal Procedure of 1963, the Stalking No Contact Order Act, the Civil No Contact Order Act, or an order of protection issued by a court of another state. 775 ILCS 5/1-103(K-5), ~~amended by P.A. 100-714.~~

¹⁰ *Military status* means a person's status on active duty or in status as a veteran in the U.S. Armed Forces, veteran of any reserve component of U.S. Armed Forces, or current member or veteran of the Ill. Army National Guard or Ill. Air National Guard. 775 ILCS 5/1-103(J-1). *Unfavorable military discharge* does not include those characterized as RE-4 or *dishonorable*. 775 ILCS 5/1-103(P). The Uniformed Services Employment and Reemployment Rights Act of 1994 prohibits employers from discriminating or retaliating against any person for reasons related to past, present, or future service in a *uniformed service*. 38 U.S.C. §4301 *et seq.*

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

authorization status;¹² use of lawful products while not at work;¹³ being a victim of domestic violence, sexual violence, or gender violence, or any other crime of violence;¹⁴ genetic information;¹⁵ physical or mental handicap or disability, if otherwise able to perform the essential functions of the job with reasonable accommodation;¹⁶ pregnancy, childbirth, or related medical conditions;¹⁷ credit history, unless a satisfactory credit history is an established bona fide

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

¹³ The Right to Privacy in the Workplace Act prohibits discrimination based on use of lawful products, e.g., alcohol, cannabis, and tobacco, off-premises during non-working hours. 820 ILCS 55/5, amended by P.A. 101-27.

¹⁴ 820 ILCS 180/30, amended by P.A.s 101-221 and 102-487, Victims' Economic Security and Safety Act. *Gender violence* means: (1) one or more acts of violence or aggression that are a criminal offense under State law committed, at least in part, on the basis of a person's actual or perceived sex or gender, (2) a physical intrusion or invasion of a sexual nature under coercive conditions that is a criminal offense under State law, or (3) a threat to commit one of these acts. 820 ILCS 180/10(12.5), added by P.A. 101-221. *Other crime of violence* means conduct prohibited by 720 ILCS 5/9 (homicide), 720 ILCS 5/11 (sex offenses), 720 ILCS 5/12 (bodily harm), 720 ILCS 5/26.5 (harassing and obscene communications), 720 ILCS 5/29D (terrorism), and 720 ILCS 5/33A (armed violence), or similar provision of the Criminal Code of 1961. 820 ILCS 180/10(2.5), added by P.A. 102-487.

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

¹⁵ Illinois' Genetic Information Privacy Act (GIPA) (410 ILCS 513/25) and Title II of Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. §2000ff *et seq.*). Both laws protect job applicants and current and former employees from discrimination based on their genetic information. Note that GIPA provides greater protections to Illinois employees than Title II of GINA. GIPA, amended by P.A. 100-396, prohibits employers from penalizing employees who do not disclose genetic information or do not choose to participate in a program requiring disclosure of the employee's genetic information. See ¶n 12 in policy 2:260, *Uniform Grievance Procedure*, for the definition of genetic information and a detailed description of both statutes, including of Title I of GINA affecting the use of genetic information in health insurance. The EEOC vacated certain 2016 ADA and GINA wellness program regulations following an adverse court ruling. 83 Fed. Reg. 65296. Those rules provided guidance to employers on the extent to which they could use incentives (such as discounted health plan costs) to encourage employees to participate in wellness programs that asked for employee and family health information. Consult the board attorney for guidance regarding specific application of ADA and GINA and how they integrate with other related laws, e.g., the Family Medical Leave Act and other State laws governing time off for sickness and workers' compensation.

¹⁶ Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §12101 *et seq.*), amended by the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) (Pub. L. 110-325) and modified by the LLFPA; Rehabilitation Act of 1973 (29 U.S.C. §701 *et seq.*).

¹⁷ 775 ILCS 5/2-102(I). Employers must provide reasonable accommodations to employees with conditions related to pregnancy, childbirth, or related conditions. 775 ILCS 5/2-102(J). Employers are required to post a notice summarizing the right to be free from unlawful discrimination and the right to certain reasonable accommodations. 775 ILCS 5/2-102(K). The IDOL is required to prepare such a notice, retrievable from its website, which employers may use.

Federal law also prohibits employers from discriminating against employees and applicants on the basis of pregnancy, childbirth, or related medical conditions. 42 U.S.C. §2000e(k). State law also prohibits the State, which includes school districts, from interfering with or discriminating against an individual's fundamental right to continue a pregnancy or to have an abortion. 775 ILCS 55/, added by P.A. 101-13. Pregnant workers with pregnancy-related impairments may have disabilities for which they may be entitled to reasonable accommodation under the ADA. Guidance from the EEOC (6-25-15) is available at: www.eeoc.gov/laws/guidance/pregnancy_qa.cfm.

occupational requirement of a particular position;¹⁸ conviction record, unless authorized by law;¹⁹ or other legally protected categories.^{20 21 22 23} No one will be penalized solely for his or her status as a

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

¹⁹ 775 ILCS 5/2-103.1(A), added by P.A. 101-656. The IHRA prohibits an employer from *disqualifying* or taking other *adverse action* against an applicant or employee based on a *conviction record* unless: (1) otherwise authorized by law; (2) there is a *substantial relationship* between the criminal offense and the employment sought; or (3) granting the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. *Id.* Disqualification or adverse action includes refusal to hire, segregation, and actions with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges, or conditions of employment. *Id.* If a board wants to terminate or take other adverse action against a *current* district employee based in whole or in part on a conviction record, it still must comply with all applicable statutory, policy, and bargaining agreement provisions. Boards should consult the board attorney to ensure all legal obligations are met.

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

²⁰ Insert the following optional sentence (775 ILCS 5/1-103(A) and 29 U.S.C. §631):

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

²¹ Insert the following optional provision (29 U.S.C. §705(10)(A)-(B), (20)(C)(v), (20)(D) and 42 U.S.C. §12114):

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

1. Currently using illegal drugs;
2. Having a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, are unable to perform the duties of the job; or
3. Whose current alcohol use prevents them from performing the job's duties or constitutes a direct threat to the property or safety of others.

Persons who have successfully completed or are participating in a drug rehabilitation program are considered *disabled*.

²² Districts may not make residency in the district a condition of employment for teachers or educational support personnel. 105 ILCS 5/24-4.1, 5/10-23.5. This ban on residency requirements for teachers applies only to instructional personnel, and not, for example, to assistant principals. *Owen v. Kankakee Sch. Dist.*, 261 Ill.App.3d 298 (3rd Dist. 1994). Districts also may not ask an applicant, or the applicant's previous employer, whether the applicant ever received, or filed a claim for, benefits under the Workers' Compensation Act or Workers' Occupational Diseases Act. 820 ILCS 55/10(a). Districts are also prohibited from requiring, requesting, or coercing an employee or potential employee to provide a user name and password or any password or other related account information to gain or demand access to his or her personal online account. 820 ILCS 55/10(b). While the law does not prohibit employers from viewing public information, consult the board attorney before engaging in this practice.

²³ School districts must accommodate mothers who choose to continue breastfeeding after returning to work. See 740 ILCS 137/, Right to Breastfeed Act; 820 ILCS 260/, ~~amended by P.A. 100-1003~~ Nursing Mothers in the Workplace Act (NMWA); and 29 U.S.C. §207(r), Fair Labor Standards Act. At least one court has ruled an implied private right of action may exist under the NMWA. *Spriesch v. City of Chicago*, 2017 WL 4864913 (N.D.Ill. 2017). See sample language for a personnel handbook in 5:10-AP, *Workplace Accommodations for Nursing Mothers*.

registered qualifying patient or a registered designated caregiver for purposes of the Compassionate Use of Medical Cannabis Program Act, 410 ILCS 130/.²⁴

Persons who believe they have not received equal employment opportunities should report their claims to the Nondiscrimination Coordinator and/or a Complaint Manager for the Uniform Grievance Procedure. These individuals are listed below. No employee or applicant will be discriminated or retaliated against because he or she: (1) requested, attempted to request, used, or attempted to use a reasonable accommodation as allowed by the Illinois Human Rights Act, or (2) initiated a complaint, was a witness, supplied information, or otherwise participated in an investigation or proceeding involving an alleged violation of this policy or State or federal laws, rules or regulations, provided the employee or applicant did not make a knowingly false accusation nor provide knowingly false information.²⁵

Administrative Implementation

The Superintendent shall appoint a Nondiscrimination Coordinator for personnel who shall be responsible for coordinating the District's nondiscrimination efforts. The Nondiscrimination Coordinator may be the Superintendent or a Complaint Manager for the Uniform Grievance Procedure. The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator.²⁶

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²⁴ 410 ILCS 130/40, amended by P.A. 101-363; 77 Ill.Admin.Code Part 946. To legally use medical cannabis, an individual must first become a *registered qualifying patient*. Their use of cannabis, e.g. permissible locations, is governed by the Compassionate Use of Medical Cannabis Program Act, 410 ILCS 130/, amended by P.A.s 100-660 and 101-363. There are many situations in which no one, even a registered qualifying patient, may possess or use cannabis except as provided under *Ashley's Law* (105 ILCS 5/22-33, added by P.A.s 100-660, and amended by P.A.s 101-363, and 101-370), including in a school bus or on the grounds of any preschool, or primary or secondary school. 410 ILCS 130/30(a)(2)(3), amended by P.A.s 100-660 and 101-363. See policy 5:50, *Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition*, at ¶n 9 for further discussion.

²⁵ 775 ILCS 5/6-101. Discrimination on the basis of a request for or use of a reasonable accommodation is a civil rights violation under the IHRA. *Id.* Most discrimination laws prohibit retaliation against employees who oppose practices made unlawful by those laws, including, for example, the EEOA, Title IX, ADA, ADEA, Victims' Economic Security and Safety Act, the EPA, and the Ill. Whistleblower Act (IWA).

The IWA specifically prohibits employers from retaliating against employees for: (1) disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation (740 ILCS 174/15(b)); (2) disclosing information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding where the employee has reasonable cause to believe that the information reveals a violation of a State or federal law, rule or regulation (740 ILCS 174/15(a)); (3) refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation, including, but not limited to, violations of FOIA (740 ILCS 174/20); and (4) disclosing or attempting to disclose public corruption or wrongdoing (740 ILCS 174/20.1). The definition of retaliation is expanded to include *other retaliation* and *threatening retaliation*. 740 ILCS 174/20.1, 20.2.

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

²⁶ The Nondiscrimination and Title IX Coordinator(s) need not be the same person. If the district uses a separate Title IX Coordinator who does not also serve as the Nondiscrimination Coordinator, delete "~~The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator.~~" insert a hard return to create a new paragraph, and insert "The Superintendent shall appoint a Title IX Coordinator to coordinate the District's efforts to comply with Title IX." Then, list the Title IX and Nondiscrimination Coordinators' names and contact information separately in this policy.

The Superintendent shall insert into this policy the names, office addresses, email addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers.
27

Nondiscrimination Coordinator: 28

Name

Address

Email

Telephone

Complaint Managers:

Name

Address

Email

Telephone

Name

Address

Email

Telephone

The Superintendent shall also use reasonable measures to inform staff members and applicants that the District is an equal opportunity employer, such as, by posting required notices and including this policy in the appropriate handbooks. 29

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27 Title IX regulations require districts to designate and authorize at least one employee to coordinate their efforts to comply with Title IX and to refer to that employee as the *Title IX Coordinator*. 34 C.F.R. §106.8(a). Districts must identify the Title IX Coordinator by name, office address, email address, and telephone number. Id. See ¶n 19 in policy 2:260, *Uniform Grievance Procedure*.

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

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

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

Minority Recruitment ³⁰

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

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

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³⁰ All districts must have a policy on minority recruitment. 105 ILCS 5/10-20.7a. Unlike minority recruitment efforts, affirmative action plans are subject to significant scrutiny because of the potential for reverse discrimination. The U.S. Constitution's guarantee of equal protection prohibits school districts from using racial hiring quotas without evidence of past discrimination. See 29 C.F.R. §1608.1 et seq. (EEOC's guidelines for affirmative action plans); Wygant v. Jackson Bd. of Ed., 476 U.S. 267 (1986) (The goal of remedying societal discrimination does not justify race-based layoffs.); City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) (Minority contractor quota struck; quotas must be narrowly tailored to remedy past discrimination and the city failed to identify the need for remedial action and whether race-neutral alternatives existed.).

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

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

General Personnel

Workplace Harassment Prohibited 1

The School District expects the workplace environment to be productive, respectful, and free of unlawful discrimination, including harassment. District employees shall not engage in harassment or abusive conduct on the basis of an individual's actual or perceived race, color, religion², national origin, ancestry, sex, sexual orientation, age, citizenship status, work authorization status, disability, pregnancy, marital status, order of protection status, military status, or unfavorable discharge from military service, nor shall they engage in harassment or abusive conduct on the basis of an individual's other protected status identified in Board policy 5:10, *Equal Employment Opportunity and Minority*

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¹ State or federal law controls this policy's content. Federal law requires districts to take action to prevent sexual harassment and to disseminate a policy regarding its prohibition of sex discrimination. 29 C.F.R. §1604.11(f); 34 C.F.R. §106.8(b). State law requires districts to establish a policy to prohibit sexual harassment. 5 ILCS 430/70-5(a), amended by P.A.s 100-554 and 101-221. See f/n 3 below. 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 sample 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.

Under the Ill. Human Rights Act (IHRA), harassment is unlawful if it has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. 775 ILCS 5/2-101(E-1), added by P.A. 101-221. *Working environment* is not limited to a physical location to which an employee is assigned. *Id.* Harassment is unlawful on the basis of the specifically-listed categories in this policy whether that status is *actual* or *perceived*. *Id.*

An employer is liable under Title VII of the Civil Rights Act of 1964 (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. 42 U.S.C. §2000e *et seq.* An employer is liable under the IHRA for harassment by its nonmanagerial and nonsupervisory employees if it becomes aware of the conduct and fails to take reasonable corrective measures. 775 ILCS 5/2-102(A), amended by P.A. 101-221. 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*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (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*, 133 S.Ct. 2434 (2013). Note that the IHRA: (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*, 233 Ill.2d 125 (Ill. 2009). Additionally, under the IHRA, an employer is liable for the harassment of *nonemployees* by nonmanagerial and nonsupervisory employees if it becomes aware of the conduct and fails to take reasonable corrective measures. 775 ILCS 5/2-102(A-10) and (D-5), added by P.A. 101-221. Nonemployees are those who are directly performing services for an employer pursuant to a contract, such as contractors or consultants. *Id.*

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 Section 2-102 of the IHRA, amended by P.A. 100-100, contains a *religious discrimination* subsection. It expressly prohibits employers from requiring a person to violate a sincerely held religious belief to obtain or retain employment unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious belief, practice, or observance without undue hardship on the conduct of the employer's business. Religious beliefs include, but are not limited to: the wearing of any attire, clothing, or facial hair in accordance with the requirements of his/her religion. 775 ILCS 5/2-102(E-5). Employers may, however, enact a dress code or grooming policy that restricts attire, clothing, or facial hair to maintain workplace safety or food sanitation. *Id.*

Recruitment. Harassment of students, including, but not limited to, sexual harassment, is prohibited by Board policies 2:260, *Uniform Grievance Procedure*; 2:265, *Title IX Sexual Harassment Grievance Procedure*; 7:20, *Harassment of Students Prohibited*; 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*; and 7:185, *Teen Dating Violence Prohibited*.

The District will take remedial and corrective action to address unlawful workplace harassment, including sexual harassment.

Sexual Harassment Prohibited³

The District shall provide a workplace environment free of verbal, physical, or other conduct or communications constituting harassment on the basis of sex as defined and otherwise prohibited by State and federal law. The District provides annual sexual harassment prevention training in accordance with State law.⁴

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

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³ The IHRA (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.

See sample policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, for the definition of Title IX sexual harassment (20 U.S.C. §1681 *et seq.*), and see ¶n 3 of it for examples of employee sexual harassment that may violate Title IX. Title IX's reach is broad because an alleged complainant or alleged respondent may be *anyone* in the district's educational program or activity. This includes applicants for employment, students, parents/guardians, any employee, and third parties. Districts are liable for Title IX sexual harassment when *any* district employee has *actual knowledge* of sexual harassment or allegations of sexual harassment against anyone in the district (except when the only employee with knowledge is the perpetrator of the alleged sexual harassment). 34 C.F.R. §106.30.

The State Officials and Employees Ethics Act (SOEEA) (5 ILCS 430/70-5(a), amended by P.A. 101-221) requires governmental entities (including school districts) to adopt an ordinance or resolution establishing a policy to prohibit sexual harassment. 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.

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 (IDHR); (3) a prohibition on retaliation for reporting sexual harassment allegations, including availability of whistleblower protections under the SOEEA, the Whistleblower Act (740 ILCS 174/), and the IHRA (775 ILCS 5/); (4) the consequences: (a) of a violation of the prohibition on sexual harassment and (b) for knowingly making a false report; and (5) 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(a), amended by P.A. 100-554 and 101-221. Sample policy 2:105, *Ethics and Gift Ban*, covers item (5) of this list.

⁴ 775 ILCS 5/2-109, added by P.A. 101-221. See sample policy 5:100, *Staff Development Program*, at ¶n 4. Districts may use a free, online model program to be offered by the Ill. Dept. of Human Rights (IDHR), develop their own program, or utilize a combination of the two, as long as it includes the following, at a minimum: (1) an explanation of sexual harassment consistent with the IHRA, (2) examples of conduct that constitutes unlawful harassment, (3) a summary of relevant federal and State law concerning sexual harassment and remedies available to victims of sexual harassment, and (4) a summary of responsibilities of employers in the prevention, investigation, and corrective measures of sexual harassment. *Id.* at 5/2-109(B), added by P.A. 101-221. For IDHR's online model program, see its *Model Sexual Harassment Prevention Training Program* page at: <https://www2.illinois.gov/dhr/Training/Pages/State-of-Illinois-Sexual-Harassment-Prevention-Training-Model.aspx>. Employers that fail to comply with this training requirement may face financial penalties. *Id.* Training on other types of workplace harassment is not required by law; however it is best practice.

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 environment.⁵ Sexual harassment prohibited by this policy includes, but is not limited to, verbal, physical, or other 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 Report or Complaint

Employees and *nonemployees*⁶ (persons who are not otherwise employees and are directly performing services for the District pursuant to a contract with the District, including contractors, and consultants) are encouraged to promptly report information regarding violations of this policy. Individuals may choose to report to a person of the individual's same gender. Every effort should be made to file such reports or complaints as soon as possible, while facts are known and potential witnesses are available.

Aggrieved individuals, if they 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.

Whom to Contact with a Report or Complaint⁷

An employee should report claims of harassment, including making a confidential report, to any of the following: his/her immediate supervisor, the Building Principal, an administrator, the Nondiscrimination Coordinator, and/or a Complaint Manager.⁸

Employee may also report claims using Board policy 2:260, *Uniform Grievance Procedure*. If a claim is reported using Board policy 2:260, then the Complaint Manager shall process and review the claim according to that policy, in addition to any response required by this policy.

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⁵ This definition is from State and federal law. 775 ILCS 5/2-101(E) and 29 C.F.R. §1604.11. *Working environment* is not limited to a physical location to which an employee is assigned. 775 ILCS 5/2-101(E), amended by P.A. 101-221. 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. *Oncale v. Sundowner Offshore Services*, 523 U.S. 75 (1998).

⁶ 775 ILCS 5/2-102(A-10) and (D-5), added by P.A. 101-221. See also ¶n 1, above, for discussion regarding nonemployees.

⁷ 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.

⁸ 5 ILCS 430/70-5(a), amended by P.A. 100-554, requires that a school board policy prohibiting sexual harassment include details for reporting an allegation of sexual harassment, including options for making a confidential report to a supervisor and an ethics officer. 5 ILCS 430/20-23 defines ethics officers as being designated by State agencies under the jurisdiction of the Executive Ethics Commission. School districts are not State agencies (5 ILCS 430/1-5) and do not have ethics officers; thus, this sample policy substitutes Complaint Manager for ethics officer. Note also that the IDHR has established a Sexual Harassment Hotline Call Center and website to help the public find resources and assistance for the filing of sexual harassment complaints. The hotline can be reached Monday through Friday with the exception of State holidays, between the hours of 8:30 a.m. and 5:00 p.m., at 1-877-236-7703. See www2.illinois.gov/sites/sexualharassment/Pages/default.aspx. All communications received by the IDHR are exempt from disclosure under the Freedom of Information Act (FOIA).

The Superintendent shall insert into this policy the names, office addresses, email addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers. The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator.⁹

Nondiscrimination Coordinator:

Name

Address

Email

Telephone

Complaint Managers:

_____ Name	_____ Name
_____ Address	_____ Address
_____ Email	_____ Email
_____ Telephone	_____ Telephone

Investigation Process

Any District employee who receives a report or complaint of harassment must promptly forward the report or complaint to the Nondiscrimination Coordinator or a Complaint Manager.¹⁰ Any employee who fails to promptly forward a report or complaint may be disciplined, up to and including discharge.

Reports and complaints of harassment will be confidential to the greatest extent practicable, subject to the District's duty to investigate and maintain a workplace environment that is productive, respectful, and free of unlawful discrimination, including harassment.

For any report or complaint alleging sexual harassment that, if true, would implicate Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.), the Nondiscrimination Coordinator or

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⁹ Title IX regulations require districts to identify the name, office address, email address, and telephone number of the person who is responsible for coordinating the district's compliance efforts. The Nondiscrimination and Title IX Coordinator(s) need not be the same person. If the district uses a separate Title IX Coordinator who does not also serve as the Nondiscrimination Coordinator, delete "~~The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator.~~" and supplement the previous sentence to state "The Superintendent shall insert into this policy the names, office addresses, email addresses, and telephone numbers of the District's current Nondiscrimination Coordinator, Title IX Coordinator, and Complaint Managers." Then, list the Title IX and Nondiscrimination Coordinators' names and contact information separately in this policy.

¹⁰ If the district's Nondiscrimination Coordinator does not also serve as the Title IX Coordinator, supplement this sentence to state "Any District employee who receives a report or complaint of harassment must promptly forward the report or complaint to the Nondiscrimination Coordinator, Title IX Coordinator, or a Complaint Manager."

designee¹¹ shall consider whether action under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, should be initiated.

For any other alleged workplace harassment that does not require action under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, the Nondiscrimination Coordinator or a Complaint Manager or designee shall consider whether an investigation under policy 2:260, *Uniform Grievance Procedure*, and/or 5:120, *Employee Ethics; Conduct, and Conflict of Interest*,¹² should be initiated, regardless of whether a written report or complaint is filed.

Reports That Involve Alleged Incidents of Sexual Abuse of a Child by School Personnel¹³

An *alleged incident of sexual abuse* is an incident of sexual abuse of a child, as defined in 720 ILCS 5/11-9.1A(b), that is alleged to have been perpetrated by school personnel, including a school vendor or volunteer, that occurred: on school grounds during a school activity; or outside of school grounds or not during a school activity.

Any complaint alleging an incident of sexual abuse shall be processed and reviewed according to policy 5:90, *Abused and Neglected Child Reporting*. In addition to reporting the suspected abuse, the complaint shall also be processed under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, or policy 2:260, *Uniform Grievance Procedure*.

Enforcement¹⁴

A violation of this policy by an employee may result in discipline, up to and including discharge.¹⁵ A violation of this policy by a third party will be addressed in accordance with the authority of the Board

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¹¹ "Nondiscrimination Coordinator or designee" is used where Title IX is potentially implicated. In contrast, if Title IX is likely not implicated then "Nondiscrimination Coordinator or a Complaint Manager or designee" is used (see next paragraph in policy text). If the district's Nondiscrimination Coordinator does not also serve as the Title IX Coordinator, delete "Nondiscrimination" and insert "Title IX" in its place.

¹² See administrative procedure 5:120-AP2, *Employee Conduct Standards* and its exhibit 5:120-AP2, E, *Expectations and Guidelines for Employee-Student Boundaries*.

¹³ Required for districts located within a county served by an accredited Children's Advocacy Center (CAC). Delete this subhead if your school district is within a county not served by an accredited CAC. 105 ILCS 5/22-85 (final citation pending), added by P.A. 101-531 (governing the investigation of an *alleged incident of sexual abuse* of any child within any Illinois counties served by a CAC). For further discussion see ¶n 14 in sample policy 5:90, *Abused and Neglected Child Reporting*.

¹⁴ 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 IHRA if it fails to take corrective action to stop severe or pervasive harassment. 775 ILCS 5/5-102 and 5/5-102.2.

¹⁵ 5 ILCS 430/70-5(a) (amended by P.A. 100-554) (consequences of a violation of the prohibition on sexual harassment). When discharge is the penalty, examine 50 ILCS 205/3c (added by P.A. 100-1040). It 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 IHRA or Title VII. *Id.* Additionally, under the Workplace Transparency Act (WTA), employers may not require confidentiality clauses in settlement or termination agreements involving alleged unlawful employment practices under federal or State civil rights laws, except under specific conditions. 820 ILCS 96/1-30, added by P.A. 101-221.

in the context of the relationship of the third party to the District, e.g., vendor, parent, invitee, etc. Any person making a knowingly false accusation regarding harassment will likewise be subject to disciplinary action, which for an employee that may be up to and including discharge. ¹⁶

Retaliation Prohibited

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 complaints or providing information about harassment is prohibited (see Board policy 2:260, *Uniform Grievance Procedure*), and depending upon the law governing the complaint, whistleblower protection may be available under the State Officials and Employees Ethics Act (5 ILCS 430/), the Whistleblower Act (740 ILCS 174/), and the Ill. Human Rights Act (775 ILCS 5/). ¹⁷

An employee should report allegations of retaliation to his/her immediate supervisor, the Building Principal, an administrator, the Nondiscrimination Coordinator, and/or a Complaint Manager.

Employees who retaliate against others for reporting or complaining of violations of this policy or for participating in the reporting or complaint process will be subject to disciplinary action, up to and including discharge.

Recourse to State and Federal Fair Employment Practice Agencies ¹⁸

The District encourages all employees who have information regarding violations of this policy to report the information pursuant to this policy. The following government agencies are available to assist employees: the Ill. Dept. of Human Rights and the U.S. Equal Employment Opportunity Commission.

The Superintendent shall also use reasonable measures to inform staff members, applicants, and nonemployees of this policy, which shall include posting on the District website and/or making this

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¹⁶ Prior to the passage of 50 ILCS 205/3c, added by P.A. 100-1040, and the WTA, members of the public could already access copies of severance agreements between school districts and their former employees under FOIA. The Ill. Atty. Gen. Public Access Counselor (PAC) directed a public body to release a settlement agreement that arose out of claims of sexual harassment. PAO 14-4. The PAC noted that the public body could not withhold the entire settlement agreement under 5 ILCS 140/7(1)(c), which exempts personal information that would constitute a clearly unwarranted invasion of privacy. Instead, it could redact personal information from the agreement, such as the complainants' names in order to protect their privacy. *Id.* However, data regarding settlement agreements involving allegations of sexual harassment or other unlawful discrimination that an employer must report to IDHR under 775 ILCS 5/2-108 is categorically exempt from FOIA. 5 ILCS 140/7.5(oo), added by P.A. 101-221. See ¶n 6 in sample policy 2:260, *Uniform Grievance Procedure*, for more discussion about reconciling 50 ILCS 205/3c, added by P.A. 100-1040, with another new law, the Government Severance Pay Act (GSPA) (5 ILCS 415/10(a)(1), added by P.A. 100-895), which prohibits school district employees with contract provisions for severance pay to receive any severance pay if they are fired for *misconduct* by the board.

¹⁶ 5 ILCS 430/70-5(a), amended by P.A. 100-551 (consequences for knowingly making a false report of sexual harassment).

¹⁷ *Id.* (prohibition on retaliation for reporting sexual harassment allegations, including availability of whistleblower protections under the SOEEA, the Whistleblower Act (740 ILCS 174/), and the IHRA (775 ILCS 5/)).

Crawford v. Metro. Gov't of Nashville & Davidson County, 555 U.S. 271 (2009) (holding the anti-retaliation provision in EEOA 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).

¹⁸ 5 ILCS 430/70-5(a), amended by P.A. 100-551 (how an individual can report an allegation of sexual harassment, including options for making a confidential report to the Inspector General or the IDHR). This sample policy does not reference the Inspector General because the Inspector General does not have jurisdiction over public school districts. 5 ILCS 430/1. School districts must also annually disclose to IDHR certain data about *adverse judgment or administrative rulings* made against them where there was a finding of sexual harassment or unlawful discrimination under federal, State, or local laws. 775 ILCS 5/2-108, added by P.A. 101-221. See IDHR's *Sexual Harassment and Unlawful Discrimination* at www2.illinois.gov/dhr/Pages/default.aspx.

policy available in the District's administrative office, and including this policy in the appropriate handbooks.¹⁹

LEGAL REF.: ~~Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., Title VII of the Civil Rights Act of 1964; 29 C.F.R. §1604.11.~~
~~Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq., Title IX of the Education Amendments of 1972; 34 C.F.R. Part 106.~~
~~State Officials and Employees Ethics Act, 5 ILCS 430/70-5(a), State Officials and Employees Ethics Act.~~
~~Ill. Human Rights Act, 775 ILCS 5/2-101(E) and (E-1), 5/2-102(A), (A-10), (D-5), 5/2-102(E-5), 5/2-109, 5/5-102, and 5/5-102.2, Ill. Human Rights Act.~~
56 Ill. Admin. Code Parts 2500, 2510, 5210, and 5220.
Burlington Industries v. Ellerth, 524 U.S. 742 (1998).
Berry v. Delta Airlines, 260 F.3d 803 (7th Cir. 2001).
Crawford v. Metro. Gov't of Nashville & Davidson County, 555 U.S. 271 (2009).
Faragher v. City of Boca Raton, 524 U.S. 775 (1998).
Franklin v. Gwinnett Co. Public Schools, 503 U.S. 60 (1992).
Harris v. Forklift Systems, 510 U.S. 17 (1993).
Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005).
Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986).
Oncale v. Sundowner Offshore Services, 523 U.S. 75 (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, 233 Ill.2d 125 (Ill. 2009).
Vance v. Ball State University, 133 S. Ct. 2434 (2013).
Williams v. Waste Mgmt., 361 F.3d 1021 (7th Cir. 2004).

CROSS REF.: 2:260 (Uniform Grievance Procedure), 2:265 (Title IX Sexual Harassment Grievance Procedure), 4:60 (Purchases and Contracts), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:90 (Abused and Neglected Child Reporting), 5:120 (Employee Ethics; Conduct; and Conflict of Interest), 7:20 (Harassment of Students Prohibited), 8:30 (Visitors to and Conduct on School Property)

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¹⁹ 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. 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.

Informing nonemployees is not required by law. However, given the potential for employer liability under the IHRA for harassment of nonemployees, best practice is to publicize this policy to those individuals as well.

General Personnel

Hiring Process and Criteria 1

The District hires the most qualified personnel consistent with budget and staffing requirements and in compliance with School Board policy on equal employment opportunity and minority recruitment.² The Superintendent is responsible for recruiting personnel and making hiring recommendations to the Board.³ If the Superintendent's recommendation is rejected, the Superintendent must submit another.⁴ No individual will be employed who has been convicted of a criminal offense listed in 105 ILCS 5/21B-80(c).⁵

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

² See policy 5:10, *Equal Employment Opportunity and Minority Recruitment*. Districts may not classify a job as either a male or female job. 29 C.F.R. §1604.5, 34 C.F.R. §106.55.

³ Boards must consider the superintendent's recommendations concerning, among other things, "the selection, retention, and dismissal of employees." 105 ILCS 5/10-16.7. The board may want to use this alternative sentence:

All personnel decisions are made by the Board, but only on the recommendation of the Superintendent.

Subject to an applicable collective bargaining agreement in effect on 6-13-11, a board that fills a "new or vacant teaching position" must select a candidate based on: (1) certifications, (2) qualifications, (3) merit and ability (including performance evaluation, if available), and (4) relevant experience, provided that the length of continuing service with the district must not be considered a factor, unless all other factors are determined by the school district to be equal. 105 ILCS 5/24-1.5. The statute does not define "new or vacant teaching positions." The requirement does not apply to filling vacant positions under 105 ILCS 5/24-12 (reduction in force and recall). Consult the board attorney about these issues.

⁴ An additional optional sentence follows:

The Superintendent may select personnel on a short-term basis for a specific project or emergency condition before the Board's approval.

⁵ 775 ILCS 5/2-103.1, added by P.A. 101-656, prohibits employers from using conviction records as a basis to refuse to hire or to take any adverse action against an applicant or employee unless: (1) otherwise authorized by law; (2) there is a *substantial relationship* between the criminal offense and the employment sought; or (3) granting the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. For the disqualifying offenses listed in 105 ILCS 5/21B-80, amended by P.A. 102-552, a district does not have to show a *substantial relationship* between the offense and the position or that hiring or continuing to employ the person would involve an unreasonable risk. However, the Ill. Dept. of Human Rights (IDHR) interprets the Ill. Human Rights Act (IHRA) to still require the employer to notify the applicant of the disqualification pursuant to law and to afford the applicant at least five business days to respond in case the applicant wants to dispute the accuracy of the conviction record. Id. at 5/2-103.1(C). See IDHR's *Conviction Record Protection – Frequently Asked Questions* (March 2021), at:

www2.illinois.gov/dhr/Pages/Conviction_Record_Protection_Frequently_Asked_Questions.aspx.

Attorneys have different opinions as to whether the IHRA requires the notification process described in 775 ILCS 5/2-103.1(c), which includes preliminary and final notices, when a disqualifying offense listed in 105 ILCS 5/21B-80 is found in a conviction record; consult the board attorney for guidance on this issue. See administrative procedure 5:30-AP2, *Investigations*, and its footnotes for more detail regarding the IHRA notice requirements provisions and the need for districts to also comply with the seven-day notification requirement in the Ill. Uniform Conviction Information Act, 20 ILCS 2635/7. **Note:** The protections of 775 ILCS 5/2-103.1 do not cover *unpaid interns*, which may include student teachers in the K-12 context. The definition of *employee* in the IHRA only extends to include unpaid interns for civil rights violations involving sexual harassment. 775 ILCS 5/2-101(A)(1)(c) and 5/2-102(D).

105 ILCS 5/10-21.9(c), amended by P.A. 101-531; 105 ILCS 5/21B-80, amended by P.A.s 101-531 and 102-552, allows individuals with criminal histories involving certain drug convictions to apply for or to reinstate their educator licenses seven years after their sentence for the criminal offense is completed. Consult the board attorney about whether the board wants to continue prohibiting employment for any individual who has a criminal history involving these exempted drug offenses.

All applicants must complete a District application in order to be considered for employment. ⁶

Job Descriptions

The Board maintains the Superintendent's job description and directs, through policy, the Superintendent, in his or her charge of the District's administration. ⁷

The Superintendent shall develop and maintain a current comprehensive job description for each position or job category; however, a provision in a collective bargaining agreement or individual contract will control in the event of a conflict. ⁸

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For more discussion regarding criminal history records checks and screenings required by 105 ILCS 5/10-21.9, amended by P.A.s 101-531, ~~and 101-643~~, and 102-552, see ¶ns 5 and 6 in policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*.

⁶ Any person who applies for employment as a teacher, principal, superintendent, or other certificated employee who willfully makes a false statement on his or her application for employment, material to his or her qualifications for employment, which he or she does not believe to be true, is guilty of a Class A misdemeanor. 105 ILCS 5/22-6.5 District employment applications must contain a statement to this effect. Id. Each employment application for these positions must state the following (Id.):

Failure to provide requested employment or employer history which is material to the applicant's qualifications for employment or the provision of statements which the applicant does not believe to be true may be a Class A misdemeanor.

Many districts ask applicants about disqualifying criminal convictions on their employment applications or at another point before a job offer is made. State law does not expressly prohibit this practice; however, guidance issued by IDHR regarding implementation of 775 ILCS 5/1-103(G-5) and 5/2-103.1, added by P.A. 101-656, states "[u]nless authorized by law, an employer is prohibited from inquiring about an applicant's conviction record prior to making a job offer to the applicant." See IDHR's *Conviction Record Protection – Frequently Asked Questions* guidance issued by IDHR (March 2021), at:

www2.illinois.gov/dhr/Pages/Conviction_Record_Protection_Frequently_Asked_Questions.aspx.

While the School Code and Job Opportunities for Qualified Applicant Act do not prohibit districts from asking about disqualifying convictions before a job offer is made, it is unclear whether they affirmatively authorize such inquiries. The IDHR's guidance does not carry the force of law, but may impact its handling of a discrimination charge based on a conviction record. It is also unclear if an applicant's mere disclosure of a disqualifying conviction on an application, absent results of a fingerprint-based criminal history records check, Ill. Sex Offender Registry check, or Violent Offender Against Youth Registry check, triggers the district's obligation to provide notice to the applicant under 775 ILCS 5/2-103.1(C); see also ¶n 5, above. Consult the board attorney for advice on these issues and how they may affect application processes.

Any employer that asks applicants to record video interviews and uses an artificial intelligence analysis of the applicant-submitted videos must comply with the Artificial Intelligence Video Interview Act, 820 ILCS 42/, added by P.A. 101-260.

⁷ 105 ILCS 5/10-16.7. The foundation for a productive employment relationship begins with a board's policy, a thoughtfully crafted employment contract and job description, and procedures for communications and ongoing assessment. See IASB's *Foundational Principles of Effective Governance, Principle 3. The board employs a superintendent*, at:

www.iasb.com/conference-training-and-events/training/training-resources/foundational-principles-of-effective-governance/.

See also 3:40-E, *Checklist for the Superintendent Employment Contract Negotiation Process*, for best practice discussions about establishing the board-superintendent employment relationship and contract.

⁸ Job descriptions will become the basis for categorizing a teacher into one or more positions that the teacher is qualified to hold for reduction in force (RIF) dismissal and recall purposes. 105 ILCS 5/24-12(b), amended by P.A. 101-643. A board should consult with its attorney to review its current list of job descriptions and discuss the district's specific responsibilities.

Investigations

The Superintendent or designee shall ensure that a fingerprint-based criminal history records check and a check of the Statewide Sex Offender Database and Violent Offender Against Youth Database is performed on each applicant as required by State law.⁹ When the applicant is a successful superintendent candidate who has been offered employment by the Board, the Board President shall ensure that these checks are completed.¹⁰ The Superintendent or designee, or if the applicant is a successful superintendent candidate, then the Board President shall notify an applicant if the applicant is identified in either database.¹¹ The School Code requires the Board President to keep a conviction record confidential and share it only with the Superintendent, Regional Superintendent, State Superintendent, State Educator Preparation and Licensure Board, any other person necessary to the hiring decision, ~~or for purposes of clarifying the information, the Ill. Dept. of State Police and/or Statewide Sex Offender Database for purposes of clarifying the information, and/or the Teachers'~~

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A job description is evidence of a position's *essential functions*. 29 C.F.R. §1630.2(n). The Americans with Disabilities Act (ADA) protects individuals who have a disability and are qualified, with reasonable accommodation, to perform the *essential functions* of the job. 42 U.S.C. §12101 *et seq.*, amended by the ADA Amendments Act (ADAAA), Pub. L. 110-325. Determining which functions are essential may be critical to determining if an individual with a disability is qualified. An individual is qualified to perform a job even though he or she is unable, due to a disability, to perform tasks which are incidental to the job. Only when an individual is unable to perform the *essential functions* of a job may a district deny the individual employment opportunities. 29 C.F.R. §1630.2(m). For a definition of essential functions see *Id.* at 1630.2(n). Whether a particular function is essential is a factual determination.

Important: The ADAAA made significant changes to the ADA's definition of disability that broadened the scope of coverage and overturned a series of U.S. Supreme Court decisions that made it difficult to prove that an impairment was a qualifying disability. There is information about the regulations and a link to them at: www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm. Consult the board attorney regarding how these amendments impact the district's hiring processes.

⁹ The policy's requirements on criminal records checks for applicants for employment are mandated by 105 ILCS 5/10-21.9, amended by P.A.s 101-72, 101-531, ~~and 101-643, and 102-552~~. See administrative procedure 5:30-AP2, *Investigations*, for the process ~~timing~~ and positions requiring criminal background investigation and what steps a district must take if it wants to disqualify an applicant based on a conviction record. The Statewide Sex Offender Database (a/k/a Sex Offender Registry) is available at: www.isp.state.il.us/sor. The Statewide Murderer and Violent Offender Against Youth Database is available at: www.isp.state.il.us/cmvo/. For more discussion regarding criminal history records checks and screenings required by 105 ILCS 5/10-21.9, amended by P.A.s 101-531 and 101-643, see f/n 5 in policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*. See policy 4:60, *Purchases and Contracts*, for requirements concerning criminal background checks of employees of contractors who have *direct, daily contact* with students.

¹⁰ *Id.* If a board wants to require additional background inquiries beyond the fingerprint-based criminal history records information check required by 105 ILCS 5/10-21.9, amended by P.A.s 101-72, 101-531, ~~and 101-643, and 102-552~~, including the federal *Rap Back Service* (20 ILCS 2630/3.3, ~~added by P.A. 100-718~~) and/or checks through consumer reporting agencies regulated by the Fair Credit Reporting Act (15 U.S.C. §1681 *et seq.*), consult the board attorney. For more detailed information, see the laws listed in sample exhibit 3:40-E, *Checklist for the Superintendent Employment Contract Negotiation Process*, under the checklist item entitled **Conditions of Employment**, in the **Other Background Check Laws** row.

¹¹ 105 ILCS 5/10-21.9(b), amended by P.A.s 101-72 and 101-531, and 105 ILCS 5/21B-10. The School Code requires the board president to keep a conviction record confidential. It is impossible to know whether a fingerprint-based criminal history records check and a check of the Statewide Sex Offender and Violent Offender Against Youth Databases on a successful superintendent candidate will come back with a conviction record.

Therefore, in accordance with best practice (ensuring compliance and aligning with good governance principles), this policy does not assign a designee for the board president to complete this task. However, to balance the requirement to keep conviction records confidential with the practical implementation of ensuring a fingerprint-based criminal history records check and a check of the Statewide Sex Offender and Violent Offender Against Youth Databases are performed on each successful superintendent applicant, a board president may want to designate the duty to order these checks to the individuals otherwise listed in 105 ILCS 5/10-21.9(b), amended by P.A.s 101-72 and 101-531. Those individuals include the board president, the superintendent or designee, regional superintendent (if the check was requested by the district), state superintendent of education, state Educator Preparation and Licensure Board, any other person necessary to the hiring decision, or for clarification purposes, the Ill. Dept. of State Police and/or Statewide Sex Offender Registry.

Retirement System of the State of Illinois when required by law.¹² The Board reserves its right to authorize additional background inquiries beyond a fingerprint-based criminal history records check when it deems it appropriate to do so, in accordance with applicable laws.

Each newly hired employee must complete a U.S. Citizenship and Immigration Services Form as required by federal law.¹³

The District retains the right to discharge any employee whose criminal background investigation reveals a conviction for committing or attempting to commit any of the offenses outlined in 105 ILCS 5/21B-80¹⁴ or who falsifies, or omits facts from, his or her employment application or other employment documents. If an indicated finding of abuse or neglect of a child has been issued by the Ill. Department of Children and Family Services or by a child welfare agency of another jurisdiction for any applicant for student teaching, applicant for employment, or any District employee, then the Board must consider that person's status as a condition of employment.¹⁵

The Superintendent shall ensure that the District does not engage in any investigation or inquiry prohibited by law and complies with each of the following:¹⁶

1. The District uses an applicant's credit history or report from a consumer reporting agency only when a satisfactory credit history is an established bona fide occupational requirement of a particular position.¹⁷

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

¹² Id. at 5/10-21.9(b), amended by P.A.s 101-72 and 101-531, and 105 ILCS 5/21B-85, amended by P.A. 102-552. The School Code continues to define the board president's role in conducting criminal background investigations and receiving the results of these investigations, including the results for employees of district contractors. 105 ILCS 5/10-21.9. Many districts delegate this task in the hiring process to a human resources department.

105 ILCS 5/21B-85, amended by P.A. 102-552, requires a board to provide prompt written notice to the board of trustees of the Teachers' Retirement System of the State of Illinois (TRS) when it learns that any teacher has been convicted of a felony offense (which provides for a sentence of death or imprisonment for one year or more). The notice to TRS is limited to (1) the name of the license holder, (2) fact of conviction, (3) name and location of the court in which the conviction occurred, and (4) the assigned case number from the court. Id.

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

For more discussion regarding responses to results obtained by criminal history records checks and screenings as required by 105 ILCS 5/10-21.9(e), amended by P.A.s 101-531 and 101-643, see *f/n 6* in policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*.

¹³ Immigration Reform and Control Act, 8 U.S.C. §1324a *et seq.* Consult with the board attorney regarding the district's rights and responsibilities under all Illinois laws if the district uses any electronic employment verification system, including *E-Verify* and/or the Basic Pilot Program. 820 ILCS 55/12. This statute urges employers who voluntarily use *E-Verify* (formerly known as the Basic Pilot/Employment Eligibility Verification Program) to consult the Ill. Dept. of Labor's website for current information on the accuracy of *E-Verify* and to review and understand their legal responsibilities relating to the use of any electronic employment verification systems. See *f/n 2* in 5:150-AP, *Personnel Records*, for a more detailed discussion of *E-Verify* issues.

¹⁴ See *f/n 5*, above.

¹⁵ 105 ILCS 5/10-21.9(c) and (g), amended by P.A. 101-531. See *f/n 6* in 4:175, *Convicted Child Sex Offender; Screening; Notifications*, for further discussion.

¹⁶ As an alternative to describing the prohibited investigations, a board may substitute this sentence:

The Superintendent shall ensure that the District does not engage in any investigation or inquiry prohibited by law, including without limitation, investigation into or inquiry concerning: (1) credit history or report unless a satisfactory credit history is an established bona fide occupational requirement of a particular position; (2) claim(s) made or benefit(s) received under Workers' Compensation Act; and (3) access to an employee's or applicant's social networking website, including a request for passwords to such sites.

The default policy provision and the alternative stated above – whichever is selected – may be made a prohibition rather than a duty of the superintendent; to do this, delete the stricken text as follows: "~~The Superintendent shall ensure that the District does not engage ...~~."

2. The District does not screen applicants based on their current or prior wages or salary histories, including benefits or other compensation, by requiring that the wage or salary history satisfy minimum or maximum criteria. ¹⁸
3. The District does not request or require a wage or salary history as a condition of being considered for employment, being interviewed, continuing to be considered for an offer of employment, an offer of employment, or an offer of compensation. ¹⁹
4. The District does not request or require an applicant to disclose wage or salary history as a condition of employment. ²⁰
5. The District does not ask an applicant or applicant's current or previous employers about wage or salary history, including benefits or other compensation. ²¹
6. The District does not ask an applicant or applicant's previous employers about claim(s) made or benefit(s) received under the Workers' Compensation Act. ²²
7. The District does not request of an applicant or employee access in any manner to his or her personal online account, such as social networking websites, including a request for passwords to such accounts. ²³

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

¹⁷ Employee Credit Privacy Act, 820 ILCS 70/10. This Act allows inquiries into an applicant's credit history or credit report or ordering or obtaining an applicant's credit report from a consumer reporting agency when a satisfactory credit history is an *established bona fide occupational requirement* of a particular position. The Act identifies circumstances that permit a satisfactory credit history to be a job requirement, such as, the position's duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more.

¹⁸ 820 ILCS 112/10(b-5), added by P.A. 101-177. If an employer violates this subsection, the employee may recover in a civil action any damages incurred, special damages up to \$10,000, injunctive relief, and costs and reasonable attorney's fees. 820 ILCS 112/30(a-5), added by P.A. 101-177.

¹⁹ *Id.*

²⁰ *Id.*

²¹ 820 ILCS 112/10(b-10), added by P.A. 101-177. Note: Attorneys caution that using the exceptions in 820 ILCS 112/10(b-10)(1) and (2), added by P.A. 101-177, may trigger litigation. Violating this subsection entitles an employee to recover in a civil action any damages incurred, special damages up to \$10,000, injunctive relief, and costs and reasonable attorney's fees. 820 ILCS 112/30(a-5), added by P.A. 101-177.

A school board that wishes to preserve these exceptions should consult its board attorney; then they may supplement number 5 by adding the following after "compensation":

unless the applicant's wage or salary history is a matter of public record, or is contained in a document completed by the applicant's current or former employer and then made available to the public by the employer, or then submitted or posted by the employer to comply with State or federal law; or the applicant is a current employee applying for a position with the same current employer.

²² Right to Privacy in the Workplace Act, 820 ILCS 55/10(a).

²³ *Id.* at 55/10(b)(6)(B) (commonly known as the *Facebook Password Law*). A *personal online account* is defined as an online account used primarily by a person for personal purposes. *Personal online account* does not include an account created, maintained, used, or accessed for the business purpose of a person's employer or prospective employer. *Id.* at 55/10(b)(5). Bracketed explanations follow the statutory language:

"Nothing in this subsection shall prohibit or restrict an employer from complying with a duty to screen employees or applicants prior to hiring...provided that the password, account information, or access sought by the employer only relates to an online account that:

(A) an employer supplies or pays; or

(B) an employee creates or maintains on behalf of under the direction of an employer in connection with that employee's employment."

[Based on this explanation, it is implausible that an applicant would have an account, service, or profile for business purposes of a school employer.]

8. The District provides equal employment opportunities to all persons. See policy 5:10, *Equal Employment Opportunity and Minority Recruitment*.

Physical Examinations ²⁴

Each new employee must furnish evidence of physical fitness to perform assigned duties and freedom from communicable disease. The physical fitness examination must be performed by a physician licensed in Illinois, or any other state, to practice medicine and surgery in any of its branches, a licensed advanced practice registered nurse, or a licensed physician assistant who has been delegated the authority by his or her supervising physician to perform health examinations. The employee must have the physical examination performed no more than 90 days before submitting evidence of it to the District.

Any employee may be required to have an additional examination by a physician who is licensed in Illinois to practice medicine and surgery in all its branches, a licensed advanced practice registered nurse, or a licensed physician assistant who has been delegated the authority by his or her supervising physician to perform health examinations, if the examination is job-related and consistent with business necessity.²⁵ The Board will pay the expenses of any such examination.

Orientation Program

The District's staff will provide an orientation program for new employees to acquaint them with the District's policies and procedures, the school's rules and regulations, and the responsibilities of their position. Before beginning employment, each employee must sign the *Acknowledgement of Mandated Reporter Status* form as provided in policy 5:90, *Abused and Neglected Child Reporting*.

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

The statute specifically permits an employer to: (1) maintain workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use, social networking site use, and electronic mail use; and (2) monitor usage of the employer's (district's) electronic equipment and electronic mail. The statute also states that it does *not prohibit* an employer from obtaining information about an applicant or an employee that is in the public domain or that is otherwise obtained in compliance with the statute. Finally, the statute does not apply to all types of personal technology that employees may use to communicate with students or other individuals, such as text messages on a personal phone. Consult the board attorney about these issues.

²⁴ 105 ILCS 5/24-5, amended by P.A.s ~~100-513, 100-855,~~ and 101-81. According to this statute, a new or existing employee or substitute teacher employee may be subject to additional health examinations, including tuberculosis screening, as required by rules adopted by the Ill. Dept. of Public Health (IDPH) or by order of a local public health official. The ~~Ill. Dept. of Public Health (IDPH)~~ IDPH does not require school employees to be screened for tuberculosis other than workers in child day care and preschool settings. 77 Ill.Admin.Code §696.140(a)(3).

The last sentence of the first paragraph exceeds State law requirements and may be deleted.

Note that while examination by a spiritual leader/practitioner is sufficient for purposes of leaves, the statute does not permit an examination by a spiritual leader/practitioner for initial employment exams. This difference may present a constitutional issue; contact the board attorney for an opinion if an applicant wants to use an examination by a spiritual leader/practitioner.

Federal law limits pre-employment medical inquiries to whether the applicant is able to perform job-related functions; required medical examinations of applicants is forbidden. ~~American with Disabilities Act (ADA),~~ 42 U.S.C. §12112(d)(2); see also f/n 8 for an explanation regarding the ADA. Districts may condition an employment offer on taking and passing medical inquiries or physical exams, provided that all entering employees in the same classification receive the same conditional offer.

²⁵ The State law (105 ILCS 5/24-5, amended by P.A.s ~~100-513, 100-855,~~ and 101-81) allowing boards to require physicals of current employees "from time to time," is superseded by the ADA. 42 U.S.C. §12112(d)(4). The ADA allows medical inquiries of current employees only when they are job-related and consistent with business necessity or part of a voluntary employee wellness program. Id. Districts may deny jobs to individuals with disabilities who pose a direct threat to the health or safety of others in the workplace, provided that a reasonable accommodation would not either eliminate the risk or reduce it to an acceptable level. 42 U.S.C. §12113; 29 C.F.R. §1630.2(r). See f/n 8 for an explanation regarding the ADA.

See f/n 24 for a discussion of examinations by spiritual leaders/practitioners.

LEGAL REF.: 42 U.S.C. §12112, Americans with Disabilities Act; 29 C.F.R. Part 1630.
15 U.S.C. § 1681 et seq., Fair Credit Reporting Act.
8 U.S.C. §1324a et seq., Immigration Reform and Control Act.
105 ILCS 5/10-16.7, 5/10-20.7, 5/10-21.4, 5/10-21.9, 5/10-22.34, 5/10-22.34b,
5/21B-10, 5/21B-80, 5/21B-85, 5/10-22.34, 5/10-22.34b, 5/22-6.5, and 5/24-5.
20 ILCS 2630/3.3, Criminal Identification Act.
820 ILCS 55/, Right to Privacy in the Workplace Act.
820 ILCS 70/, Employee Credit Privacy Act.
~~Americans with Disabilities Act, 42 U.S.C. §12112, and 29 C.F.R. Part 1630.~~
~~Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.~~
~~Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.~~
Duldulao v. St. Mary of Nazareth Hospital, 136 Ill. App. 3d 763 (1st Dist. 1985),
aff'd in part and remanded 115 Ill.2d 482 (Ill. 1987).
Kaiser v. Dixon, 127 Ill. App. 3d 251 (2nd Dist. 1984).
Molitor v. Chicago Title & Trust Co., 325 Ill. App. 124 (1st Dist. 1945).

CROSS REF.: 2:260 (Uniform Grievance Procedure), 3:50 (Administrative Personnel Other Than the Superintendent), 4:60 (Purchases and Contracts), 4:175 (Convicted Child Sex Offender; Screening; Notifications), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:40 (Communicable and Chronic Infectious Disease), 5:90 (Abused and Neglected Child Reporting), 5:125 (Personal Technology and Social Media; Usage and Conduct), 5:220 (Substitute Teachers), 5:280 (Duties and Qualifications)

General Personnel

Family and Medical Leave 1

Leave Description

An eligible employee may use unpaid family and medical leave (FMLA leave), guaranteed by the federal Family and Medical Leave Act. The U.S. Department of Labor's rules (federal rules) implementing FMLA, as they may be amended from time to time, control FMLA leave.

An eligible employee may take FMLA leave for up to a combined total of 12 weeks each 12-month period, beginning September 1 and ending August 31 of the next year. ²

During a single 12-month period, an eligible employee's FMLA leave entitlement may be extended to a total of 26 weeks of unpaid leave to care for a covered servicemember (defined in the federal rules) with a serious injury or illness. The "single 12-month period" is measured forward from the date the employee's first FMLA leave to care for the covered servicemember begins. ³

While FMLA leave is normally unpaid, the District will substitute an employee's accrued compensatory time-off and/or paid leave for unpaid FMLA leave, provided such leave is available for use in accordance with Board policies and rules.⁴ In addition, ~~a~~All policies and rules regarding the

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¹ State or federal law controls this policy's content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. This policy implements the very complex Family and Medical Leave Act, 29 U.S.C. §2612, (FMLA) and a school board is urged to have its attorney review it before adoption. A provision in State law expands eligibility for FMLA leave to school district employees who have been employed by the district for at least 12 months and work at 1,000 hours (which includes FMLA's 1,280 hours) in the 12-month period immediately preceding the leave, which effectively makes more educational support personnel eligible for the leave. See fn 9, below: 105 ILCS 5-24-6.4, added by P.A. 102-335.

All public (and private) school employers are covered by the FMLA without regard to their number of employees. (29 C.F.R. §§825.104 and 825.600). To be eligible for FMLA leave, however, an educational employee must be employed at a worksite where at least 50 employees are employed within 75 miles. (29 C.F.R. §825.600).

The U.S. Department of Labor (DOL), Wage & Hour Division, has a very helpful website containing forms, compliance guidance, posters, etc. (www.dol.gov/whd/fmla). It also contains a link to the complete FMLA rules, 29 C.F.R. Part 825.

² 29 C.F.R. §825.200 lists and explains the four methods boards may choose among for determining a 12-month period in which the 12-week entitlement occurs. While using a school year may be the easiest method to administer, **another method may be more suitable for the district.** Before changing to a different method of calculating the 12-month period, an employer must first give all employees at least 60-days' notice of the intended change; the transition must take place in such a way that the employees retain the full benefit of their leave entitlement under whichever method affords the greatest benefit to the employee. If the district fails to select an option, the one that provides the most beneficial outcome for employees will be used.

³ 29 C.F.R. §825. Section 585 of the National Defense Authorization Act for FY 2008, Pub. L. 110-181, added two types of family military leave – qualifying exigency leave and servicemember family leave. The latter leave extends the possible FMLA leave to 26 weeks in a *single 12-month period*. For more information, see fn 6.

⁴ This paragraph presents only one of many possible alternatives. The FMLA permits an employee to choose to substitute paid leave for FMLA leave, and an employer to require an employee to substitute paid leave for FMLA leave (29 C.F.R. §825.207). Substitution of paid leave for FMLA purposes means that the unpaid FMLA leave and the paid leave run concurrently. The sample policy, in the interests of clarity and limiting absences, requires this substitution. For boards that do not allow for compensatory time-off and have not adopted policy 5:310, *Compensatory Time-Off*, delete ~~compensatory time-off and/or~~ from this sentence.

use of paid leave apply when paid leave is substituted for unpaid FMLA leave. Any substitution of paid leave for unpaid FMLA leave will count against the employee's FMLA leave entitlement. Use of FMLA leave shall not preclude the use of other applicable unpaid leave that will extend the employee's leave beyond 12 weeks, provided that the use of FMLA leave shall not serve to extend such other unpaid leave. Any full workweek period during which the employee would not have been required to work, including summer break, winter break and spring break, is not counted against the employee's FMLA leave entitlement.⁵

FMLA leave is available in one or more of the following instances:⁶

1. The birth and first-year care of a son or daughter.
2. The adoption or foster placement of a son or daughter, including absences from work that are necessary for the adoption or foster care to proceed and expiring at the end of the 12-month period beginning on the placement date.
3. The serious health condition of an employee's spouse, child, or parent.
4. The employee's own serious health condition that makes the employee unable to perform the functions of his or her job.

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In order to substitute paid leave for FMLA, it must be available for use under the employer's normal leave policies. For example, under 105 ILCS 5/24-6 and sample board policies 5:250, *Leaves of Absence*, and 5:330, *Sick Day, Vacation, Holidays, and Leaves*, an employee may only substitute 30 days of sick leave for birth without providing a medical certification, even if the employee has 100 sick days accrued; only 30 of those days are available for use.

Once an eligible employee communicates a need to take leave for an FMLA-qualifying reason, a district may not delay designating the leave as FMLA leave, and neither the employee nor a district may decline FMLA protection for that leave, even when a collective bargaining agreement requires or allows for such a delay. Further, when a district requires employees to substitute accrued paid leave for FMLA leave, all the benefits and protections that would otherwise apply during the paid leave (such as accrual of seniority) must continue to apply when substituting for FMLA leave. See *DOL Wage and Hour Division Letter FMLA 2019-3-A* (9-10-19), at:

www.dol.gov/sites/dolgov/files/WHD/legacy/files/2019_09_10_3A_FMLA.pdf. Likewise, an employer may require an employee to substitute accrued comp time against the employee's FMLA leave entitlement. (29 C.F.R. §825.207(f). Sample policy 5:310, *Compensatory Time-Off*, addresses the acquisition and use of comp time. The FMLA rules also describe the interaction between FMLA leave and leave taken pursuant to a disability plan and workers' compensation leave. (29 C.F.R. §825.207(d) and (e).

If employees have not previously been required to substitute accrued paid leave, this requirement's implementation may give rise to a duty to bargain because it affects the mandatory bargaining subject of employee paid leave.

⁵ 29 C.F.R. §825.200(h). If a holiday occurs within the week taken as FMLA leave, the week is still counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement.

⁶ 29 C.F.R. §§825.112 and 825.200. See §§825.120 and 825.121 for birth or placement for adoption or foster care. *Spouse* includes an individual in a same-sex or common law marriage that either: (1) was entered into in a state that recognizes such marriages; or (2) if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state (29 C.F.R. §§825.102 and 825.122(b)). See also *Obergefell v. Hodges*, 135 S.Ct. 2584, 576 U.S. 644 (2015).

Leave for a qualifying exigency (reason number 5) is governed by 29 C.F.R. §§825.122 (definition) and 825.126.

Leave to care for a covered servicemember (reason number 6) is governed by 29 C.F.R. §§825.122 (definition) & 825.127. An eligible employee may take 26 weeks of leave in different "single 12-month periods" to care for multiple servicemembers or to care for the same servicemember with a subsequent serious injury or illness. (29 C.F.R. §825.127).

Attorneys disagree whether the Illinois Family Military Leave Act, 820 ILCS 151/, applies to schools because its definition of *employer* does not specify school districts. A covered employer must allow a spouse, parent, child, or grandparent of a person called to military service to take an unpaid leave of 15 or 30 days, depending on the number of individuals employed by the employer. (Id. at 151/10(a)-(b)). The length of leave provided to an employee under State law because his or her spouse or child is called to military service is reduced by the number of days of leave provided under 29 U.S.C. §2612(a)(1)(E) because of any qualifying exigency arising out of the fact that the employee's spouse or child is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. (820 ILCS 151/10(b)).

5. The existence of a qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a military member on covered active duty or has been notified of an impending call or order to active duty, as provided by federal rules.
6. To care for the employee's spouse, child, parent, or next of kin who is a covered servicemember with a serious injury or illness, as provided by federal rules.

If spouses are employed by the District, they may together take only 12-weeks for FMLA leaves when the reason for the leave is 1 or 2. above, or to care for a parent with a serious health condition. or a combined total of 26 weeks for item 6 above. ⁷

An employee may be permitted to work on an intermittent or reduced-leave schedule in accordance with federal rules. ⁸

Eligibility ⁹

To be eligible for FMLA leave, an employee must be employed at a worksite where at least 50 employees are employed within 75 miles. In addition, one of the following provisions must describe the employee:

1. The employee has been employed by the District for at least 12 months and has been employed for at least 1,000~~250~~ hours of service during the 12-month period immediately before the beginning of the leave. The 12 months an employee must have been employed by the District need not be consecutive. However, the District will not consider any period of previous employment that occurred more than seven years before the date of the most recent hiring, except when the service break is due to fulfillment of a covered service obligation under the employee's Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, et seq., or when a written agreement exists concerning the District's intention to rehire the employee.
2. The employee is a full-time classroom teacher.

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⁷ 29 C.F.R. §§825.120(a)(3) (birth) and 825.121(a)(3) (adoption and foster care).

⁸ 29 C.F.R. §§825.121(b), 825.202 - 825.205 and 825.601.

⁹ 29 C.F.R. §§825.110, 825.111, and 825.600; 105 ILCS 5/24-6.4, added by P.A. 102-335. **The default policy language exceeds federal and State law requirements because it provides immediate eligibility to full-time classroom teachers.** A board may substitute the following to deny eligibility to classroom teachers who have not worked 12 months for the district, but it should first analyze collective bargaining consequences and seek its board attorney's advice:

To be eligible for FMLA leave, both of the following provisions must describe the employee:

1. The employee is employed at a worksite where at least 50 employees are employed within 75 miles; and
2. The employee has been employed by the District for at least 12 months and has been employed for at least 1,000~~250~~ hours of service during the 12-month period immediately before the beginning of the leave. The 12 months an employee must have been employed by the District need not be consecutive. However, the District will not consider any period of previous employment that occurred more than 7 years before the date of the most recent hiring, except when the service break is due to fulfillment of a covered service obligation under the employee's Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, et seq., or when a written agreement exists concerning the District's intention to rehire the employee.

A service break due to fulfillment of covered service obligation is found in the *Glossary of Terms Used in FMLA* available at: webapps.dol.gov/elaws/whd/fmla/3.aspx?Glossary_Word=ELIGIBLE.

An employee's eligibility requires analysis of the information available in each case using the guidance in §825.110. Any week during which an employee is maintained on the payroll, even if the employee does not work that week, is counted toward the 12-months' service requirement. ~~(Id. at 825.110(b)(3)).~~

Requesting Leave ¹⁰

If the need for the FMLA leave is foreseeable, an employee must provide the Superintendent or designee with at least 30 days' advance notice before the leave is to begin. If 30 days' advance notice is not practicable, the notice must be given as soon as practicable. The employee shall make a reasonable effort to schedule a planned medical treatment so as not to disrupt the District's operations, subject to the approval of the health care provider administering the treatment. The employee shall provide at least verbal notice sufficient to make the Superintendent or designee aware that he or she needs FMLA leave, and the anticipated timing and duration of the leave. Failure to give the required notice for a foreseeable leave may result in a delay in granting the requested leave until at least 30 days after the date the employee provides notice.

Certification ¹¹

Within 15 calendar days after the Superintendent or designee makes a request for certification for a FMLA leave, an employee must provide one of the following:

1. When the leave is to care for the employee's covered family member with a serious health condition, the employee must provide a complete and sufficient certificate signed by the family member's health care provider.
2. When the leave is due to the employee's own serious health condition, the employee must provide a complete and sufficient certificate signed by the employee's health care provider.
3. When the leave is to care for a covered servicemember with a serious illness or injury, the employee must provide a complete and sufficient certificate signed by an authorized health care provider for the covered servicemember.
4. When the leave is because of a qualified exigency, the employee must provide: (a) a copy of the covered military member's active duty orders or other documentation issued by the military indicating that the military member is on active duty or call to active duty status, and the dates of the covered military member's active duty service, and (b) a statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested.

The District may require an employee to obtain a second and third opinion at its expense when it has reason to doubt the validity of a medical certification.

The District may require recertification at reasonable intervals, but not more often than once every 30 days. Regardless of the length of time since the last request, the District may request recertification when the, (1) employee requests a leave extension, (2) circumstances described by the original certification change significantly, or (3) District receives information that casts doubt upon the continuing validity of the original certification. Recertification is at the employee's expense and must be provided to the District within 15 calendar days after the request. The District may request recertification every six months in connection with any absence by an employee needing an intermittent or reduced schedule leave for conditions with a duration in excess of six months.

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

¹⁰ 29 C.F.R. §§825.302-825.304 require an employee to notify the employer of the need for leave and to generally schedule leave for planned medical treatments in a way that the absences do not unduly disrupt the employer's operations. The policy's notice provisions are the shortest time frame allowable (29 C.F.R. §825.302). The employee need not expressly request a leave under the FMLA. An employer may require that employees follow its usual and customary notice and procedural requirements for requesting leave.

¹¹ Requests for medical certification, 2nd and 3rd opinions, and recertification are governed by 29 C.F.R. §§825.305-825.310. The appropriate certification forms are available at www.dol.gov/agencies/whd/fmla/forms www.dol.gov/WHD/fmla. Districts must inform the employee of the medical certification requirement and of the consequences for failing to provide it.

Failure to furnish a complete and sufficient certification on forms provided by the District may result in a denial of the leave request.

Continuation of Health Benefits ¹²

During FMLA leave, employees are entitled to continuation of health benefits that would have been provided if they were working. Any share of health plan premiums being paid by the employee before taking the leave, must continue to be paid by the employee during the FMLA leave. A District's obligation to maintain health insurance coverage ceases if an employee's premium payment is more than 30 days late and the District notifies the employee at least 15 days before coverage will cease.

Changed Circumstances and Intent to Return ¹³

An employee must provide the Superintendent or designee reasonable notice of changed circumstances (i.e., within two business days if the changed circumstances are foreseeable) that will alter the duration of the FMLA leave. The Superintendent or designee, taking into consideration all of the relevant facts and circumstances related to an individual's leave situation, may ask an employee who has been on FMLA leave for eight consecutive weeks whether he or she intends to return to work.

Return to Work

If returning from FMLA leave occasioned by the employee's own serious health condition, the employee is required to obtain and present certification from the employee's health care provider that he or she is able to resume work. ¹⁴

An employee returning from FMLA leave will be given an equivalent position to his or her position before the leave, subject to: (1) permissible limitations the District may impose as provided in the FMLA or implementing regulations, and (2) the District's reassignment policies and practices. ¹⁵

Classroom teachers may be required to wait to return to work until the next semester in certain situations as provided by the FMLA regulations. ¹⁶

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

¹² Required by 29 C.F.R. §825.209. The same health benefits means, for example, that if family member coverage is provided to an employee, family member coverage must be maintained during FMLA leave. If an employer provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan or benefits to the same extent as if the employee were not on leave. *Health benefits* do not include individual policies paid exclusively by the employee. Districts must provide an advance written description of how premium payments must be made. (29 C.F.R. §825.210). See fn 1, above. Consult the board attorney about whether any existing collective bargaining agreements alter a district's obligation to continue health benefits even after exhaustion of FMLA.

If coverage lapses because an employee has not made required premium payments, the employer must still restore the employee to coverage and benefits when the employee returns from leave. (29 C.F.R. §825.212). 29 C.F.R. §825.213 governs how districts may recover premium payments if the employee fails to return to work after the leave entitlement is exhausted or expires. The board attorney must be consulted for the appropriate premium recovery method.

¹³ This section is optional but allowed by 29 C.F.R. §825.311. Either or both sentences may be changed or omitted, provided the policy is applied uniformly.

¹⁴ Requiring *fitness for duty* certification is optional but allowed by 29 C.F.R. §825.312. This sentence may be deleted or changed in accordance with the rule.

¹⁵ 29 C.F.R. §§825.214 - 825.216 & 825.604. An equivalent position must have the same pay (including any unconditional pay increases), benefits, and working conditions and involve the same or substantially similar duties. (29 C.F.R. §825.215). Determining how an employee will be restored to an *equivalent position* is made on the basis of "established policies and practices" and collective bargaining agreements. (29 C.F.R. §825.604).

¹⁶ Optional but allowed by 29 C.F.R. §825.602.

Implementation

The Superintendent or designee shall ensure that: (1) all required notices and responses to leave requests are provided to employees in accordance with the FMLA;¹⁷ and (2) this policy is implemented in accordance with the FMLA. In the event of a conflict between the policy and the FMLA or its regulations, the latter shall control. The terms used in this policy shall be defined as in the FMLA regulations.¹⁸

LEGAL REF.: ~~Family and Medical Leave Act, 29 U.S.C. §2601 et seq., Family and Medical Leave Act; 29 C.F.R. Part 825.~~
105 ILCS 5/24-6.4.

CROSS REF.: 5:180 (Temporary Illness or Temporary Incapacity), 5:250 (Leaves of Absence), 5:310 (Compensatory Time-Off), 5:330 (Sick Days, Vacation, Holidays, and Leaves)

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

¹⁷ School districts must provide employees a general notice explaining the FMLA and the process for filing complaints. (29 C.F.R. §825.300(a)). This notice must also be provided to FMLA-covered employees; distribution may be accomplished electronically. A poster is available at www.dol.gov/WHD/fmla, The Family and Medical Leave Act Poster.

When an employee requests FMLA leave or when the employer acquires knowledge that an employee's leave may be for a FMLA-qualifying reason, the employer must provide the employee with a notice of eligibility (within five⁵ business days absent extenuating circumstances) (29 C.F.R. §825.300(b)). At the same time, the employer must provide the employee with a notice of rights and responsibilities (29 C.F.R. §825.300(c)). Finally, the employer must notify the employee whether it has designated the leave as FMLA-qualifying (29 C.F.R. §825.300(d)). The federal rules contain specific requirements for each of these notices. Fortunately, a prototype for each of these required notices is available at www.dol.gov/WHD/fmla (*WH-381 Notice of Eligibility and Rights & Responsibilities* and *WH-382 Designation Notice*). Willfully failing to provide the notices can subject an employer to a monetary penalty.

¹⁸ 29 C.F.R. §825.102.

17. First Reading of Revised Board of Education Policy 5:50 - Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition

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Recommended Motion: that the Board of Education accept for first reading the revised Board of Education Policy for Section 5:50 - Drug-and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition, as presented. **See Attachment No. 15.**

TO: Members of the Board of Education

FROM: Todd DeTaeye, Assistant Superintendent for Administration and Human Resources *td*

DATE: January 6, 2022

SUBJECT: Approve Board Policy 5:50 – Drug-and-Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: Approve the updated Board Policy.

Facts: In the continuing quest to update the District's Board Policies, attached is Board Policy 5:50 – Drug-and-Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition, which was included as part of the November 2021 PRESS update review.

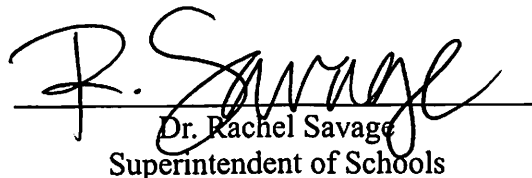
The revised policy states upon the Superintendent or designee's reasonable suspicion of an employee's violation of any of the prohibited activities, the Superintendent or designee may direct the employee to undergo a drug and/or alcohol test to corroborate or refute the alleged violation. State law protects the District from liability when it takes actions pursuant to a reasonable workplace drug policy, including but not limited to subjecting an employee or applicant to reasonable drug and alcohol testing, reasonable and nondiscriminatory random drug testing, discipline, termination of employment, or withdrawal of a job offer due to failure of a drug test.

Recall the underlined text represents suggested new additions; whereas, the ~~strikethrough~~ text represents suggested deletions.

Cost: None.

Recommended Action: That the Board of Education accept for first reading the revised Board of Education Policy for Section 5:50 – Drug-and-Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition, as presented.

Approved for Submission to the Board of Education


Dr. Rachel Savage
Superintendent of Schools

General Personnel

Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition 1

All District workplaces are drug- and alcohol-free workplaces. ²

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

¹ State or federal law controls this policy’s content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. The Right to Privacy in the Workplace Act (RPWA) allows employers to regulate employees’ use of lawful products that impair an employee’s ability to perform his or her assigned duties. 820 ILCS 55/5(b), amended by P.A. 101-27. The Cannabis Regulation and Tax Act (CRTA), 410 ILCS 705/10-35(a)(8), amended by P.A. 101-593, allows penalties issued by employers of law enforcement officers for consumption, possession, sale, purchase, or delivery of cannabis or cannabis-infused substances while on or off-duty to be collectively bargained; districts that employ school resource officers should consult their board attorneys about this provision of the CRTA.

The federal Drug-Free Workplace Act applies only to the specific programs receiving federal funds. 41 U.S.C. §8101 *et seq.* For ease of administration, this policy makes its requirements applicable to all employees to avoid confusion during implementation and to avoid complications when obtaining and maintaining federal funds. The CRTA, 410 ILCS 705/, added by P.A. 101-27 and amended by P.A. 101-593, legalized cannabis, but it remains a *Schedule 1* (c)(17) controlled substance under federal law, meaning that it has no currently accepted medical use in addition to a high potential for abuse. 21 U.S.C.A. §812 (exempting hemp as defined at 7 U.S.C.A. §1639o). 41 U.S.C. §§8101, 8102 and 8103. While not law, in June 2019, the U.S. House of Representatives, in a voice vote, voted in favor of an amendment to H.R. 3055, which was introduced by Reps. Earl Blumenauer (D-OR), Tom McClintock (R-CA), and Eleanor Holmes Norton (D-D.C.), prohibiting the U.S. Dept. of Justice (DOJ) from interfering with a state’s decision to implement laws governing the legalization of cannabis (recreational and medicinal). This marked the first time that either branch of the U.S. Congress has voted to protect state recreational cannabis laws from federal enforcement actions. If the amendment becomes law, it would block the DOJ from using funds to intervene in state and territory cannabis legalization laws. This policy continues to prohibit employees from using cannabis as allowed by the CRTA. See ¶n 9, below.

The federal Safe and Drug-Free Schools and Communities Act provides funds, upon application, for drug and violence prevention programs; it does not contain policy mandates. Illinois also has a Drug Free Workplace Act (30 ILCS 580/) that applies to districts with 25 or more employees working under a state contract or a grant of \$5,000 or more.

² Replace this sentence with the district’s drug- and alcohol- free policy goal(s), if any.

With the passage of the CRTA, 410 ILCS 705/, added by P.A. 101-27 and amended by P.A. 101-593, each board and superintendent may wish to engage in a risk-management conversation about the district’s drug- and alcohol-free policy enforcement and discipline goals. Enforcement and discipline goals depend upon a board’s risk-level tolerance and community expectations. Risk-level-tolerance decisions will depend upon many factors, including, but not limited to: (1) the board attorney’s recommendations, (2) the district’s budget parameters, if any, for reasonable suspicion training on identification of symptoms of impairment and/or being under the influence, (3) drug testing, and (4) the community’s expectations. Answers to the following questions might structure this risk-management conversation:

1. Does the board want to implement a reasonable suspicion program (or any other type of *just cause* provisions in an applicable collective bargaining agreement) to identify employees suspected of being impaired and/or under the influence to enhance its ability to discipline?
2. Does the board want the superintendent to secure training for designated district employees to educate them to identify symptoms of impairment or being under the influence of the substances prohibited in this policy?
3. How does the board want to address employees in positions of leadership, e.g., the superintendent and/or building principal(s), who are perpetually on call due to the nature of their positions and responsibilities (see ¶n 3, below)?
4. How will the district manage its duty to educate students about the dangers of drugs and alcohol against the reality that employees are allowed to use lawful products off-duty and off the district’s premises (820 ILCS 55/5(b), amended by P.A. 101-27)?
5. Will licensed educators be held to a higher standard than non-licensed employees due to their professional code of conduct expectations?

All employees are prohibited from engaging in any of the following activities while on District premises or while performing work or being *on call*³ for the District: ⁴

1. Unlawful manufacture, dispensing, distribution, possession, or use of an illegal or controlled substance. ⁵
2. Distribution, consumption, use, possession, or being impaired by or under the influence of an alcoholic beverage; being present on District premises or while performing work for the District when alcohol consumption is detectable, regardless of when and/or where the use occurred. ⁶
3. Distribution, consumption, possession, use, or being impaired by or under the influence of cannabis; being present on District premises or while performing work for the District when impaired by or under the influence of cannabis, regardless of when and/or where the use occurred, unless distribution, possession, and/or use is by a school nurse or school administrator pursuant to *Ashley's Law*, 105 ILCS 5/22-33.⁷ The District considers

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6. Will employees working directly with students be held to a higher standard than employees not working directly with students?

³ An employee is *on call* when the employer schedules him or her with at least 24 hours' notice to be on standby or otherwise responsible for performing employment-related tasks either at the employer's location or another previously-designated location. 820 ILCS 55/5, amended by P.A. 101-27. Consult the board attorney regarding how the board wants to treat employees who may be considered on call, e.g., superintendents, principals, coaches, and/or maintenance workers, etc

For boards that do not want this text, delete ~~or being on call~~.

⁴ To align with best practices for identifying and subsequently initiating discipline of employees for violating this policy (especially with the passage of the CRTA) and any possible collective bargaining agreement provisions, the superintendent may want to convene the Employee Substance Abuse Prevention Committee (see 2:150-AP, *Superintendent Committees*).

⁵ These actions are prohibited by both federal (41 U.S.C.A. §§8101, 8102 and 8103) and State Workplace Acts. See *f/n 13+2*, below. These laws do not address *under the influence* but a board may add: ", or being impaired by or under the influence of any illegal substance or any detectible use of any illegal substance regardless of when or where the use occurred." This option is limited to *illegal* substances to avoid prohibiting employees from using lawfully prescribed controlled substances. See *f/n 13+2*. Contact the board attorney for advice concerning this provision and whenever the district wants to discipline or dismiss an employee using it. If a hearing is required before the district may discipline or discharge an employee under this provision, the district must put forth evidence that the employee violated it. A district would also have this burden if a grievance is filed under a *just cause* provision in a collective bargaining agreement. This policy's third paragraph addresses prescribed medications other than cannabis.

⁶ Optional; alcohol is not addressed in either the federal or State Drug-Free Workplace Acts. Contact the board attorney for advice concerning this provision and whenever the district wants to discipline or dismiss an employee using it. If a hearing is required before the district may discipline or discharge an employee under this provision, the district must put forth evidence that the employee violated it. A district would also have this burden if a grievance is filed under a *just cause* provision in a collective bargaining agreement. The Ill. Court of Appeals held that when the policy defines *under the influence* as any "mental, emotional, sensory or physical impairment due to the use of drugs or alcohol," the school district must prove that the teacher showed signs of impairment even though she registered 0.056 blood-alcohol level on a Breathalyzer. *Kinsella v. Bd. of Ed. of the City of Chicago*, 27 N.E.3d 226 (Ill.App.1st 2015).

⁷ "[R]egardless of when and/or where the use occurred" is intended to mean that an employer may reach an employee's conduct on or off-duty depending upon the facts of the disciplinary situation; however, the CRTA contains a specific requirement that law enforcement employers adopt a policy outlining penalties for discipline of law enforcement employees for their on or off-duty conduct involving consumption, possession, sale, purchase, or delivery of cannabis or cannabis-infused substances. *Id.* at 10-35(a)(8), amended by P.A. 101-593. See also *f/ns 1, above, and 9, below*. Consult the board attorney if the district employs a school resource officer(s) (SRO(s)) as opposed to contracting with a local law enforcement agency for SRO services.

employees impaired by or under the influence of cannabis when there is a good faith belief that an employee manifests ~~the specific articulable symptoms~~⁸ while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position listed in the Cannabis Regulation and Tax Act (CRTA).⁹

Upon the Superintendent or designee's reasonable suspicion of an employee's violation of any of the prohibited activities stated above, the Superintendent or designee may direct the employee to undergo a drug and/or alcohol test to corroborate or refute the alleged violation. State law protects the District from liability when it takes actions pursuant to a reasonable workplace drug policy, including but not limited to subjecting an employee or applicant to reasonable drug and alcohol testing, reasonable and

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410 ILCS 130/25(b) prohibits discipline or arrest of school nurses and/or administrators for acting in accordance with *Ashley's Law*, 105 ILCS 5/22-33, amended by P.A. 101-370. Employers may enforce drug-free workplace policies when they are applied in a nondiscriminatory manner. 410 ILCS 705/10-50(a), added by P.A. 101-27, includes disciplining employees – even those who are *registered qualifying patients* – for violating drug-free workplace policies (410 ILCS 130/50 and 705/10-35(a)(1), added by P.A. 101-27). Contact the board attorney for advice concerning the Compassionate Use of Medical Cannabis Program Act (Medical Cannabis Program Act (MCPA)).

⁸ Specific articulable symptoms listed in 410 ILCS 705/10-50(d), added by P.A. 101-27, include: 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. In contrast to the CRTA, the MCPA, while listing the same specific, articulable, symptoms, does not require an employer to have a *good faith belief* that a *registered qualifying patient* is under the influence of cannabis. 410 ILCS 130/50(f), and scheduled to be repealed on 7-1-20.

⁹ 410 ILCS 705/10-35 and 10-50(a), added by P.A. 101-27 allows reasonable, nondiscriminatory, zero-tolerance policies. If the district seeks to discipline an employee on the basis that he or she is under the influence of or impaired by cannabis, it must afford the employee a reasonable opportunity to contest the basis of the determination. *Id.* at 10-50(d), added by P.A. 101-27. See also *f/n* 7, above. **Contact the board attorney for advice concerning this provision and whenever the district seeks disciplinary action or dismissal of an employee on the basis of the cannabis prohibitions in the policy.**

See also the Ill. Vehicle Code 625 ILCS 5/11-501.2(b-5) number one: when an individual's tetrahydrocannabinol concentration (THC) is five nanograms or more in whole blood or 10 nanograms or more in another bodily substance, e.g., saliva, urine, etc., as defined in 625 ILCS 5/11-501.2(a), a presumption under Illinois law exists that the individual is under the influence of cannabis. Under 625 ILCS 5/11-501.2(b-5) number two: when an individual's [THC] is less than five nanograms in whole blood or less than 10 nanograms or more in another bodily substance, e.g., saliva, urine, etc., as defined in 625 ILCS 5/11-501.2(a), the individual may still be considered impaired.

In addition to a zero-tolerance policy, the CRTA also allows civil, criminal, or other penalties for:

1. Engaging in tasks under the influence of cannabis when doing so would constitute negligence, professional malpractice, or professional misconduct (410 ILCS 705/10-35(a)(1));
2. Possessing cannabis on a school bus or on school grounds (*Id.* at 10-35(a)(2)(A)-(B) unless permitted under the MCPA);
3. Using cannabis on a school bus or on school grounds (*Id.* at 10-35(a)(3)(A)-(B) unless permitted under the MCPA);
4. [Using cannabis] in a public place [while impaired or under the influence of cannabis] (*Id.* at 10-35(a)(3)(F));
5. Knowingly being [impaired by or under the influences of cannabis] in close physical proximity to anyone under 21 years of age who is not a registered medical cannabis patient under the MCPA (*Id.* at 10-35(a)(3)(G));
6. Smoking [and/or *vaping* (see *f/n* 1948, below for a definition of *vaping*)] it in any place where smoking is prohibited under the Smoke Free Illinois Act (*Id.* at 10-35(a)(4));
7. Using [cannabis] as an on-duty law enforcement officer, corrections officer, probation officer, or firefighter (*Id.* at 10-35(a)(8)), or consuming, possessing, selling, purchasing, or delivering cannabis or a cannabis-infused substance(s) while on or off-duty [only if a policy has been adopted] *Id.* at 10-35(a)(8), amended by P.A. 101-593; or
8. [Using cannabis while [b]]eing on duty as an individual holding a school bus permit or Commercial Driver's License (*Id.* at 10-35(a)(9)).

nondiscriminatory random drug testing, discipline, termination of employment, or withdrawal of a job offer due to a failure of a drug test. ¹⁰

For purposes of this policy, a controlled substance means a substance that is:

1. Not legally obtainable,
2. Being used in a manner different than prescribed,
3. Legally obtainable, but has not been legally obtained, or
4. Referenced in federal or State controlled substance acts.

For purposes of this policy, *District premises*¹¹ means workplace as defined in the Cannabis Regulation and Tax Act (CRTA) in addition to District and school buildings, grounds, and parking areas; vehicles used for school purposes; and any location used for a School Board meeting, school athletic event, or other school-sponsored or school-sanctioned events or activities. *School grounds* means the real property comprising any school, any conveyance used to transport students to school or a school-related activity, and any public way within 1,000 feet of any school ground, designated school bus stops where students are waiting for the school bus, and school-sponsored or school-sanctioned events or activities. "Vehicles used for school purposes" means school buses or other school vehicles.

As a condition of employment, each employee shall: ¹²

1. Abide by the terms of ~~the~~this Board policy respecting a drug- and alcohol-free workplace; and
2. Notify his or her supervisor of his or her conviction under any criminal drug statute for a violation occurring on the District premises or while performing work for the District, no later than five calendar days after such a conviction.

Unless otherwise prohibited by this policy, prescription and over-the-counter medications are not prohibited when taken in standard dosages and/or according to prescriptions from the employee's licensed health care provider, provided that an employee's work performance is not impaired. ¹³

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

¹⁰ 410 ILCS 705/10-50(d). For boards that will not communicate to employees what will happen when reasonable suspicion exists, delete the first sentence of this paragraph: Upon the Superintendent or designee's reasonable suspicion of an employee's violation of any of the prohibited activities stated above, the Superintendent or designee may direct the employee to undergo a drug and/or alcohol test to corroborate or refute the alleged violation.

410 ILCS 705/10-50(c)(1), amended by P.A. 101-593, protects the district from liability for actions described in the last sentence of this paragraph. Delete it if the board will not communicate this information to its employees.

¹¹ 410 ILCS 705/10-35 and 10-50(a), added by P.A. 101-27 and amended by P.A. 101-593, allows employers to prohibit cannabis in the *workplace*. Many attorneys agree it is a best practice for employers to define workplace in policies that prohibit cannabis. 410 ILCS 705/10-50(h), added by P.A. 101-27, defines *workplace* as the employer's premises, including any building, real property, and parking area under the control of the employer or area used by an employee while in performance of the employee's job duties, and vehicles, whether leased, rented, or owned – and may be further defined by the employer's written policy when it is consistent with this definition.

This policy's definition of workplace expands the above CRTA definition to areas that board policy and/or the School Code impose duties upon districts to keep students safe, including:

1. The *school property* definition from policy 8:30, *Visitors to and Conduct on School Property*;
2. The *school grounds* definition at 105 ILCS 5/10-27.1A(d); and
3. Places that school districts must prevent and respond to bullying, including vehicles used for school purposes. 105 ILCS 5/27-23.7(a).

¹² Required by the State and federal Drug-Free Workplace Acts.

To make employees aware of the dangers of drug and alcohol abuse, the Superintendent or designee shall perform each of the following: ¹⁴

1. Provide each employee with a copy of this policy.
2. Post notice of this policy in a place where other information for employees is posted. ¹⁵
3. Make available materials from local, State, and national anti-drug and alcohol-abuse organizations. ¹⁶
4. Enlist the aid of community and State agencies with drug and alcohol informational and rehabilitation programs to provide information to District employees.
5. Establish a drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace,
 - b. Available drug and alcohol counseling, rehabilitation, re-entry, and any employee assistance programs, and
 - c. The penalties that the District may impose upon employees for violations of this policy.
6. Remind employees that policy 6:60, *Curriculum Content*, requires the District to educate students, depending upon their grade, about drug and substance abuse prevention and relationships between drugs, alcohol, and violence. ¹⁷

E-Cigarette, Tobacco, and Cannabis Prohibition ¹⁸

All employees are covered by the conduct prohibitions contained in policy 8:30, *Visitors to and Conduct on School Property*. The prohibition on the use of e-cigarettes,¹⁹ tobacco, and cannabis

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

¹³ This optional paragraph is not addressed in State or federal drug-free workplace acts. An employer should generally not ask an employee about his or her use of medication. See rules implementing the Americans with Disabilities Act, 29 C.F.R. §1630.14. Consult the board attorney if an employee is suspected of working while impaired or under the influence.

¹⁴ Numbers one through five in this paragraph are required by the State and federal Drug-Free Workplace Acts. 30 ILCS 580/3.

¹⁵ As an alternative, replace the phrase “in a place where other information for employees is posted” with the district’s local method, e.g., staff intranet, Internet, etc.

¹⁶ Grants may be available from the Ill. State Board of Education for developing a drug-free awareness program. 105 ILCS 5/2-3.93. The drug-free awareness program requirement can be met by developing a brochure on drug abuse or by contacting local, State, or national anti-drug abuse organizations for materials. The materials should be distributed to employees along with a list of places employees may call for assistance.

¹⁷ Optional. This statement serves as a display of good judgement and a reminder to employees that 105 ILCS 5/27-13.2, amended by P.A. 102-195 and 23.4 (provided it can be funded by private grants or the federal government) require districts to educate students about the prevention and avoidance of drugs abuse and the dangers of opioid and substance abuse.

¹⁸ 105 ILCS 5/10-20.5b, The Smoke Free Illinois Act, 410 ILCS 82/, and the CRTA, 410 ILCS 705/10-35(a)(4)(smoking anyplace where smoking is prohibited under the Smoke Free Illinois Act). Federal law prohibits smoking inside schools. 20 U.S.C. §6083(a).

The prohibition in 8:30, *Visitors to and Conduct on School Property*, referred to here, applies “on school property or at a school event.” Here, “at a school event” is clarified with the phrase “while ... performing work for the District” in order to align with this policy’s other prohibitions.

products applies both (1) when an employee is on school property, and (2) while an employee is performing work for the District at a school event regardless of the event's location.

Tobacco ~~shall have~~ has the meaning provided in 105 ILCS 5/10-20.5b.

Cannabis ~~shall have~~ has the meaning provided in the CRTA, 410 ILCS 705/1-10.

E-Cigarette is short for electronic cigarette and includes, but is not limited to, any electronic nicotine delivery system (ENDS), electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, and any components or parts that can be used to build the product or device. ²⁰

District Action Upon Violation of Policy

An employee who violates this policy may be subject to disciplinary action, including termination. ²¹ In addition or alternatively, the Board may require an employee to successfully complete an appropriate drug- or alcohol-abuse rehabilitation program.

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

¹⁹ While 720 ILCS 675, amended by P.A. 101-2, excludes e-cigarettes from its definition of tobacco, it does not address vaporization. Prohibiting *e-cigarettes* aligns with the district's obligation to maintain a safe, smoke-free environment and is logical extension of 105 ILCS 5/10-20.5b, The Smoke Free Illinois Act (410 ILCS 82/), and The Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, 720 ILCS 675, amended by P.A. 101-2 (raising the legal age to buy tobacco and e-cigarette products to 21 years of age). In addition, the U.S. Food and Drug Administration now regulates e-cigarettes. 21 C.F.R. Parts 1100, 1140, and 1143, amended by 81 Fed.Reg. 28973.

E-Cigarettes may resemble cigarettes but contain a battery-operated heating element that turns a liquid into an aerosol (or vapor) that sometimes includes nicotine, flavorings, and other chemicals. The act of inhaling and exhaling the aerosol is known as *vaping*. See www.centeronaddiction.org/e-cigarettes/recreational-vaping/what-vaping. For ease of administration, this policy treats *vaping*, whether tobacco products or not, and smoking tobacco the same due to the outbreaks of lung disease associated with the use of e-cigarettes and vaping. Some e-cigarettes do not look like tobacco products; they are designed to resemble other objects, such as USB flash drives, to be more easily concealed. Like smoking tobacco, vaporization products may include nicotine, which is derived from and is the addictive drug in tobacco, and other potentially harmful chemicals. See *Tobacco/Nicotine and E-Cigs* at: www.drugabuse.gov/drugs-abuse/tobacconicotine-e-cigs. Unlike smoking tobacco, vaping does not produce smoke, but rather the aerosol, often mistaken for water vapor and consisting of fine particles. Many of these particles contain varying amounts of toxic chemicals, which have been linked to cancer and respiratory and heart disease. An outbreak of lung disease has been associated with e-cigarette use and vaping. See articles at:

www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html; and
www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease/health-departments/index.html.

²⁰ Optional. If a district does not want to include the statutory example that includes the term *vape pen*, which provides notice that vaping products are also prohibited through the term e-cigarette, replace ~~includes but is not limited to, any electronic nicotine delivery system (ENDS), electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, and any components or parts that can be used to build the product or device~~ with "shall have the meaning provided in the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, 720 ILCS 675/1(a-9)."

²¹ An employee who currently uses *illegal* drugs is not protected under the Americans With Disabilities Act (ADA) when the district acts on the basis of such use. 42 U.S.C. §12114. Legal drug abusers and alcoholics may still be protected as *handicapped* under the Rehabilitation Act of 1973 (29 U.S.C. §706 et seq.) or the Ill. Human Rights Act (IHRA). 775 ILCS 5/1-101 et seq. and 56 Ill.Admin.Code §2500.20. The Rehabilitation Act, however, excludes from protection "an alcohol or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment ... would constitute a direct threat to the property or the safety of others." 29 U.S.C. §706(7)(B).

The ADA neither authorizes nor prohibits drug testing; it 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 (c). 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. Drug tests may also be a subject of collective bargaining. See paragraph one of *f/n* 1, above. Consult the board attorney before implementing a drug testing program to enforce this policy.

The Board shall take disciplinary action with respect to an employee convicted of a drug offense in the workplace within 30 days after receiving notice of the conviction. ²²

Should District employees be engaged in the performance of work under a federal contract or grant, or under a State contract or grant of \$5,000 or more, the Superintendent shall notify the appropriate State or federal agency from which the District receives contract or grant monies of the employee's conviction within 10 days after receiving notice of the conviction. ²³

Disclaimer ²⁴

The Board reserves the right to interpret, revise or discontinue any provision of this policy pursuant to the **Suspension of Policies** subhead in policy 2:240, *Board Policy Development*.

LEGAL REF.: ~~42 U.S.C. §12114, Americans With Disabilities Act, 42 U.S.C. §12114.~~
~~21 U.S.C. §812; 21 C.F.R. §1308.11-1308.15, Controlled Substances Act, 21~~
~~U.S.C. §812; 21 C.F.R. §1308.11-1308.15.~~
~~41 U.S.C. §8101 et seq., Drug-Free Workplace Act of 1988,; 41 U.S.C. §8101 et~~
~~seq.~~
~~20 U.S.C. §7101 et seq., Safe and Drug-Free School and Communities Act of 1994,;~~
~~20 U.S.C. §7101 et seq.~~
30 ILCS 580/, Drug-Free Workplace Act.
105 ILCS 5/10-20.5b.
410 ILCS 82/, Smoke Free Illinois Act.
410 ILCS 130/, Compassionate Use of Medical Cannabis Program Act.
410 ILCS 705/1-1 et seq., Cannabis Regulation and Tax Act.
720 ILCS 675, Prevention of Tobacco Use by Persons under 21 Years of Age and
Sale and Distribution of Tobacco Products Act.
820 ILCS 55/, Right to Privacy in the Workplace Act.
21 C.F.R. Parts 1100, 1140, and 1143.
23 Ill.Admin.Code §22.20.

CROSS REF.: 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:120
(Employee Ethics; Conduct; and Conflict of Interest), 6:60 (Curriculum Content),
8:30 (Visitors to and Conduct on School Property)

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

²² Required by both the federal and State Drug-Free Workplace Acts.

²³ Id.

²⁴ Optional best practice text.

18. First Reading of Revised Board of Education Policy 5:90 - Abused and Neglected Child Reporting

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Recommended Motion: that the Board of Education accept for first reading the revised Board of Education Policy for Section 5:90 - Abused and Neglected Child Reporting, as presented. **See Attachment No. 16.**

TO: Members of the Board of Education

FROM: Todd DeTaeye, Assistant Superintendent for Administration and Human Resources *T.D.*

DATE: January 6, 2022

SUBJECT: Approve Board Policy 5:90 – Abused and Neglected Child Reporting

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: Approve the updated Board Policy.

Facts: In the continuing quest to update the District's Board Policies, attached is Board Policy 5:90 – Abused and Neglected Child Reporting, which was included as part of the November 2021 PRESS update review.

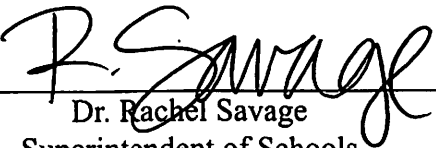
The revised policy requires districts to provide special education services to students with disabilities who turn 22 during the school year for the remainder of that school year. In addition, it also requires a board (formerly ISBE) to provide written notice to TRS when it learns a teacher has been convicted of a felony. Language was also added that states when the Superintendent has reasonable cause to believe that a license holder committed an intentional act of abuse or neglect with the result of making a child and abused child or a neglected child under ANCRA, and that act resulted in the license holder's dismissal or resignation from the District, he or she shall notify the State Superintendent and the Regional Superintendent in writing providing the Ill. Educator Identification Number as well as a brief description of the misconduct alleged.

Recall the underlined text represents suggested new additions; whereas, the ~~strikethrough~~ text represents suggested deletions.

Cost: None.

Recommended Action: That the Board of Education accept for first reading the revised Board of Education Policy for Section 5:90 – Abused and Neglected Child Reporting, as presented.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

General Personnel

Abused and Neglected Child Reporting 1

Any District employee who suspects or receives knowledge that a student may be an abused or neglected child or, for a student aged 18 through 22+, an abused or neglected individual with a disability², shall: (1) immediately report or cause a report to be made to the Ill. Dept. of Children and Family Services (DCFS) on its Child Abuse Hotline 1-800-25-ABUSE (1-800-252-2873)(within Illinois); 1-217-524-2606 (outside of Illinois); or 1-800-358-5117 (TTY), and (2) follow directions given by DCFS concerning filing a written report within 48 hours with the nearest DCFS field

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

¹ State or federal law controls this policy's content. The Abused and Neglected Child Reporting Act (ANCRA) (325 ILCS 5/) requires *education personnel* to immediately report or cause a report to be made to DCFS when they have reasonable cause to believe a child known to them in their professional or official capacities may be abused or neglected; *education personnel* includes school personnel (including administrators and certified and non-certified school employees) and educational advocates assigned to a child in accordance with the School Code. 325 ILCS 5/4(a)(4), added by P.A. 101-564, eff. 1-1-20; ANCRA states that such personnel "may also notify the person in charge of [the] school[.]" 325 ILCS 5/4(e). If the report involves an ~~disabled adult student~~, employees should expect DCFS to instruct them to call the Ill. Dept. of Human Services Office (DHS) office of the Inspector General's statewide 24 hour toll-free telephone number at 1-800-368-1463/1-866-324-5553 (TTY/Nextalk) or 711 (Illinois Relay). 325 ILCS 5/4.4a and 20 ILCS 1305/1-17(b). Reports involving an ~~disabled adult student with a disability~~ may be made directly to DHS; however, for simplicity, and to preserve a superintendent's duty to disclose certain reports involving an employee or former district employee (see discussion in f/n 18 below) and the immunity for such disclosures, the sample policy directs the initial phone call involving a ~~disabled adult student~~ to DCFS.

Abuse and neglect are defined in 325 ILCS 5/3 and, for ~~disabled adult students with a disability~~ in 20 ILCS 1305/1-17(b). Abuse may be generally understood as any physical or mental injury or sexual abuse inflicted on a child or ~~disabled adult student with a disability~~ other than by accidental means or creation of a risk of such injury or abuse by a person who is responsible for the ~~welfare of a child's or disabled adult student with a disability's~~ welfare. Neglect may be generally understood as abandoning a child or ~~disabled adult student with a disability~~ or failing to provide the proper support, education, medical, or remedial care required by law by one who is responsible for the child's or ~~disabled adult student with a disability's~~ welfare.

Any person required by law to report abuse and neglect who willfully fails to report is guilty of a Class A misdemeanor. A teaching license may be suspended for willful or negligent failure to report suspected child abuse or neglect as required by law. 105 ILCS 5/21B-75, amended by P.A.s 101-531 and 102-552, and 20 ILCS 1305/1-17(k)(1). 20 ILCS 1305/1-17(k)(1) allows mandated reporters for ~~disabled adults with disabilities~~ four hours to report after the initial discovery of the incident, allegation, or suspicion of any one or more of the following: mental abuse, physical abuse, sexual abuse, neglect, or financial exploitation.

District employees who make a report in good faith receive immunity, except in cases of willful or wanton misconduct. See 325 ILCS 5/4 and 9. Further, for the purpose of any proceedings, civil or criminal, good faith of the person making the report is presumed. *Id.*

Every two years, each district within an Illinois county served by an accredited Children's Advocacy Center (CAC) must review its sexual abuse investigation policies and procedures to ensure consistency with 105 ILCS 5/22-85-~~(final citation pending)~~, added by P.A. 101-531. 105 ILCS 5/10-20.7169-~~(final citation pending)~~, added by P.A. 101-531. See sample policy 7:20, *Harassment of Students Prohibited*.

² State child and disabled adult protection laws define the same class of individuals differently, but with the same goal. to protect an ~~disabled adult student with a disability~~, not living in a DCFS licensed facility, who is still finishing school with an Individual Education Plan (IEP). The Dept. of Human Services Act (DHS Act) defines "adult student with a disability" as an adult student, age 18 through 21, inclusive (through the day before the student's 22nd birthday), with an IEP other than a resident of a facility licensed by DCFS. 20 ILCS 1305/1-17(b). ~~However 105 ILCS 5/14-1.02, amended by P.A. 102-172, provides that a student who turns 22 years old during the school year shall be eligible for IEP services through the end of the school year. This statutory definition is the basis for this sample policy's language. For purposes of the discussions in f/ns 1 and 18, the term "adult student with a disability" is shortened to disabled adult student.~~

For elementary districts, delete the following phrase from the first sentence: "or, for a student aged 18 through 22+, an abused or neglected individual with a disability. "

office.³ Any District employee who believes a student is in immediate danger of harm, shall first call 911. The employee shall also promptly notify the Superintendent or Building Principal that a report has been made.⁴ The Superintendent or Building Principal shall immediately coordinate any necessary notifications to the student's parent(s)/guardian(s) with DCFS, the applicable school resource officer (SRO), and/or local law enforcement.⁵ *Negligent failure to report* occurs when a District employee personally observes an instance of suspected child abuse or neglect and reasonably believes, in his or her professional or official capacity, that the instance constitutes an act of child abuse or neglect under the Abused and Neglected Child Reporting Act (ANCRA) and he or she, without willful intent, fails to immediately report or cause a report to be made of the suspected abuse or neglect to DCFS. ⁶

Any District employee who discovers child pornography on electronic and information technology equipment shall immediately report it to local law enforcement, the National Center for Missing and Exploited Children's CyberTipline 1-800-THE-LOST (1-800-843-5678) or online at www.report.cybertip.org or www.missingkids.org. The Superintendent or Building Principal shall also be promptly notified of the discovery and that a report has been made. ⁷

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

³ 325 ILCS 5/7, amended by P.A. 101-583, eff. 1-1-20. For a board that wants to include what a DCFS report should contain, an optional sentence follows:

The report shall include, if known:

1. The name and address of the child, parent/guardian names, or other persons having custody;
2. The child's age;
3. The child's condition, including any evidence of previous injuries or disabilities; and
4. Any other information that the reporter believes may be helpful to DCFS for its investigation.

⁴ The sample policy makes the report to the superintendent or building principal mandatory to keep the administration informed. The administration may not force the staff member to change or modify his or her report.

⁵ Optional. The sample policy makes coordination with DCFS, the SRO, and local law enforcement a step in the process of reporting, so the local agencies and school district are better able to prevent and manage the risks school officials and parents/guardians face when a DCFS report has been made, e.g., situations where parents/guardians, upon learning a DCFS report has been made involving their child(ren), commit an act of self-harm in response to the information.

For school districts in DuPage County, the DuPage County State's Attorney (SAO), Regional Office of Education (ROE), Police Dept. (PD), and DCFS have created a *Model Policy Reporting Abuse and Neglect for School Officials in DuPage County*, at: www.dupageroe.org/wp-content/uploads/Mandated_Reporting.pdf. Consult the board attorney about this reporting policy – its intent is for school officials to immediately inform the SAO that a report to DCFS has been made to allow the SAO to investigate and prevent evidence spoliation. **Note:** The DuPage SAO, ROE, and PD lack authority under ANCRA over school officials to enforce compliance with this “model reporting policy;” only DCFS has the authority under ANCRA to enforce penalties under ANCRA, not the “model reporting policy.” The DuPage SAO, ROE, and PD did not consult school officials in the creation of its “model reporting policy.”

⁶ 105 ILCS 5/10-23.12(c) (all district employees), added by P.A. 101-531; 105 ILCS 5/21B-75(b) (teachers), amended by P.A. 101-531.

⁷ ANCRA requires an electronic and information technology equipment worker or the worker's employer to report a discovery of child pornography depicted on an item of electronic and information technology equipment. 325 ILCS 5/4.5(b). Consult the board attorney to determine whether any district employees fit the definition of an *electronic and information technology worker*, i.e., are “persons who in the scope and course of their employment or business install, repair, or otherwise service electronic and information technology equipment for a fee.”

The paragraph exceeds the State requirements by requiring *all* district employees to report a discovery of child pornography on electronic and information technology equipment. This furthers the National Center for Missing and Exploited Children's public policy goal of “empowering the public to take immediate and direct action to enforce a zero tolerance policy regarding child sexual exploitation.”

Similar to school personnel who are mandated reporters, electronic and information technology equipment workers and their employers have broad immunities from criminal, civil, or administrative liabilities when they report a discovery of child pornography as required under 325 ILCS 5/4.5(b), except for willful or wanton misconduct, e.g., knowingly filing a false report. Failure to report a discovery of child pornography is a business offense subject to a fine of \$1001. 325 ILCS 5/4.5(e).

Any District employee who observes any act of hazing that does bodily harm to a student must report that act to the Building Principal, Superintendent, or designee who will investigate and take appropriate action. If the hazing results in death or great bodily harm, the employee must first make the report to law enforcement and then to the Superintendent or Building Principal. Hazing is defined as any intentional, knowing, or reckless act directed to or required of a student for the purpose of being initiated into, affiliating with, holding office in, or maintaining membership in any group, organization, club, or athletic team whose members are or include other students.⁸

Abused and Neglected Child Reporting Act (ANCRA), School Code, and Erin's Law Training

The Superintendent or designee shall provide staff development opportunities for District employees in the detection, reporting, and prevention of child abuse and neglect.⁹

All District employees shall:

1. Before beginning employment, sign the *Acknowledgement of Mandated Reporter Status* form provided by DCFS. The Superintendent or designee shall ensure that the signed forms are retained.
2. Complete mandated reporter training as required by law within three months of initial employment and at least every three years after that date.¹⁰
- ~~2.3. Complete an annual evidence-informed training related to child sexual abuse, grooming behaviors, and boundary violations as required by law and policy 5:100, *Staff Development Program*. The Superintendent will encourage all District educators to complete continuing professional development that addresses the traits and identifiers that may be evident in students who are victims of child sexual abuse, including recognizing and reporting child~~

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

⁸ 720 ILCS 5/12C-50.1(b) creates a duty for *school officials* to report hazing. The term *school official* includes all school employees and volunteer coaches. 720 ILCS 5/12C-50.1(a). The duty to report hazing is triggered only when the ~~district employee volunteer~~ was fulfilling his or her responsibilities as a school official and observed hazing which results in bodily harm. 720 ILCS 5/12C-50.1(b). A report must be made to *supervising educational authorities*, which is not defined in the Act. *Id.* Common sense, however, would require the individual witnessing hazing to report it to the building principal or superintendent. Failure to report hazing is a Class B misdemeanor. 720 ILCS 5/12C-50.1(c). Failure to report hazing that resulted in death or great bodily harm is a Class A misdemeanor. *Id.* 7:190-AP1, *Student Handbook—Hazing Prohibited*, uses the same definition of *hazing*; this definition is based on 720 ILCS 5/12C-50.

⁹ While it is unclear whether this is a duty or power, 105 ILCS 5/10-23.12(a), amended by P.A.s 100-413 and 100-468, authorizes boards “[t]o provide staff development for local school site personnel who work with pupils in grades kindergarten through 8, in the detection, reporting, and prevention of child abuse and neglect.”

The drill during such training should be: “If in question, report.”

¹⁰ ANCRA also requires staff members, within three months of employment, to complete mandated reporter training, including a section on implicit bias and racial and ethnic sensitivity. 325 ILCS 5/4(j), amended by P.A.s 101-564, eff. 1-1-20 and 102-604. This training must be completed again at least every three years. *Id.* The initial ANCRA three-month training requirement applies to the first time staff engage in their professional or official capacity. *Id.* While the law allows an extension to six months, it is unclear when such an extension is permissible. Consult the board attorney for guidance. As a best practice, to ensure compliance with the requirement in 105 ILCS 5/22-85(c) (final citation pending), added by P.A. 101-531, that mandated reporters annually review ISBE materials regarding notification of DCFS (see f/n 15, below), and to ease the administrative burden to track employee training schedules, a district may consider requiring annual training for all employees.

To reduce liability and align with best practices, ANCRA training for existing district employees appears prudent; however, consult the board attorney about:

1. Whether mandating existing employees to participate in ANCRA training is 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.
2. How to comply with both the new ANCRA training requirements and whether compliance with them would also satisfy the School Code's more limited district-provided training requirement discussed in f/n 9 above.

sexual abuse and providing appropriate follow-up and care for abused students as they return to the classroom setting. ^{11 12}

Alleged Incidents of Sexual Abuse; Investigations ¹³

An *alleged incident of sexual abuse* is an incident of sexual abuse of a child, as defined in 720 ILCS 5/11-9.1A, that is alleged to have been perpetrated by school personnel, including a school vendor or volunteer, that occurred: on school grounds during a school activity; or outside of school grounds or not during a school activity. ¹⁴

If a District employee reports an alleged incident of sexual abuse to DCFS¹⁵ and DCFS accepts the report for investigation, DCFS will refer the matter to the local Children's Advocacy Center (CAC).¹⁶ The Superintendent or designee will implement procedures to coordinate with the CAC.

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

¹¹ *Erin's Law, Taskforce Final Report (Report at: www.isbe.net/Documents/erins-law-final0512.pdf, 105 ILCS 5/22-65 was repealed by P.A. 99-30 (eff. 7-10-15) upon submission of the Report, 105 ILCS 5/10-23.13, amended by P.A. 102-610. For additional *Erin's Law* requirements and definitions, see policies and the footnotes in 4:165, *Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors*; 5:100, *Staff Development Program*; 5:120, *Employee Ethics; Conduct, and Conflict of Interest*; and 6:60, *Curriculum Content*.*

¹² 105 ILCS 5/10-23.12(b) (amended by P.A.s 100-443 and 100-468, permits DCFS to cooperate with school officials to distribute informational ANCRAs in school buildings. The following optional sentence provides that information: "The Superintendent or designee will display DCFS-issued materials that list the DCFS toll-free telephone number and methods for making a report under ANCRAs in a clearly visible location in each school building."

¹³ Delete this subhead if your school district is not within a county served by an accredited CAC. 105 ILCS 5/22-85 (final citation pending), added by P.A. 101-531, governs the investigation of an *alleged incident of sexual abuse* of any child within any Illinois counties served by a CAC. For a map of accredited CACs, and to identify a CAC that may serve your district, see www.childrensadvocacycentersofillinois.org/about/map. The law is silent about investigations in counties without CACs.

¹⁴ Though 105 ILCS 5/22-85(b) (final citation pending), added by P.A. 101-531, defines *alleged incident of sexual abuse*, its definition is circular, using the term *sexual abuse* without defining what that means. To provide boards with clarity, the definition of *sexual abuse* used in the Ill. Criminal Code of 2012 is used.

¹⁵ 105 ILCS 5/22-85(c) (final citation pending), added by P.A. 101-531, provides that if a mandated reporter within a school has knowledge of an alleged incident of sexual abuse, the reporter must call the DCFS hotline immediately after obtaining the minimal information necessary to make a report, including the names of the affected parties and the allegations. It further requires the Ill. State Board of Education (ISBE) to make available materials detailing the information necessary to enable notification to DCFS of an alleged incident of sexual abuse, and that all mandated reporters annually review ISBE's materials.

¹⁶ 105 ILCS 5/22-85(d) (final citation pending), added by P.A. 101-531.

DCFS and/or the appropriate law enforcement agency will inform the District when its investigation is complete or has been suspended, as well as the outcome of its investigation.¹⁷ The existence of a DCFS and/or law enforcement investigation will not preclude the District from conducting its own parallel investigation into the alleged incident of sexual abuse in accordance with policy 7:20, *Harassment of Students Prohibited*.

Special Superintendent Responsibilities

The Superintendent shall execute the requirements in Board policy 5:150, *Personnel Records*, whenever another school district requests a reference concerning an applicant who is or was a District employee and was the subject of a report made by a District employee to DCFS. ¹⁸

~~The Superintendent shall notify the State Superintendent and the Regional Superintendent in writing~~ When the Superintendent he or she has reasonable cause to believe that a license holder committed an intentional act of abuse or neglect with the result of making a child an abused child or a neglected child under ANCRA, and that act resulted in the license holder's dismissal or resignation from the District, he or she shall notify the State Superintendent and the Regional Superintendent in writing providing the Ill. Educator Identification Number as well as a brief description of the misconduct alleged ~~was dismissed or resigned from the District as a result of an act that made a child an abused or neglected child.~~¹⁹ The Superintendent must make the report within 30 days of the dismissal or resignation and mail a copy of the notification to the license holder. ²⁰

Special School Board Member Responsibilities

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, direct or cause the

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¹⁷ 105 ILCS 5/22-85(j), (k) ~~(final citation pending)~~, added by P.A. 101-531.

¹⁸ ANCRA requires a superintendent, upon being requested for a reference concerning an employee or former employee, to disclose to the requesting school district the fact that a district employee has made a report involving the conduct of the applicant or caused a report to be made to DCFS. 325 ILCS 5/4(d), ~~amended by P.A. 101-564, eff. 1-1-20.~~ When a report involves an disabled adult student with a disability, DCFS must instruct mandated reporters making these reports to call the DHS' Office of the Inspector General's statewide 24 hour toll-free telephone number: 1-800-368-1463 (325 ILCS 5/4.4a) to make a report under the DHS Act.

The DHS Act (20 ILCS 1305/1-17(l)) then requires a determination of whether a report involving an disabled adult student with a disability should be investigated under it or the Abuse of Adults with Disabilities Intervention Act (20 ILCS 2435), however that Act was repealed by P.A. 99-049 (eff. 7-1-13). The DHS Act does not outline a duty for the superintendent, upon being requested for a reference concerning an employee or former employee, to disclose to the requesting school district the fact that a district employee has made a report involving the conduct of the applicant or caused a report to be made to DHS involving an adult student with a disability.

Given the public policy behind the recent amendments to 325 ILCS 5/4, a reasonable interpretation of the law is that the superintendent's duty to disclose now involves DHS reports concerning adult students with disabilities. However, with no mechanism requiring DHS to report back to the superintendent a *non-substantiated report* (DHS version of a DCFS *unfounded* report), a superintendent's duty to disclose cannot end. Consult the board attorney about managing the duty to disclose reports that involve disabled adult students with disabilities when DCFS redirects the reporter to DHS. For more information, see policy 5:150, *Personnel Records*.

See also fn 4 of policy 5:150, *Personnel Records*, discussing the Elementary and Secondary Education Act's (ESEA) (20 U.S.C. §7926) requirement that school policies must explicitly prohibit school districts from providing a recommendation of employment for an employee, contractor, or agent that a district knows, or has probable cause to believe, has engaged in sexual misconduct with a student or minor in violation of the law.

¹⁹ Alternative for districts in suburban Cook County: replace "Regional Superintendent" with "appropriate Intermediate Educational Service Center."

²⁰ 105 ILCS 5/10-21.9(e-5), amended by P.A.s 101-531 and 102-552, requires these notifications and provides superintendents immunity from any liability, whether civil or criminal or that otherwise might result by complying with the statute.

Board to direct the Superintendent or other equivalent school administrator to comply with ANCRA's requirements concerning the reporting of child abuse. ²¹

If the Board determines that any District employee, other than an employee licensed under 105 ILCS 5/21B, has willfully or negligently failed to report an instance of suspected child abuse or neglect as required by ANCRA, the Board may dismiss that employee immediately. ²²

When the Board learns that a licensed teacher was convicted of any felony, it must promptly report it to the State agencies listed in policy 2:20, Powers and Duties of the School Board; Indemnification. ²³

LEGAL REF.: 20 U.S.C. §7926, Elementary and Secondary Education Act.
105 ILCS 5/10-21.9, 5/10-23.13, and 5/21B-85.
20 ILCS 1305/1-1 et seq., Department of Human Services Act.
325 ILCS 5/, Abused and Neglected Child Reporting Act.
720 ILCS 5/12C-50.1, Criminal Code of 2012.

CROSS REF.: 2:20 (Powers and Duties of the School Board; Indemnification), 3:40 (Superintendent), 3:50 (Administrative Personnel Other Than the Superintendent), 3:60 (Administrative Responsibility of the Building Principal), 4:165 (Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors), 5:20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and Criteria), 5:100 (Staff Development Program), 5:120 (Employee Ethics; Conduct; and Conflict of Interest), 5:150 (Personnel Records), 5:200 (Terms and Conditions of Employment and Dismissal), 5:290 (Employment Terminations and Suspensions), 6:120 (Education of Children with Disabilities), 6:250 (Community Resource Persons and Volunteers), 7:20 (Harassment of Students Prohibited), 7:150 (Agency and Police Interviews)

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

²¹ ~~325 ILCS 5/4(d), amended by P.A. 101-564, eff. 1-1-20.~~ This statute makes board members mandatory child abuse reporters "to the extent required in accordance with other provisions of this section expressly concerning the duty of school board members to report suspected child abuse." Thus, a board member's duty is "to direct the superintendent or other equivalent school administrator to comply with the Act's requirements concerning the reporting of child abuse" whenever an "allegation is raised to a school board member during the course of an open or closed school board meeting that a child who is enrolled in the school district of which he or she is a board member is an abused child." Of course, any board member with reason to doubt that a report was or will be made should directly contact DCFS.

²² 105 ILCS 5/10-23.12(c), added by P.A. 101-531. See fn 6, above, and fn 3 in policy 2:20, *Powers and Duties of the School Board; Indemnification*.


²³ 105 ILCS 5/21B-85(a) and (b), amended by P.A. 102-552. Because felony charges often arise out of abuse and neglect investigation, this board duty is listed here for convenience. See the discussion in the fns tied to these duties in policy 2:20, Powers and Duties of the School Board; Indemnification.

19. First Reading of Revised Board of Education Policy 5:100 - Staff Development Program

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Recommended Motion: that the Board of Education accept for first reading the revised Board of Education Policy for Section 5:100 - Staff Development Program, as presented. **See Attachment No. 17.**

TO: Members of the Board of Education

FROM: Todd DeTaeye, Assistant Superintendent for Administration and Human Resources 

DATE: January 6, 2022

SUBJECT: Approve Board Policy 5:100 – Staff Development Program

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: Approve the updated Board Policy.

Facts: In the continuing quest to update the District's Board Policies, attached is Board Policy 5:100 – Staff Development Program, which was included as part of the November 2021 PRESS update review.


The revised policy adds the following staff development program requirements related to mandated reporter training and Erin's law: 1. Staff development for local school site personnel who work with students in grades kindergarten through 8, in the detection, reporting, and prevention of child abuse and neglect. 2. Within three months of employment, each staff member must complete mandated reporter training from a provider or agency with expertise in recognizing and reporting child abuse. 3. By January 31, 2023, and every year after, all school personnel must complete evidence-informed training on preventing, reporting, and responding to child sexual abuse, grooming behaviors, and boundary violations.

Recall the underlined text represents suggested new additions; whereas, the ~~strikethrough~~ text represents suggested deletions.

Cost: None.

Recommended Action: That the Board of Education accept for first reading the revised Board of Education Policy for Section 5:100 – Staff Development Program, as presented.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

General Personnel

Staff Development Program 1

The Superintendent or designee shall implement a staff development program. The goal of such program shall be to update and improve the skills and knowledge of staff members in order to achieve and maintain a high level of job performance and satisfaction. Additionally, the development program for licensed staff members shall be designed to effectuate the District and School Improvement Plans so that student learning objectives meet or exceed goals established by the District and State.

The staff development program shall include the Abused and Neglected Child Reporting Act (ANCRA), School Code, and awareness and prevention of child sexual abuse and grooming behaviors (*Erin's Law*) training as follows (see policies 4:165, *Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors*, and 5:90, *Abused and Neglected Child Reporting*):²

1. Staff development for local school site personnel who work with students in grades kindergarten through 8, in the detection, reporting, and prevention of child abuse and neglect.
2. Within three months of employment, each staff member must complete mandated reporter training from a provider or agency with expertise in recognizing and reporting child abuse. Mandated reporter training must be completed again at least every three years.
3. By January 31, 2023, and every year after, all school personnel must complete evidence-informed training on preventing, reporting, and responding to child sexual abuse, grooming behaviors, and boundary violations.

The staff development program shall provide, at a minimum, at least once every two years, the in-service training of licensed school personnel and administrators on current best practices regarding the identification and treatment of attention deficit disorder and attention deficit hyperactivity

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

¹ State law requires the subject matter in paragraph 2 to be covered by policy. State or federal law controls this policy's content. A school board may set and enforce professional growth requirements. 105 ILCS 5/24-5. Failure to meet professional growth requirements is considered remediable. *Morris v. Ill. State Bd. of Educ.*, 198 Ill.App.3d 51 (3rd Dist. 1990).

105 ILCS 5/2-3.62 requires the Ill. State Board of Education (ISBE) to establish a regional network of educational service centers to coordinate and combine existing services in a manner that is practical and efficient for schools. Their purposes are to provide, among other things, continuing education, in-service training, and staff development services to all local school districts in Illinois.

² 105 ILCS 5/10-23.12, amended by P.A. 101-531; 325 ILCS 5/4(i), amended by P.A.s 101-564 and 102-604; and *Erin's Law*, 105 ILCS 5/10-23.13, amended by P.A. 102-610. Delete #1 for high school districts.

Mandated reporter training may be in-person or web-based and must include, at a minimum, information on the following topics: (1) indicators for recognizing child abuse and child neglect; (2) the process for reporting suspected child abuse and child neglect and the required documentation; (3) responding to a child in a trauma-informed manner; (4) understanding the response of child protective services and the role of the reporter after a call has been made; and (5) implicit bias. *Implicit bias* means the attitudes or internalized stereotypes that affect people's perceptions, actions, and decisions in an unconscious manner and that exist and often contribute to unequal treatment of people based on race, ethnicity, gender identity, sexual orientation, age, disability, and other characteristics. The implicit bias topic must include, at a minimum: (1) information on implicit bias; (2) information on racial and ethnic sensitivity; and (3) tools to adjust automatic patterns of thinking and ultimately eliminate discriminatory behaviors. 325 ILCS 5/4(j), amended by P.A.s 101-564 and 102-604. Districts must provide mandated reporter training through either DCFS, an entity authorized to provide continuing education through the Dept. of Financial and Professional Regulation, ISBE, the Ill. Law Enforcement Training Standards Board, the Ill. State Police, or an organization approved by DCFS to provide mandated reporter training. *Id.* *Child-serving organizations*, which are not defined in ANCRA, are "encouraged to provide in-person annual trainings." *Id.*

disorder, the application of non-aversive behavioral interventions in the school environment, and the use of psychotropic or psychostimulant medication for school-age children. ³

The staff development program shall provide, at a minimum, once every two years, the in-service training of all District staff on educator ethics, teacher-student conduct, and school employee-student conduct. ^{4 5 6}

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

³ This paraphrases 105 ILCS 5/10-20.36(b). The topic covered in this paragraph must be in a board policy. ~~Id.~~ A school medical staff, an individualized educational program team, or a professional worker (as defined in ~~Section 105 ILCS 5/14-1.10~~) may recommend that a student be evaluated by an appropriate medical practitioner. School personnel may consult with the practitioner, with the consent of the student's parent/guardian.

⁴ 105 ILCS 5/10-22.39(f) requires boards to conduct this in-service. While the language of this paragraph is not required to be in board policy, including it provides a way for boards to monitor that it is being done. Including this language provides an opportunity for each board and the superintendent to examine all current policies, collective bargaining agreements, and administrative procedures on this subject. Each board may then want to have a conversation with the superintendent and direct him or her to develop a curriculum for the in-service that instructs all district staff to maintain boundaries and act appropriately, professionally, and ethically with students. See also sample policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*, and ¶n 11 in sample policy 4:110, *Transportation*. These expectations will be most effective when they reflect local conditions and circumstances. Employee conduct issues may be subjects of mandatory collective bargaining, therefore consulting the board attorney should be a part of this process. A district would commit an unfair labor practice by implementing new employee conduct rules without first offering to negotiate them with the applicable exclusive bargaining representative.

⁵ Insert the following option if a board wants to list in-services and/or trainings that State and federal law require, but are not required to be specified in board policy. ~~If the board does not choose this option, delete 325 ILCS 5/4 from the Legal References.~~ The only non-School Code State and/or federal law training requirements listed are from the Abused and Neglected Child Reporting Act, Ill. Human Rights Act, the Seizure Smart School Act, and Title IX of the Education Amendments of 1972 (Title IX).

In addition, the staff development program shall include each of the following:

1. At least, once every two years, training of all District staff by a person with expertise on anaphylactic reactions and management.
2. At least every two years, an in-service to train school personnel, at a minimum, to understand, provide information and referrals, and address issues pertaining to youth who are parents, expectant parents, or victims of domestic or sexual violence.
3. Training that, at a minimum, provides District staff with a basic knowledge of matters relating to acquired immunodeficiency syndrome (AIDS) and the availability of appropriate sources of counseling and referral.
4. Training for licensed school personnel and administrators who work with students in grades kindergarten through 12 to identify the warning signs of mental illness and suicidal behavior in youth along with appropriate intervention and referral techniques.
- ~~5. Abused and Neglected Child Reporting Act (ANCRA), School Code, and Erin's Law Training as follows:
 - a. Staff development for local school site personnel who work with students in grades kindergarten through 8, in the detection, reporting, and prevention of child abuse and neglect (see policy 5:90, *Abused and Neglected Child Reporting*).
 - b. Within three months of employment, each staff member must complete mandated reporter training from a provider or agency with expertise in recognizing and reporting child abuse. Mandated reporter training must be completed again at least every three years (see policy 5:90, *Abused and Neglected Child Reporting*).
 - c. Informing educators about the recommendation in the *Erin's Law* Taskforce Report requesting them to attend continuing professional development programs that address the prevention and identification of child sexual abuse (see policy 5:90, *Abused and Neglected Child Reporting*).~~
- 6.5. Education for staff instructing students in grades 7 through 12, concerning teen dating violence as recommended by the District's Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students or Complaint Manager.

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

- 7.6. Ongoing professional development for teachers, administrators, school resource officers, and staff regarding the adverse consequences of school exclusion and justice-system involvement, effective classroom management strategies, culturally responsive discipline, the appropriate and available supportive services for the promotion of student attendance and engagement, and developmentally appropriate disciplinary methods that promote positive and healthy school climates.
- 8.7. Annual continuing education and/or training opportunities (*professional standards*) for school nutrition program directors, managers, and staff. Each school food authority's director shall document compliance with this requirement by the end of each school year and maintain documentation for a three year period.
- 9.8. All high school coaching personnel, including the head and assistant coaches, and athletic directors must obtain online concussion certification by completing online concussion awareness training in accordance with 105 ILCS 25/1.15. Coaching personnel and athletic directors hired on or after 8-19-14 must be certified before their position's start date.
- 10.9. The following individuals must complete concussion training as specified in the Youth Sports Concussion Safety Act: coaches and assistant coaches (whether volunteer or employee) of an interscholastic athletic activity; nurses, licensed and/or non-licensed healthcare professionals serving on the Concussion Oversight Team; athletic trainers; game officials of an interscholastic athletic activity; and physicians serving on the Concussion Oversight Team.
- 11.10. Every two years, school personnel who work with students must complete an in-person or online training program on the management of asthma, the prevention of asthma symptoms, and emergency response in the school setting.
- 12.11. Training for school personnel to develop cultural competency, including understanding and reducing implicit racial bias.
- 13.12. For school personnel who work with hazardous or toxic materials on a regular basis, training on the safe handling and use of such materials.
- 14.13. For nurses, administrators, guidance school counselors, teachers, persons employed by a local health department and assigned to a school, and persons who contract with the District to perform services in connection with a student's seizure action plan, training in the basics of seizure recognition, first aid, and appropriate emergency protocols.
- 15.14. For all District staff, annual sexual harassment prevention training.
- 16.15. Title IX requirements for training as follows (see policy 2:265, *Title IX Sexual Harassment Grievance Procedure*):
 - a. For all District staff, training on the definition of sexual harassment, the scope of the District's education program or activity, all relevant District policies and procedures, and the necessity to promptly forward all reports of sexual harassment to the Title IX Coordinator.
 - b. For school personnel designated as Title IX coordinators, investigators, decision-makers, or informal resolution facilitators, training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and grievance process (including hearings, appeals, and informal resolution processes, as applicable), and how to serve impartially.
 - c. For school personnel designated as Title IX investigators, training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
 - d. For school personnel designated as Title IX decision-makers, training on issues of relevance of questions and evidence, including when questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant.

Alternative to paragraph number 2:

2. At least every two years, an in-service to train school personnel who work with students on how to: (a) communicate with and listen to youth victims of domestic or sexual violence and expectant and parenting youth, (b) connect youth victims of domestic or sexual violence and expectant and parenting youth to appropriate in-school services and other agencies, programs and services as needed, and (c) implement the School District's policies, procedures, and protocols with regard to such youth, including confidentiality. The in-service shall be conducted by persons with expertise in domestic and sexual violence and the needs of expectant and parenting youth.

Citations for this option follow:

1. 105 ILCS 5/10-22.39(e) (refers to anaphylactic reactions/management).
2. 105 ILCS 5/10-22.39(d), amended by P.A. 102-197.

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

3. 105 ILCS 5/10-22.39(c), amended by P.A. 102-197.
4. 105 ILCS 5/10-22.39(b), amended by P.A.s 100-903 and 101-350. The law allows districts to use the Ill. Mental Health First Aid training program to provide this training. If a licensed employee or an administrator obtains mental health first aid training outside of an in-service training program, he or she may present a certificate of successful completion of that training to the school district to satisfy the requirements of this law.
5. ~~105 ILCS 5/10-23.12, amended by P.A. 101-531; 325 ILCS 5/4(j), amended by P.A. 101-564; and *Erin's Law Taskforce Final Report*, authorized by 105 ILCS 5-22-65 and repealed by P.A. 09-30 because of submission of the Report at: www.isbe.net/Documents/erin-law-final0512.pdf and see also www.erinslawillinois.org/ for more resources based upon the report. Training may be in-person or web-based and must include, at a minimum, information on the following topics: (1) indicators for recognizing child abuse and child neglect; (2) the process for reporting suspected child abuse and child neglect and the level of documentation; (3) responding to a child in a trauma-informed manner; and (4) understanding the response of child protective services and the role of the reporter after a call has been made. topic 325 ILCS 5/4(j), amended by P.A. 101-564. Districts must provide training through either DCFS, an entity authorized to provide continuing education through the Dept. of Financial and Professional Regulation, the Ill. State Board of Education, the Ill. Law Enforcement Training Standards Board, the Ill. Dept. of State Police, or an organization approved by DCFS to provide mandated reporter training. Id. *Child serving organizations*, which are not defined in ANGRA, are "encouraged to provide in-person annual trainings." Id.~~
6. ~~5. 105 ILCS 110/3.10(b)(2).~~
7. ~~6. 105 ILCS 5/10-22.6(c-5), amended by P.A. 100-810. School board members are also included.~~
8. ~~7. 7 C.F.R. Parts 210 and 235. Section 210.2 defines school nutrition program directors, managers and staff. 7 C.F.R. §§210.15(b)(8) (recordkeeping requirements) and 210.31(a), (c), (d), and (e) (professional standards requirements); 210.31(g)(requiring school food authority director to keep records), amended by Fed. Reg. Vol. 81, No. 146 at 50169 and finalized 7-29-16. Food service funds may be used for reasonable, allocable, and necessary training costs. 7 C.F.R. §210.31(f). The U.S. Dept. of Agriculture (USDA) has established implementation resources that contain training opportunities and resources covering the four core training areas: nutrition, operations, administration, and communications/marketing at: www.fns.usda.gov/school-meals-professional-standards, www.fns.usda.gov/cn/professional-standards.~~
9. ~~8. 105 ILCS 25/1.15.~~
10. ~~9. 105 ILCS 5/22-80(h), amended by P.A. 100-309.~~
11. ~~10. 105 ILCS 5/22-30(j-15). Consult the board attorney about whether:~~
 - a. All asthma action plans should require immediate 911 calls based upon In re Estate of Stewart, 406 Ill.Dec. 345 (2nd Dist. 2016); In re Estate of Stewart, 412 Ill.Dec. 914 (Ill. 2017) (school district's appeal denied). The court held that a teacher's failure to dial 911 immediately upon a student's asthma attack was *willful and wanton* conduct, subjecting the school district to liability under the Local Governmental and Governmental Employees Tort Immunity Act.
 - b. The duties and responsibilities of the district when it asks for, but does not receive an asthma action plan from a parent/guardian and the logistics of distributing any received plans to those employees who need to know based upon Stewart, above.
12. ~~11. 105 ILCS 5/10-20.61, added by P.A. 100-11.~~
13. ~~12. 105 ILCS 5/10-20.17a; 23 Ill.Admin.Code §1.330.~~
14. ~~13. 105 ILCS 150/25, added by P.A. 101-50.~~
15. ~~14. 775 ILCS 5/2-109, added by P.A. 101-221.~~
16. ~~15. 34 C.F.R. §106.45(b)(1)(iii).~~

Putting this optional list into the policy will help the board monitor that the required in-service and training topics are being covered. While it is possible to *pick and choose*, this practice is likely to add more confusion to an already confusing responsibility. Unless noted, the School Code does not mandate the frequency with which the training must occur. Several other trainings that are mentioned in laws other than the School Code are addressed in other policies. Many of those policies are listed in the cross-references to this policy, e.g., training requirements under the Care of Students with Diabetes Act. 105 ILCS 145/.

The Superintendent shall develop protocols for administering youth suicide awareness and prevention education to staff consistent with Board policy 7:290, *Suicide and Depression Awareness and Prevention*.⁷

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

⁶ Different from the in-service training that school districts must provide to their staff, 105 ILCS 5/3-11, contains requirements that the regional superintendents must include during teachers institutes. Instruction on prevalent student chronic health conditions, as well as educator ethics and teacher-student conduct training is also required. See also ¶n 3 above discussing the board's requirement in Section 10-22.39. Beginning with the 2016-17 school year, teachers' institutes must also include instruction on the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §12101 *et seq.*) as it pertains to the school environment at least every two years. Contact the Regional Superintendent or the appropriate Intermediate Service Center with questions about online training for this component of a teachers' institute. Discuss with the board attorney the best practices of documenting trainings and evaluations of trainings; many attorneys in the field prefer documentation of ADA trainings to assist in their defense of any potential ADA claims against the district.

For districts that have a practice of providing instruction in life-saving techniques and first-aid in their staff development programs, insert the following optional paragraph that restates 105 ILCS 5/3-11, 105 ILCS 110/3, and 77 Ill.Admin.Code §527.800:

An opportunity shall be provided for all staff members to acquire, develop, and maintain the knowledge and skills necessary to properly administer life-saving techniques and first aid, including the Heimlich maneuver, cardiopulmonary resuscitation, and the use of an automated external defibrillator, in accordance with a nationally recognized certifying organization. Physical fitness facilities' staff must be trained in cardiopulmonary resuscitation and use of an automated external defibrillator.

Persons performing CPR are generally exempt from civil liability if they are trained in CPR (745 ILCS 49/10); persons performing automated external defibrillation are generally exempt from civil liability if they were trained and acted according to the standards of the American Heart Association (745 ILCS 49/12).

The board may also want to address other staff development opportunities. While not required to be policy, 105 ILCS 5/27-23.10 requires a school board to collaborate with State and local law enforcement agencies on gang resistance education and training. It also states that ISBE may assist in the development of instructional materials and teacher training for gang resistance education and training, which may be helpful to include in the staff development program. Other mandated and recommended staff development opportunities that are not located in the School Code or ISBE rules are found in the Ill. Administrative Code or federal regulations. Many of them are cross referenced in this policy.

⁷ Required by 105 ILCS 5/2-3.166(c)(2).

LEGAL REF.: 20 U.S.C. §1681 et seq., Title IX of the Educational Amendments of 1972; 34 C.F.R. Part 106.
42 U.S.C. §1758b, Pub. L. 111-296, Healthy, Hunger-Free Kids Act of 2010; 7 C.F.R. Parts 210 and 235.
105 ILCS 5/2-3.62, 5/10-20.17a, 5/10-20.61, 5/10-22.6(c-5), 5/10-22.39, 5/10-23.12, 5/10-23.13, 5/22-80(h), and 5/24-5.
105 ILCS 25/1.15, Interscholastic Athletic Organization Act.
105 ILCS 150/25, Seizure Smart School Act.
105 ILCS 110/3, Critical Health Problems and Comprehensive Health Education Act.
325 ILCS 5/4, Abused and Neglected Child Reporting Act.
745 ILCS 49/, Good Samaritan Act.
775 ILCS 5/2-109, Ill. Human Rights Act.
23 Ill.Admin.Code §§ 22.20, 226.800, and Part 525.
77 Ill.Admin.Code §527.800.

CROSS REF.: 2:265 (Title IX Sexual Harassment Grievance Procedure), 3:40 (Superintendent), 3:50 (Administrative Personnel Other Than the Superintendent), 4:160 (Environmental Quality of Buildings and Grounds), 4:165 (Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors), 5:20 (Workplace Harassment Prohibited), 5:90 (Abused and Neglected Child Reporting), 5:120 (Employee Ethics; Conduct; and Conflict of Interest), 5:250 (Leaves of Absence), 6:15 (School Accountability), 6:20 (School Year Calendar and Day), 6:50 (School Wellness), 6:160 (English Learners), 7:10 (Equal Educational Opportunities), 7:20 (Harassment of Students Prohibited), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:185 (Teen Dating Violence Prohibited), 7:270 (Administering Medicines to Students), 7:285 (Food Allergy Management Program), 7:290 (Suicide and Depression Awareness and Prevention), 7:305 (Student Athlete Concussions and Head Injuries)


ADMIN. PROC.: 2:265-AP1 (Title IX Sexual Harassment Response), 2:265-AP2 (Formal Title IX Sexual Harassment Complaint Grievance Process), 4:160-AP (Environmental Quality of Buildings and Grounds), 4:170-AP6 (Plan for Responding to a Medical Emergency at an Indoor Physical Fitness Facility with an AED), 5:100-AP (Staff Development Program), 5:120-AP2 (Employee Conduct Standards), 5:150-AP (Personnel Records), 6:120-AP4 (Care of Students with Diabetes), 7:250-AP1 (Measures to Control the Spread of Head Lice at School)

20. First Reading of Revised Board of Education Policy 5:120 - Employee Ethics; Conduct; and Conflict of Interest

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Recommended Motion: that the Board of Education accept for first reading the revised Board of Education Policy for Section 5:120 - Employee Ethics; Conduct; and Conflict of Interest, as presented. **See Attachment No. 18.**

TO: Members of the Board of Education

FROM: Todd DeTaeye, Assistant Superintendent for Administration and Human Resources 

DATE: January 6, 2022

SUBJECT: Approve Board Policy 5:120 – Employee Ethics; Conduct; and Conflict of Interest

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: Approve the updated Board Policy.


Facts: In the continuing quest to update the District's Board Policies, attached is Board Policy 5:120 – Employee Ethics; Conduct; and Conflict of Interest, which was included as part of the November 2021 PRESS update review.

The revised policy states that any employee who sexually harasses a student, willfully or negligently fails to report an instance of suspected child abuse or neglect as required by the Abused and Neglected Child Reporting Act engages in grooming as defined in 720 ILCS 5/11-25 engages in grooming behaviors, violates boundaries for appropriate school employee student conduct, or otherwise violates an employee conduct standard will be subject to discipline up to and including dismissal. New language was added that states the Superintendent or designee shall identify appropriate employee conduct standards and provide them to all District employees. Standards related to school employee-student conduct shall, at a minimum include prohibitions noted in the revised initial policy, define prohibited grooming behaviors, identify expectations for employees to maintain professional relationships with students, including expectations for employee-student boundaries, employee reporting requirements, outline how employees can report prohibited behaviors and/or boundary violations, and reference employee training related to educator ethics, child abuse, grooming behaviors and boundary violations. Lastly, the revised policy provides details on guidance counselor gift ban.

Cost: None.

Recommended Action: That the Board of Education accept for first reading the revised Board of Education Policy for Section 5:120 – Employee Ethics; Conduct; and Conflict of Interest, as presented.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

General Personnel

Employee Ethics; Conduct; and Conflict of Interest 1

Professional and Appropriate Conduct

All District employees are expected to maintain high standards in their school relationships, to demonstrate integrity and honesty, to be considerate and cooperative, and to maintain professional and appropriate relationships with students, parents, staff members, and others.² In addition, the *Code of Ethics for Illinois Educators*, adopted by the Illinois State Board of Education, is incorporated by reference into this policy.³ Any employee who sexually harasses a student, willfully or negligently fails to report an instance of suspected child abuse or neglect as required by the Abused and Neglected Child Reporting Act (325 ILCS 5/),⁴ engages in grooming as defined in 720 ILCS 5/11-25, engages in grooming behaviors, violates boundaries for appropriate school employee-student conduct,⁵ or otherwise violates an employee conduct standard will be subject to discipline up to and including dismissal.⁶

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

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

³ 775 ILCS 5/2-109, added by P.A. 101-221, eff. 1-1-20, requires districts to provide annual workplace sexual harassment prevention training to all employees. See ¶n 4 in policy 5:20, *Workplace Harassment Prohibited*, for further detail about the training requirements.

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

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

⁶ 325 ILCS 5/4(a)(4), amended by P.A. 101-564, eff. 1-1-20; 105 ILCS 5/10-23.12(c) (all district employees), added by P.A. 101-531; 105 ILCS 5/21B-75(b) (teachers), amended by P.A.s 101-531 and 102-552.

⁷ *Fran's Law*, 105 ILCS 5/10-23.13, amended by P.A. 102-610.

⁸ This sentence is optional. The Ill. Human Rights Act makes it a civil rights violation to fail to take remedial action, or to fail to take appropriate disciplinary action, against any employee when the district knows that the employee committed or engaged in sexual harassment of a student. 775 ILCS 5/5A-102. Sexual harassment of a student is also prohibited by 2-265, *Title IX Sexual Harassment Grievance Procedure*, and 7-20, *Harassment of Students Prohibited*, and Sexual harassment of an employee is also prohibited by policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, and 5:20, *Workplace Harassment Prohibited*.

The Superintendent or designee shall identify appropriate employee conduct standards and provide them to all District employees.⁷ Standards related to school employee-student conduct shall, at a minimum:

Commented [MB1]: P/n 7 was excerpted from 0/n3, with some of the contents moved into the policy and some into new 0/n 7.

1. Incorporate the prohibitions noted in paragraph 1 of this policy;
2. Define prohibited grooming behaviors⁸ to include, at a minimum, sexual misconduct. Sexual misconduct⁹ is (i) any act, including but not limited to, any verbal, nonverbal, written, or electronic communication or physical activity, (ii) by an employee with direct contact with a student, (iii) that is directed toward or with a student to establish a romantic or sexual relationship with the student. Examples include, but are not limited to:
 - a. A sexual or romantic invitation
 - b. Dating or soliciting a date
 - c. Engaging in sexualized or romantic dialog
 - d. Making sexually suggestive comments that are directed toward or with a student
 - e. Self-disclosure or physical exposure of a sexual, romantic, or erotic nature
 - f. A sexual, indecent, romantic, or erotic contact with the student
3. Identify expectations for employees to maintain professional relationships with students, including expectations for employee-student boundaries based upon students' ages, grade levels, and developmental levels.¹⁰ Such expectations shall establish guidelines for specific areas, including but not limited to:
 - a. Transporting a student
 - b. Taking or possessing a photo or video of a student
 - c. Meeting with a student or contacting a student outside the employee's professional role

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

⁷ Sample conduct standards are contained in administrative procedure 5:120-AP2, *Employee Conduct Standards*. These items are subjects of mandatory collective bargaining. Consult the board attorney for advice before establishing them.

⁸ 105 ILCS 5:10-23.13(b), amended by P.A. 102-610.

⁹ This definition of *sexual misconduct* is adapted from HB 1975, legislation that did not pass in the first half of the 102nd Ill. General Assembly; however, it includes the results of collaboration to implement some of the recommendations of the *Make Sexual and Severe Physical Abuse Fully Evitable (Make S.A.F.E.) Taskforce* and was endorsed by Stop Educator Sexual Abuse, Misconduct & Exploitation (S.E.S.A.M.E.), a national organization working to prevent sexual exploitation, abuse, and harassment of students by teachers and other school staff. See www.sesamenet.org/ for further information.

As of PRESS Issue 108's publication, HB 1975 is still pending in the 102nd General Assembly and is expected to become law. Its enactment could close significant legal loopholes related to combating grooming by broadening the definition of grooming prohibited by the Criminal Code of 2012 and authorizing the Ill. Dept. of Children and Family Services to investigate grooming allegations under the Abused and Neglected Child Reporting Act.

¹⁰ 105 ILCS 5:10-23.13(b), amended by P.A. 102-610. Sample expectations and guidelines are contained in administrative procedure 5:120-AP2, E, *Expectations and Guidelines for Employee-Student Boundaries*. Establishing guidelines specific to #3(a), (b), and (c) is not currently required but is a requirement in HB 1975 (see P/n 9, above).

4. Reference employee reporting requirements of the Abused and Neglected Child Reporting Act (325 ILCS 5), Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.), and the Elementary and Secondary Education Act (20 U.S.C. § 7926);
5. Outline how employees can report prohibited behaviors and/or boundary violations pursuant to Board policies 2:260, *Uniform Grievance Procedure*; 2:265, *Title IX Sexual Harassment Grievance Procedure*; and 5:90, *Abused and Neglected Child Reporting*;¹¹ and
6. Reference required employee training related to educator ethics, child abuse, grooming behaviors, and boundary violations as required by law and policies 2:265, *Title IX Sexual Harassment Grievance Procedure*; 4:165, *Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors*; 5:90, *Abused and Neglected Child Reporting*; and 5:100, *Staff Development Program*.

Statement of Economic Interests

The following employees must file a *Statement of Economic Interests* as required by the Illinois Governmental Ethics Act:¹²

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

Ethics and Gift Ban

School Board policy 2:105, *Ethics and Gift Ban*, applies to all District employees.¹³ Students shall not be used in any manner for promoting a political candidate or issue.

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

¹¹ 105 ILCS 5-10-23.13(b), amended by P.A. 102-610.

¹² 5 ILCS 420/4A-101.5, added by P.A. 101-221. See 5 ILCS 420/4A-102, amended by P.A. 101-221, for economic interests of an employee's spouse or any other party that is considered the employee's interests if the employee constructively controls them. Any county clerk may use a mandatory system of Internet-based filing of economic interest statements; if done, the clerk must post the statements, without the addresses, of the filers, on a publicly accessible website. 5 ILCS 420/4A-108, amended by P.A. 101-221.

¹³ The State Officials and Employees Ethics Act prohibits State employees from engaging in certain political activities and accepting certain gifts. 5 ILCS 430/. The Act requires all school districts to adopt an ordinance or resolution "in a manner no less restrictive" than the Act's provisions. See policy 2:105, *Ethics and Gift Ban*.

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

Prohibited Interests; Conflict of Interest; and Limitation of Authority

In accordance with Section 22-5 of the School Code, "no school officer or teacher shall be interested in the sale, proceeds, or profits of any book, apparatus, or furniture used or to be used in any school with which such officer or teacher may be connected," except when the employee is the author or developer of instructional materials listed with the Illinois State Board of Education and adopted for use by the Board.¹⁴ An employee having an interest in instructional materials must file an annual statement with the Board Secretary.¹⁵

For the purpose of acquiring profit or personal gain, no employee shall act as an agent of the District nor shall an employee act as an agent of any business in any transaction with the District. This includes participation 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/) when the employee has a real or apparent conflict of interest.¹⁶ A conflict of interest arises when an employee or any of the following individuals has a financial or other interest in the entity selected for the contract:

1. Any person that has a close personal relationship with an employee that may compromise or impair the employee's fairness and impartiality, including a member of the employee's immediate family or household;
2. An employee's business partner; or
3. An entity that employs or is about to employ the employee or one of the individuals listed in one or two above.¹⁷

Employees shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to agreements or contracts.¹⁸ 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*.¹⁹

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

¹⁴ This sentence quotes 105 ILCS 5/22-5 because the statute does not define important terms making it difficult to paraphrase. No appellate decision defines *school officer* or *apparatus*, or what is meant by *connected*. The statute was enacted in 1961 but earlier versions were in the School Code much longer. A violation of this prohibition is a Class A misdemeanor.

¹⁵ *Id.*

¹⁶ 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*. The uniform federal rules on procurement standards in 2 C.F.R. Part 200 also apply to eligible State grants through the Grant Accountability and 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.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *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.

Guidance Counselor Gift Ban ²⁰

Guidance counselors are prohibited from intentionally soliciting or accepting any gift from a prohibited source or any gift that would be in violation of any federal or State statute or rule. For guidance counselors, a prohibited source is any person who is (1) employed by an institution of higher education, or (2) an agent or spouse of or an immediate family member living with a person employed by an institution of higher education. This prohibition does not apply to:

1. Opportunities, benefits, and services available on the same conditions as for the general public.
2. Anything for which the guidance counselor pays market value.
3. A gift from a relative.
4. Anything provided by an individual on the basis of a personal friendship, unless the guidance counselor believes that it was provided due to the official position or employment of the guidance counselor and not due to the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the guidance counselor must consider the circumstances in which the gift was offered, including any of the following:
 - a. The history of the relationship between the individual giving the gift and the guidance counselor, including any previous exchange of gifts between those individuals.
 - b. Whether, to the actual knowledge of the guidance counselor, the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift.
 - c. Whether, to the actual knowledge of the guidance counselor, the individual who gave the gift also, at the same time, gave the same or a similar gift to other school district employees.
5. Bequests, inheritances, or other transfers at death.
6. Any item(s) during any calendar year having a cumulative total value of less than \$100.
7. Promotional materials, including, but not limited to, pens, pencils, banners, posters, and pennants.

A guidance counselor does not violate this prohibition if he or she promptly returns the gift to the prohibited source or donates the gift or an amount equal to its value to a tax exempt charity.

Outside Employment

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

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

²⁰ This section is only for those districts with a high school. 105 ILCS 5-22-90 (final citation pending), added by P.A. 102-327, eff. 1-1-22. *Guidance counselor* means a person employed by a school district and working in a high school to offer students advice and assistance in making career or college plans. Id.

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

LEGAL REF.: U.S. Constitution, First Amendment.
2 C.F.R. §200.318(c)(1).
5 ILCS 420/4A-101, Ill. Governmental Ethics Act.
5 ILCS 430/, State Officials and Employee Ethics Act.
30 ILCS 708/, Grant Accountability and Transparency Act.
50 ILCS 135/, Local Governmental Employees Political Rights Act.
105 ILCS 5/10-22.39, 5/10-23.13, and 5/22-5, and 2-2-2017 (Illinois Student Reporting).
325 ILCS 5/, Abused and Neglected Child Reporting Act.
775 ILCS 5/5A-102, Ill. Human Rights Act.
23 Ill.Admin.Code Part 22, Code of Ethics for Illinois Educators.
Pickering v. Board of Township H.S. Dist. 205, 391 U.S. 563 (1968).
Garcetti v. Ceballos, 547 U.S. 410 (2006).


CROSS REF.: 2:105 (Ethics and Gift Ban), 2:265 (Title IX Sexual Harassment Grievance Procedure), 4:60 (Purchases and Contracts), 4:165 (Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors), 5:90 (Abused and Neglected Child Reporting), 5:100 (Staff Development Program), 5:125 (Personal Technology and Social Media; Usage and Conduct), 7:20 (Harassment of Students Prohibited)

21. First Reading of Revised Board of Education Policy 5:125 - Personal Technology and Social Media; Usage and Conduct

145

Recommended Motion: that the Board of Education accept for first reading the revised Board of Education Policy for Section 5:125 - Personal Technology and Social Media; Usage and Conduct, as presented. **See Attachment No. 19.**

TO: Members of the Board of Education

FROM: Todd DeTaeye, Assistant Superintendent for Administration and Human Resources 

DATE: January 6, 2022

SUBJECT: Approve Board Policy 5:125 – Personal Technology and Social Media; Usage and Conduct

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: Approve the updated Board Policy.


Facts: In the continuing quest to update the District's Board Policies, attached is Board Policy 5:125 – Personal Technology and Social Media; Usage and Conduct, which was included as part of the November 2021 PRESS update review.

The revised policy adds that all District employees who use personal technology and/or social media shall: 4. Inform their immediate supervisor if a student initiates inappropriate contact with them via any form of personal technology or social media. 5. Report instances of suspected abuse or neglect discovered through the use of social media or personal technology pursuant to a school employee's obligation under policy 5:90, Abused and Neglected Child Reporting. 6. Not disclose student record information, including student work, photographs of students, names of students, or any other personally identifiable information about students, in compliance with policy 5:130, Responsibilities Concerning Internal Information.

Cost: None.

Recommended Action: That the Board of Education accept for first reading the revised Board of Education Policy for Section 5:125 – Personal Technology and Social Media; Usage and Conduct, as presented.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

General Personnel

Personal Technology and Social Media; Usage and Conduct 1

Definitions

Includes - Means “includes without limitation” or “includes, but is not limited to.”

Social media - Media for social interaction, using highly accessible communication techniques through the use of web-based and mobile technologies to turn communication into interactive dialogue.² This includes, but is not limited to, services such as *Facebook*, *LinkedIn*, *Twitter*, *Instagram*, *Snapchat*, and *YouTube*.³

Personal technology - Any device that is not owned or leased by the District or otherwise authorized for District use and: (1) transmits sounds, images, text, messages, videos, or electronic information, (2) electronically records, plays, or stores information, or (3) accesses the Internet, or private communication or information networks.⁴ This includes laptop computers (e.g., laptops, ultrabooks, and chromebooks), tablets (e.g., iPads®, Kindle®, Microsoft Surface®, and other Android® platform or Windows® devices), smartphones (e.g., iPhone®, BlackBerry®, Android® platform phones, and Windows Phone®), and other devices (e.g., iPod®).⁵

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

¹ This policy is optional. Consult the board attorney because personal technology, and social media, and public employees' First Amendment rights involve an unprecedented and area of the law. Public employees' First Amendment rights involve an unsettled areas of the law. In addition, personal technology and social media platforms change continually.

Therefore, instead of prohibiting specific actions, this sample policy focuses on what will not change - maintaining appropriate behavior as outlined in 5:120, *Employee Ethics; Conduct; and Conflict of Interest*, the Ill. Educators' Code of Ethics at 23 Ill.Admin.Code §22.20, and 105 ILCS 5/21B-75, amended by P.A.s. 101-531 and 102-552 (allows suspensions or revocations of licenses, endorsements, or approval certificates for abuse or neglect of a child, willful or negligent failure to report suspected child abuse or neglect, *immorality*, and *unprofessional conduct*, among other things). *Immoral* has been defined by one court to mean “shameless conduct showing moral indifference to the opinions of the good and respectable members of the community.” See *Ahmad v. Board of Education of City of Chicago*, 356 Ill.App.3d 155 (1st Dist. 2006).

Consult the board attorney when a board wants to prohibit more specific actions and/or specific speech, e.g., *friending* students on Facebook or similar social media, *tweeting* or otherwise communicating with students on Twitter or similar social media sites, and text messaging or emailing students. See also the discussion in f/n's 6 & 7 below.

This policy also 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. When a policy's subject matter is superseded by a bargaining agreement, the board policy can state, “Please refer to the applicable collective bargaining agreement.”

² Several definitions of social media exist, and a board may wish to use another definition or create its own with the board attorney. This sample policy's definition is very broad. It is adapted from a frequently cited Wikipedia definition at:

www.en.wikipedia.org/wiki/Social_media.

Merriam-Webster's definition is at: www.merriam-webster.com/dictionary/social%20.

³ Optional. A board may want to add other sites. As of July 2014²¹, the publication *eBizMBA Inc.* lists the top four social networking sites as Facebook, YouTube, Twitter, and Instagram, and Twitter respectively.

⁴ *Personal technology* is not yet defined. It is the title of a weekly column in *The Wall Street Journal*. The column was created and is authored by Walt Mossberg, who frequently directs readers to his review of new technologies on a website titled *All Things Digital* at to www.allthingsd.com/author/walt/. Many of the reviewed devices operate as described in this sample definition.

⁵ Optional.

Usage and Conduct ⁶

All District employees who use personal technology and/or social media shall: ⁷

1. Adhere to the high standards for **Professional and Appropriate Conduct** ~~appropriate school relationships~~ required by policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*, at all times, regardless of the ever-changing social media and personal technology platforms available. This includes District employees posting images or private information about themselves or others in a manner readily accessible to students and other employees that is inappropriate as defined by policy 5:20, *Workplace Harassment Prohibited*; 5:100, *Staff Development Program*; 5:120, *Employee Ethics; Conduct; and Conflict of Interest*; 6:235, *Access to Electronic Networks*; 7:20, *Harassment of Students Prohibited*; and the Ill. Code of Educator Ethics, 23 Ill.Admin.Code §22.20.
2. Choose a District-provided or supported method whenever possible to communicate with students and their parents/guardians.
3. Not interfere with or disrupt the educational or working environment, or the delivery of education or educational support services.
4. Inform their immediate supervisor if a student initiates inappropriate contact with them via any form of personal technology or social media.
5. Report instances of suspected abuse or neglect discovered through the use of social media or personal technology pursuant to a school employee's obligations under policy 5:90, *Abused and Neglected Child Reporting Child Reporting*.
- 4-6. Not disclose student record information, including student work, photographs of students, names of students, or any other personally identifiable information about students, in compliance ~~Comply with policy 5:130, *Responsibilities Concerning Internal Information*. This means that personal technology and social media may not be used to share, publish, or transmit information about or images of students and/or District employees without proper~~

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

⁶ Whether to discipline an employee for his or her speech is always highly fact sensitive and should always occur after a consultation with the board attorney. See f/ns 1 and 7. The discipline will require careful balancing of the district's obligations to protect its students with employees' rights. Further, a board may not discipline its employees for discussing the terms and conditions of their employment with co-workers and others or otherwise interfere with their employees' efforts to work to improve the terms and conditions of their workplace. 29 U.S.C. §151 *et seq.*

⁷ The following list is optional and may contain items on which collective bargaining may be required. See f/n 1. To ensure that the listed expectations match local conditions, boards may want to initiate a conversation with the superintendent about these expectations. Expectations will be most effective when they reflect local conditions and circumstances. This conversation provides an additional opportunity for the board and superintendent to examine all current policies, collective bargaining agreements, and administrative procedures applicable to this subject. See f/n 2 of policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*, for more discussion about how to initiate this conversation, and f/n 3 of policy 5:100, *Staff Development Program*, and the discussion in f/n 2 of sample policy 8:10, *Connection with the Community*, related to excluding followers and purging critics from social media accounts that are considered public forums (Knight First Amendment Inst. at Columbia Univ. v. Trump, 302 F.Supp.3d 541 (S.D.N.Y. 2018)). Employee conduct issues may be subjects of mandatory collective bargaining, therefore consulting the board attorney should be a part of this process. After discussing these issues, the board may have further expectations and may choose to reflect those expectations here.

~~approval.~~ For District employees, proper approval may include implied consent under the circumstances. ⁸

~~5.7.~~ Refrain from using the District's logos without permission and follow Board policy 5:170, *Copyright*, and all District copyright compliance procedures. ⁹

~~6.8.~~ Use personal technology and social media for personal purposes only during non-work times or hours. Any duty-free use must occur during times and places that the use will not interfere with job duties or otherwise be disruptive to the school environment or its operation. ¹⁰

~~7.9.~~ Assume all risks associated with the use of personal technology and social media at school or school-sponsored activities, including students' viewing of inappropriate Internet materials through the District employee's personal technology or social media. The Board expressly disclaims any responsibility for imposing content filters, blocking lists, or monitoring of its employees' personal technology and social media. ¹¹

~~8.10.~~ Be subject to remedial and any other appropriate disciplinary action for violations of this policy ranging from prohibiting the employee from possessing or using any personal technology or social media at school to dismissal and/or indemnification of the District for any losses, costs, or damages, including reasonable attorney fees, incurred by the District relating to, or arising out of, any violation of this policy. ¹²

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

⁸ Inherent dangers exist when district employees use personal technology and social media without understanding how the information is used within the chosen platform and what choices are available within the platform to control it. Some examples of laws that require the safekeeping of district and school records include: the Federal Educational Rights and Privacy Act, 20 U.S.C. §1232g, and the Ill. School Student Records Act, 105 ILCS 10/ (both prohibit the unauthorized disclosure of student school records); 5 ILCS 140/7 (exempts personnel information and other items such as school security and response plans and maps from disclosure); 45 C.F.R. §164.502 (protects the employees' health information); and 820 ILCS 40/ (governs the release of an employee's disciplinary action). For district employees, implied consent may be sufficient in some circumstances, e.g., teachers taking pictures of each other at a birthday party in the teachers' lounge or at a social event off school grounds and later posting those pictures on social media Facebook.

⁹ 17 U.S.C. §101 *et seq.*

¹⁰ 105 ILCS 5/24-9; Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* See also f/ns 1 and 6 above.

¹¹ The Children's Internet Protection Act (CIPA) (47 U.S.C. §254(l)) requires school districts to maintain a policy and provide Internet access that protects against access to websites containing material that is obscene, pornographic, or harmful to minors. See 6:235, *Access to Electronic Networks*. Because a district cannot subject its employees' usage of personal technology and social media to the same measures required under CIPA (i.e., content filters, blocking lists, or district monitoring of Internet website traffic for patterns of usage that could indicate inappropriate network usage), this statement seeks to balance the district's duty by shifting responsibility for inappropriate behavior to the individual employee.

¹² The Ill. Human Rights Act makes it a civil rights violation to fail to take remedial action, or to fail to take appropriate disciplinary action against any employee, when the district knows that the employee committed or engaged in sexual harassment of a student. 775 ILCS 5/5A-102. Sexual harassment of a student is also prohibited by 7:20, *Harassment of Student Prohibited*, and of an employee by 5:20, *Workplace Harassment Prohibited*.

The Superintendent shall: ¹³

1. Inform District employees about this policy during the in-service on educator ethics, teacher-student conduct, and school employee-student conduct required by Board policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*.
2. Direct Building Principals to annually:
 - a. Provide their building staff with a copy of this policy.
 - b. Inform their building staff about the importance of maintaining high standards in their school relationships.
 - c. Remind their building staff that those who violate this policy will be subject to remedial and any other appropriate disciplinary action up to and including dismissal.
3. Build awareness of this policy with students, parents, and the community.
4. Ensure that ~~no one for~~ neither the District, nor anyone on its behalf, commits requests of an act prohibited by the Right to Privacy in the Workplace Act, 820 ILCS 55/10; i.e., the Facebook Password Law ~~employee or applicant access in any manner to his or her social networking website or requests passwords to such sites.~~ ¹⁴
5. Periodically review this policy and any procedures with District employee representatives and electronic network system administrator(s) and present proposed changes to the Board.

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

¹³ 105 ILCS 5/10-16.7. The school board directs, through policy, the superintendent in his or her charge of the district's administration. One logical method for a board to address the issue of district employees' use of personal technology and social media is to include its expectations during its in-service trainings required by 105 ILCS 5/10-22.39. Many experts in social media risk management advocate training employees about the expectations concerning social media usage. For boards that do not want to include this as a part of the in-service, delete the phrase "during the in-service on educator ethics, teacher-student conduct, and school employee-student conduct required by Board policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*."

Public employee First Amendment issues involve the balance between the importance of the speech and the district's interest in maintaining order and effective school operations. The First Amendment "does not entitle primary and secondary teachers, when conducting the education of captive audiences, to cover topics, or advocate viewpoints, that depart from the curriculum adopted by the school system." See Mayer v. Monroe County Community School Corp., 474 F.3d 477 (7th Cir. 2007). Nor is the First Amendment likely to entitle a teacher to protection for purely personal speech that does not touch on a matter of public concern. See Pickering v. High School Dist. 205, 391 U.S. 563 (1968). However, when public employees speak as private citizens on their own time about matters of public concern, they may face only those speech restrictions that are necessary for their employers to operate efficiently and effectively. Garcetti v. Ceballos, 547 U.S. 410 (2006).

¹⁴ Right to Privacy in the Workplace Act, 820 ILCS 55/10(b) (also known as the *Facebook Password Law*). The exception for *professional accounts* is unlikely to be available to school districts; see the explanation in f/n 19 in policy 5:30, *Hiring Process and Criteria*. The statute specifically permits an employer to: (1) maintain workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use, social networking site use, and electronic mail use; and (2) monitor usage of the employer's electronic equipment and electronic mail.

The statute does not prohibit an employer from (1) obtaining information about an applicant or an employee that is in the public domain or that is otherwise obtained in compliance with the statute, and (2) requesting or requiring an applicant or employee to share specific content that is reported to the employer to: (a) ensure compliance with laws and regulatory requirements, (b) investigate certain allegations as outlined in the law, and (c) prohibit certain outlined behaviors in the law. Finally, the statute does not apply to other types of personal technology that employees may use to communicate with students or other individuals, such as personal email or text messages on a personal phone. However, employers may access online accounts that the employer pays for or that an employee creates or maintains on behalf of the employer in connection with the employee's employment. Consult the board attorney about these issues.

LEGAL REF.: 105 ILCS 5/21B-75 and 5/21B-80.
~~Ill. Human Rights Act, 775 ILCS 5/5A-102, Ill. Human Rights Act.~~
820 ILCS 55/10, Right to Privacy in the Workplace Act.
Code of Ethics for Ill. Educators: 23 Ill.Admin.Code §22.20. Code of Ethics for Ill
Educators.
Garcetti v. Ceballos, 547 U.S. 410 (2006).
Pickering v. High School Dist. 205, 391 U.S. 563 (1968).
Mayer v. Monroe County Community School Corp., 474 F.3d 477 (7th Cir. 2007).

CROSS REF.: 4:165 (Awareness and Prevention of Child Sexual Abuse and Grooming
Behaviors), 5:20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and
Criteria), 5:100 (Staff Development Program), 5:120 (Employee Ethics; Conduct;
and Conflict of Interest), 5:130 (Responsibilities Concerning Internal
Information), 5:150 (Personnel Records), 5:170 (Copyright), 5:200 (Terms and
Conditions of Employment and Dismissal), 6:235 (Access to Electronic
Networks), 7:20 (Harassment of Students Prohibited), 7:340 (Student Records)

22. First Reading of Revised Board of Education Policy 5:150 - Personnel Records

152

Recommended Motion: that the Board of Education accept for first reading the revised Board of Education Policy for Section 5:150 - Personnel Records, as presented. **See Attachment No. 20.**

TO: Members of the Board of Education

FROM: Todd DeTaeye, Assistant Superintendent for Administration and Human Resources *T.D.*

DATE: January 6, 2022

SUBJECT: Approve Board Policy 5:150 – Personnel Records

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: Approve the updated Board Policy.


Facts: In the continuing quest to update the District's Board Policies, attached is Board Policy 5:150 – Personnel Records, which was included as part of the November 2021 PRESS update review.

The revised policy reflects changes to The Elementary and Secondary Education Act requiring policies prohibiting districts from providing a recommendation of employment for an employee, contractor, or agent that the district knows, or has probable cause to believe, has engaged in sexual misconduct with a student or minor in violation of the law.

Cost: None.

Recommended Action: That the Board of Education accept for first reading the revised Board of Education Policy for Section 5:150 – Personnel Records, as presented.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

General Personnel

Personnel Records 1

Maintenance and Access to Records

The Superintendent or designee shall manage the maintenance of personnel records in accordance with State and federal law and School Board policy. Records, as determined by the Superintendent, are retained for all employment applicants, employees, and former employees given the need for the District to document employment-related decisions, evaluate program and staff effectiveness, and comply with government recordkeeping and reporting requirements. Personnel records shall be maintained in the District's administrative office, under the Superintendent's direct supervision.

Access to personnel records is available as follows:

1. An employee will be given access to his or her personnel records according to State law and guidelines developed by the Superintendent. ²
2. An employee's supervisor or other management employee who has an employment or business-related reason to inspect the record is authorized to have access.
3. Anyone having the respective employee's written consent may have access.
4. Access will be granted to anyone authorized by State or federal law to have access.
5. All other requests for access to personnel information are governed by Board policy 2:250, *Access to District Public Records*. ³

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

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

This policy is consistent with the minimum requirements of State law. The local collective bargaining agreement may contain provisions that exceed these requirements. When a policy's subject matter is superseded by a bargaining agreement, the board policy can state, "Please refer to the applicable collective bargaining agreement(s)."

² An employee has the right to view his or her personnel file contents, with a few exceptions. Ill. Personnel Record Review Act (PRRA), 820 ILCS 40/. Thus, personnel files should contain only factual and accurate job-related information. In addition, the PRRA identifies records that may not be kept: a record of an employee's associations, political activities, publications, communications, or non-employment activities (820 ILCS 40/9, amended by P.A. 101-531) and records identifying an employee as the subject of an investigation by the Ill. Dept. of Children and Family Services (DCFS) if the investigation resulted in an unfounded report as specified in the Abused and Neglected Child Reporting Act (820 ILCS 40/13). See ¶n 5.

³ Unless a specific exemption is available, personnel file information is available to anyone making a FOIA request. 5 ILCS 140/. Specific exemptions protect the following:

1. *Private information* meaning "unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person." 5 ILCS 140/7(1)(b); 5 ILCS 140/2(c)-5.
2. *Personal information* "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 ILCS 140/7(1)(c).

Prospective Employer Inquiries Concerning a Current or Former Employee's Job Performance

The Superintendent or designee shall manage a process for responding to inquiries by a prospective employer concerning a current or former employee's job performance.⁴ The Superintendent shall:⁵

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

3. *Information prohibited from being disclosed under the Illinois Educational Labor Relations Act (IELRA).* 5 ILCS 140/7.5(y)(00), added by P.A. 101-620 (final citation pending); 115 ILCS 5/3(d). The prohibitions in the IELRA overlap with some categories of private information identified in FOIA and include: (a) the employee's home address (including ZIP code and county); (b) the employee's date of birth; (c) the employee's home and personal phone number; (d) the employee's personal email address; (e) any information personally identifying employee membership or membership status in a labor organization or other voluntary association affiliated with a labor organization or a labor federation; and (f) e-mails or other communications between a labor organization and its members. Unless a specific exception in the IELRA applies, if a district receives a third party request for any of these six categories of information about an employee, the district must provide the union with a copy of the written request (or written summary of an oral request), as well as a copy of the district's response within five business days of sending the response. If the employee is not in a bargaining unit, then these notices must be given directly to the employee. 115 ILCS 5/3(d). **Note:** It is best practice to maintain union-related documents, such as grievances, separately from an employee's personnel file.
4. *Information prohibited from being disclosed by the PRRA.* 5 ILCS 140/7.5(q). The PRRA prohibits the disclosure of a performance evaluation under FOIA. 820 ILCS 40/11. The treatment of a request for a disciplinary report, letter of reprimand, or other disciplinary action depends on the age and nature of the responsive record. If the responsive record is more than four years old and is not related to an incident or attempted incident of sexual abuse or severe physical abuse, the request must be denied unless the disclosure is permitted by the Act. 5 ILCS 140/7.5(q); 820 ILCS 40/8, amended by P.A. 101-531. 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. If the responsive record is four years old or less (regardless of its nature), the district should provide the record and must notify the employee in written form or through email, if available. 820 ILCS 40/7 and 40/8, amended by P.A. 101-531.

The School Code prohibits the disclosure of school teacher, principal, and superintendent performance evaluations except as otherwise provided in the certified employee evaluation laws. 105 ILCS 5/24A-7.1.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub.L. 104-191) created national standards to protect individuals' medical records and other personal health information. If a district is a *covered entity* (i.e., offers a self-insured group health plan or flexible spending account), it must establish clear procedures to protect the employee's health information. 45 C.F.R. §164.502. Such districts should consult their attorneys and insurance provider for assistance.

⁴ The Employment Record Disclosure Act (745 ILCS 46/10) provides conditional immunity to employers responding to a reference request; it states: "Any employer or authorized employee or agent acting on behalf of an employer who, upon inquiry by a prospective employer, provides truthful written or verbal information, or information that it believes in good faith is truthful, about a current or former employee's job performance is presumed to be acting in good faith and is immune from civil liability for the disclosure and the consequences of the disclosure." This immunity statute does not, however, create an exemption to the requirements in the PRRA. The PRRA requires an employer to give an employee written notice before divulging a "disciplinary report, letter of reprimand, or other disciplinary action to a third party." 820 ILCS 40/7. An employment application may contain a waiver of this notice. Id.

⁵ 325 ILCS 5/4(d), amended by P.A. 101-564, requires a superintendent, upon being asked for a reference concerning an employee or former employee, to disclose to the requesting school district the fact that a district employee has made a report involving the conduct of the applicant or caused a report to be made to DCFS. For more information, see 5:150-AP, *Personnel Records*.

Required by the Elementary and Secondary Education Act (ESEA) (20 U.S.C. §7926). On 6-27-2018, the U.S. Dept. of Education issued a *Dear Colleague Letter* stating that school policies must explicitly state this requirement. See the resources portion for the letter at: www2.ed.gov/policy/elsec/leg/essa/index.html.

Consult the board attorney about what "or has probable cause to believe, has engaged in sexual misconduct" means. For guidance, policy 5:90, *Abused and Neglected Child Reporting*, and its f/n 14 analysis define an "alleged incident of sexual abuse" as an incident of sexual abuse of a child, as defined in 720 ILCS 5/11-9.1A, that is alleged to have been perpetrated by school personnel, including a school vendor or volunteer, that occurred: on school grounds during a school activity; or outside of school grounds or not during a school activity.

1. Execute the requirements in the Abused and Neglected Child Reporting Act whenever another school district asks for a reference concerning an applicant who is or was a District employee and was the subject of a report made by a District employee to Ill. Dept. of Children and Family Services (DCFS); and
- ~~1.2.~~ Comply with the federal law prohibiting the District from providing a recommendation of employment for an employee, contractor, or agent that District knows, or has probable cause to believe, has engaged in sexual misconduct with a student or minor in violation of the law,⁶ but the Superintendent or designee may follow routine procedures regarding the transmission of administrative or personnel files for that employee.

When requested for information about an employee by an entity other than a prospective employer, the District will only confirm position and employment dates unless the employee has submitted a written request to the Superintendent or designee.

LEGAL REF.: 20 U.S.C. §7926.
 325 ILCS 5/4, Abused and Neglected Child Reporting Act.
 745 ILCS 46/10, Employment Record Disclosure Act.
 820 ILCS 40/, Personal Record Review Act.
 23 Ill.Admin.Code §1.660.

CROSS REF.: 2:250 (Access to District Public Records), 5:90 (Abused and Neglected Child Reporting), 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.


⁶ Consult the board attorney in these situations for help about what the superintendent may or may not say. Questions exist whether the superintendent says nothing, provides a neutral reference, or whether a *recommendation* could mean positive or negative statements.

23. First Reading of Revised Board of Education Policy 5:200 - Terms and Conditions of Employment and Dismissal

157

Recommended Motion: that the Board of Education accept for first reading the revised Board of Education Policy for Section 5:200 - Terms and Conditions of Employment and Dismissal, as presented. **See Attachment No. 21.**

TO: Members of the Board of Education

FROM: Todd DeTaeye, Assistant Superintendent for Administration and Human Resources 

DATE: January 6, 2022

SUBJECT: Approve Board Policy 5:200 – Terms and Conditions of Employment and Dismissal

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: Approve the updated Board Policy.


Facts: In the continuing quest to update the District's Board Policies, attached is Board Policy 5:200 – Terms and Conditions of Employment and Dismissal, which was included as part of the November 2021 PRESS update review.

The revised policy updates the need to comply with the terms of individual employment contracts, in addition to collective bargaining agreements and other legal requirements. Next, the revision includes 2022 Election Day and Juneteenth (June 19) as school holidays. Lastly, the policy allows districts to evaluate tenured teachers rated as excellent or proficient every three (rather than two) years, in accordance with its teacher evaluation plan and an informal teacher observation plan, to be established by ISBE rule and the agreement of the PERA Joint Committee.

Cost: None.

Recommended Action: That the Board of Education accept for first reading the revised Board of Education Policy for Section 5:200 – Terms and Conditions of Employment and Dismissal, as presented.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

Professional Personnel

Terms and Conditions of Employment and Dismissal 1

The School Board delegates authority and responsibility to the Superintendent to manage the terms and conditions for the employment of professional personnel. The Superintendent shall act reasonably and comply with State and federal law as well as any applicable individual employment contract or collective bargaining agreement in effect. The Superintendent is responsible for making dismissal recommendations to the Board consistent with the Board's goal of having a highly qualified, high performing staff. ²

School Year

Teachers shall work according to the school calendar adopted by the Board, which shall have a minimum of 176 student attendance days and a minimum of 180 teacher work days, including teacher institute days.³ Teachers are not required to work on legal school holidays unless the District has followed applicable State law that allows it to hold school or schedule teachers' institutes, parent-teacher conferences, or staff development on the third Monday in January (the Birthday of Dr. Martin Luther King, Jr.); February 12 (the Birthday of President Abraham Lincoln); the first Monday in March (known as Casimir Pulaski's birthday); the second Monday in October (Columbus Day); and November 11 (Veterans' Day). ⁴

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

¹ State or federal law controls this policy's content. This policy contains items on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. The local collective bargaining agreement may contain provisions that exceed these requirements. In such cases, the board policy should be amended to state, "Please refer to the applicable collective bargaining agreement."

Evaluation, tenure, and dismissals changed significantly from 2013 to 2016 as P.A.s 96-861, 97-8, and 98-513 were implemented. These public acts are referred to as *Education Reform or Education Reform Acts*.

² This paragraph is consistent with the IASB's *Foundational Principles of Effective Governance*, at: www.iasb.com/IASB/media/Documents/found_prin.pdf. Boards have three options for using this paragraph: (1) use it as an introduction to the policy; (2) use it alone leaving the specific other topics for administrative implementation; or (3) do not use it.

³ 105 ILCS 5/10-19, amended by P.A.s 101-12 and 101-643. See 6:20, *School Year Calendar and Day*.

⁴ 105 ILCS 5/24-2(b). See 5:330, *Sick Days, Vacation, Holidays, and Leaves*, for a holiday listing as well as a discussion of the case finding the State-mandated school holiday on Good Friday unconstitutional. 105 ILCS 5/24-2, amended by P.A.s 101-642, 102-14, 102-15, and 102-334 prohibits districts from making a deduction "from the time or compensation of a school employee on account of any legal or special holiday."

10 ILCS 5/2B-10, added by P.A. 101-642, 10 ILCS 5/2A-1.1c, added by P.A. 102-15 and scheduled to be repealed on 1-1-23, and 105 ILCS 5/24-2(e), amended by P.A.s 101-642 and 102-15, designateds 2020 Election Day on 11-3-2020 and 2022 Election Day on 11-8-22 as a legal school holidays for purposes of 105 ILCS 5/24-2. It requires all government offices, with the exception of election authorities, to be closed unless authorized to be used as a location for Election Day services or as a polling place. 10 ILCS 5/2B-10, added by P.A. 101-642, and 10 ILCS 5/2A-1.1c, added by P.A. 102-15 and scheduled to be repealed on 1-1-23, requires any school closed on 2020 or 2022 Election Day under it to make itself available to an election authority as a polling place on those days for 2020 General Election Day and comply with all safety and health practices established by the Ill. Department of Public Health (IDPH).

No waiver exists for ~~2020~~2022 Election Day. 105 ILCS 5/24-24(b) and (e), amended by P.A.s 101-642 and 102-15.

School Day

Teachers are required to work the school day adopted by the Board.⁵ Teachers employed for at least four hours per day shall receive a duty-free lunch equivalent to the student lunch period, or 30 minutes, whichever is longer.⁶

The District accommodates employees who are nursing mothers according to provisions in State and federal law.⁷

Salary

Teachers shall be paid according to the salaries fixed by the Board, but in no case less than the minimum salary provided by the School Code.⁸ Teachers shall be paid at least monthly on a 10- or 12-month basis.⁹

Assignments and Transfers

The Superintendent is authorized to make teaching, study hall, extra class duty, and extracurricular assignments.¹⁰ In order of priority, assignments shall be made based on the District's needs and best interests, employee qualifications, and employee desires.

School Social Worker Services Outside of District Employment

School social workers may not provide services outside of their District employment to any student(s) attending school in the District. *School social worker* has the meaning stated in 105 ILCS 5/14-1.09a.¹¹

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

⁵ A school day is required to consist of a minimum of five clock hours under the direct supervision of a teacher or non-teaching personnel or volunteer personnel that provides non-teaching or supervisory duties as specified in 105 ILCS 5/10-22.34(a) in order to qualify as a full day of attendance. 105 ILCS 5/10-19.05(a) and (j-5), added by P.A. 101-12 and amended by P.A. 101-643. See www.isbe.net/school-calendar for ISBE's instructional day changes notice regarding this law. See 105 ILCS 5/10-19.05, added by P.A. 101-12 and amended by P.A. 101-643, for additional exceptions to the attendance calculation.

⁶ 105 ILCS 5/24-9.

⁷ 740 ILCS 137/; 820 ILCS 260/, amended by P.A. 100-1003. Ill. law requires more of employers than federal law. Consult the board attorney to ensure the district is properly accommodating nursing mothers. See 5:10-AP, *Workplace Accommodations for Nursing Mothers*.

⁸ 105 ILCS 5/10-20.7, 5/10-21.1, 5/24-1, and 5/24-8, amended by P.A. 101-443 (minimum salary). Salaries are a mandatory subject of collective bargaining. 115 ILCS 5/10. Annually, by Oct. 1, each district must: (1) during an open school board meeting, report salary and benefits information for the superintendent, administrators, and teachers; (2) publish that information on the district's website, if any; and (3) provide this information to ISBE. 105 ILCS 5/10-20.47. According to a Public Access Counselor (PAC) *Informal Mediation* letter interpreting 5 ILCS 120/7.3, an IMRF employer must post on its website the names of employees having a total compensation package that exceeds \$75,000 per year. 2012 PAC 19808 (Informal Mediation by the Ill. Attorney General's Public Access Counselor (PAC)); see PAC Annual Report for 2012 at www.foia.ilattorneygeneral.net/pdf/Public_Access_Counselor_Annual_Report_2012.pdf.

⁹ 105 ILCS 5/24-21.

¹⁰ Districts are required to have a policy on the distribution of the listed assignments. 23 Ill.Admin.Code § 1.420(d).

Absent an individual or collective bargaining agreement, the board has unilateral discretion to assign or retain a teacher to or in an extracurricular duty. *Betebenner v. Bd. of Educ.*, 336 Ill.App. 448 (4th Dist. 1949); *Dist. 300 Educ. Assoc. v. Bd. of Educ.*, 31 Ill.App.3d 550 (2nd Dist. 1975); *Lewis v. Bd. of Educ.*, 181 Ill.App.3d 689 (5th Dist. 1989).

¹¹ Optional. This subhead provides information to district employees and the community that 105 ILCS 5/14-1.09a, amended by P.A. 100-356, prohibits school social workers from moonlighting by providing services to students attending the districts in which they are employed. Delete "5/10-20.65, 5/14-1.09a," from the Legal References if the board deletes this subhead.

Dismissal

The District will follow State law when dismissing a teacher. ¹²

Evaluation

The District's teacher evaluation system will be conducted under the plan developed pursuant to State law. ¹³

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

¹² All dismissal laws in the chart below were amended by the *Education Reform Acts*. 105 ILCS 5/24A-5.5, added by P.A. 101-591, requires districts to develop and implement a local appeals process for unsatisfactory ratings issued to teachers under 105 ILCS 5/24A-5, amended by P.A.s 101-643 and 102-252. Districts must: (1) develop the process in cooperation with the bargaining unit or teachers, if applicable, and (2) include an assessment of the original rating by a panel of qualified evaluators agreed to by the PERA joint committee (105 ILCS 5/24A-4(b)).

Non-tenure Teacher Discharge	105 ILCS 5/24-11, amended by P.A.s 101-643 and 102-552
Tenured and Non-tenure Teachers Reduction in Force	105 ILCS 5/24-12(b), amended by P.A. 101-643, and (c)
Tenured Teacher Discharge Where Cause Remediable	105 ILCS 5/24-12(d) (prior reasonable warning required) 105 ILCS 5/24-12(d) (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
Tenured Teacher Discharge Where Cause Irremediable	105 ILCS 5/24-12(d) (no prior warning required) 105 ILCS 5/24-12(d) (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
Tenured Teacher Discharge Failure to complete remediation plan with a rating of <i>Proficient</i> or <i>Excellent</i>	105 ILCS 5/24A-5(m) (participation in remediation plan after unsatisfactory evaluation) 105 ILCS 5/24-12(d)(1), amended by P.A. 101-643 (no prior warning required if cause(s) were subject of remediation plan) 105 ILCS 5/24-12(d) (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
Tenured Teacher Discharge - Optional Alternative Evaluative Dismissal Process for PERA Evaluation Failure to complete remediation plan with a <i>Proficient</i> or better rating 105 ILCS 5/24A-2.5	105 ILCS 5/24-16.5(d) (provide written notice) 105 ILCS 5/24-16.5 (pre-remediation and remediation procedural mandates) 105 ILCS 5/24-16.5(e) and (f) (school board makes final decision with only PERA-trained board members participating in vote)
Tenured Teacher Discharge Unsatisfactory PERA evaluation within 36 months of completing a remediation plan 105 ILCS 5/24A-2.5	105 ILCS 5/24A-5(n), amended by P.A. 102-252 (forego remediation and proceed to dismissal) 105 ILCS 5/24-12(d) (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
Educational Support Personnel Employees (non-licensed)	105 ILCS 5/10-23.5, amended by P.A. 101-46
Probationary Teacher (non-tenure teacher)	105 ILCS 5/24-11, amended by P.A. 101-643

Various components of a RIF (e.g., impact and decision to RIF) and an evaluation plan (e.g., development, implementation, and impact) may be subject to mandatory collective bargaining. *Central City Educ. Assoc. v. IELRB*, 149 Ill.2d 496 (Ill. 1992).

Teacher RIF procedures were changed by 105 ILCS 5/24-12, amended by P.A. 101-643. See *PERA Overview for School Board Members*, question 13, "What is the process for selecting teachers for a reduction in force/layoff (RIF)" at: www.iasb.com/law/PERAoverview.pdf.

According to a binding opinion from the Ill. Public Access Counselor, a board must identify an employee by name in a motion to dismiss him or her. PAO 13-16. As this may be a significant change in practice with possible other legal consequences, a board should consult with the board attorney on this issue before dismissing an employee.

¹³ 105 ILCS 5/24A-5, amended by P.A. 102-252. Teacher evaluation plans are covered in *PERA Overview for School Board Members* at: www.iasb.com/law/PERAoverview.pdf.

On an annual basis, the Superintendent will provide the Board with a written report which outlines the results of the District's teacher evaluation system.

LEGAL REF.: 105 ILCS 5/10-19, 5/10-19.05, 5/10-20.65, 5/14-1.09a, 5/22.4, 5/24-16.5, 5/24-2, 5/24-8, 5/24-9, 5/24-11, 5/24-12, 5/24-21, 5/24A-1 through 24A-20.
820 ILCS 260/, Nursing Mothers in the Workplace Act et seq.
23 Ill.Admin.Code Parts 50 (Evaluation of Educator Licensed Employees) and 51 (Dismissal of Tenured Teachers).
Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532.(1985).

CROSS REF.: 5:290 (Employment Termination and Suspensions), 6:20 (School Year Calendar and Day)

24. First Reading of Revised Board of Education Policy 5:250 - Leaves of Absence

163

Recommended Motion: that the Board of Education accept for first reading the revised Board of Education Policy for Section 5:250 - Leaves of Absence, as presented. **See Attachment No. 22.**

TO: Members of the Board of Education

FROM: Todd DeTaeye, Assistant Superintendent for Administration and Human Resources *T.D.*

DATE: January 6, 2022

SUBJECT: Approve Board Policy 5:250 – Leaves of Absence

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: Approve the updated Board Policy.

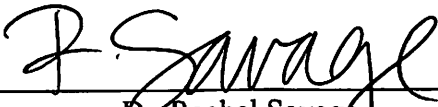
Facts: In the continuing quest to update the District's Board Policies, attached is Board Policy 5:250 – Leaves of Absence, which was included as part of the November 2021 PRESS update review.

The revised policy was updated permitting eligible school employees to take up to 30 days of paid sick leave for birth, without medical certification, anytime within one year following the birth, and for adoption, placement for adoption, or acceptance of a child in need of foster care.

Cost: None.

Recommended Action: That the Board of Education accept for first reading the revised Board of Education Policy for Section 5:250 – Leaves of Absence, as presented.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

Professional Personnel

Leaves of Absence 1

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

Sick and Bereavement Leave 2

Each full-time professional staff member is granted 10 days sick leave each school year at full pay. Unused days are allowed to accumulate to 180 days. Sick leave is defined in State law as personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, ~~or placement for adoption,~~ or the acceptance of a child for adoption.

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

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

This policy is consistent with the minimum requirements of State law. The local collective bargaining agreement may contain provisions that exceed these requirements. The introductory paragraph recognizes that an applicable collective bargaining agreement or individual employment contract will supersede a conflicting provision of the policy. It also provides policy coverage for those professional personnel who are not included in a bargaining unit or have employment contracts with conflicting provisions. Alternatively, if the policy's subject matter is superseded by a bargaining agreement, the board policy may state, "Please refer to the applicable collective bargaining agreement(s)."

Districts must coordinate leaves provided by State law and the local bargaining agreement with the leave granted by the Family and Medical Leave Act (FMLA) (29 U.S.C. §2612), amended by Sec. 565 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84). The FMLA grants eligible employees 12 weeks unpaid leave each year for: (1) the birth and first-year care of a child; (2) the adoption or foster placement of a child; (3) the serious health condition of an employee's spouse, parent, or child; (4) the employee's own serious health condition; (5) the existence of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on *covered active duty*; and (6) to care for the employee's spouse, child, parent, or next of kin who is a covered servicemember with a serious injury or illness. Districts are permitted to count paid leave (granted by State law or board policy) taken for an FMLA purpose against an employee's FMLA entitlement. 29 C.F.R. §825.207. See policy 5:185, *Family and Medical Leave*.

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

² The provisions in this section are required by 105 ILCS 5/24-6, amended by P.A. 102-275-400-513. Each specified number of days in this section is the statutory minimum. Before adopting this policy or applying its provisions, the district should examine any applicable bargaining agreements.

Consult the board attorney about the Employee Sick Leave Act (ESLA), 820 ILCS 191/, amended by P.A. 102-4. It prohibits employers from limiting the use of sick time to an employee's own illnesses and allows employees to use employer-provided sick leave to care for and/or to illness, ~~or injury,~~ medical appointment or *personal care* of a ~~covered family member or family member~~ or to attend a medical appointment with a family member. ~~Id. at 191-10(a), amended by P.A. 102-4. Personal care means: (1) activities to ensure a covered family member's basic medical, hygiene, nutritional, or safety needs are met, or to provide transportation to medical appointments, for a covered family member unable to meet those needs himself or herself; and (2) being physically present to provide emotional support to a covered family member with a serious health condition who is receiving inpatient or home care. Id. at 191-5, amended by P.A. 102-4. The law-ESLA defines covered family members as an employee's child, stepchild, spouse, domestic partner, sibling, parent, mother- or father-in-law, grandchild, grandparent, or stepparent. Id. at 191-4(b).~~ Leave may be taken under the same terms for which the employee would be permitted to take leave for his or her own illness or injury.

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

Staff members are entitled to use up to 30 days of paid sick leave because of the birth of a child that is not dependent on the need to recover from childbirth. Such days may be used at any time within the 12-month period following the birth of the child. Intervening periods of nonworking days or school not being in session, such as breaks and holidays, do not count towards the 30 working school days. As a condition of paying sick leave beyond the 30 working school days, the Board or Superintendent may require medical certification.⁴

The use of paid sick leave for purposes of adoption, or placement for adoption, or acceptance of a child in need of foster care, paid sick leave may be used for reasons related to the formal adoption or the formal foster care process prior to taking custody of the child or accepting the child in need of foster care, and for taking custody of the child or accepting the child in need of foster care. Such leave is limited to 30 days, unless a longer leave is provided in an applicable collective bargaining agreement, and need not be used consecutively once the formal adoption or foster care process is underway. The Board or Superintendent may require that the employee provide evidence that the formal adoption process or foster care process is underway.⁵

Child Bereavement Leave⁶

State law allows a maximum of 10 unpaid work days for eligible employees (Family and Medical Leave Act of 1993, 20 U.S.C. §2601 et seq.) to take child bereavement leave. The purpose, requirements, scheduling, and all other terms of the leave are governed by the Child Bereavement

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

³ ~~The School Code does not state a time limit for how sick leave must be taken, including for birth. Some employees and unions have taken the position that the 30 days of sick leave for birth can be used consecutively before and after an intervening summer break. However, an Illinois appellate court found that to interpret 105 ILCS 5/24-6 to allow sick leave for birth to be taken over such a long break was unreasonable and not a fair reading of the statute. *Dynak v. Bd. of Education of Wood Dale Sch. Dist. 7*, 2019 IL App (2d) 180551. Consult the board attorney regarding requests for sick leave when the timing involves an intervening school break.~~

⁴ 105 ILCS 5/24-6, amended by P.A. 102-275, overturned the Illinois Supreme Court's decision in *Dynak v. Bd. of Educ. of Wood Dale Sch. Dist. 7*, 164 N.E.3d 1226 (Ill. 2020) (finding that a teacher was not entitled to use 30 days of sick leave for birth consecutively before and after an intervening summer break). It is unclear from the language of the statute if an employee can be prohibited from *intermittent* use of 30 working sick days for birth, e.g., such as taking leave once a week. Consult the board attorney for guidance on this issue.

⁵ 105 ILCS 5/24-6, amended by P.A. 102-275.

⁶ Child Bereavement Leave Act, 820 ILCS 154/; 56 Ill. Admin. Code Part 252. These paragraphs discuss child bereavement leave. 820 ILCS 154/5, defines an *eligible employee* under the same terms as an employee under FMLA (29 U.S.C. 2601 et seq.). See fn 1 above.

The Act also provides that the leave must be completed within 60 days of the employee learning of the death of his or her *child*, as defined by 820 ILCS 154/5. However, that 60 day limitation does not apply where more than one child dies in a 12-month period. There may be times where an employer may want to grant more than 10 unpaid work days, e.g., when a deceased child lived in a foreign country, etc. Consult the board attorney to resolve the complexities of determining whether an employee is an eligible employee under the FMLA that would trigger this Act.

Leave Act. Child bereavement leave allows for: (1) attendance by the bereaved staff member at the funeral or alternative to a funeral of his or her child, (2) making arrangements necessitated by the death of the staff member's child, or (3) grieving the death of the staff member's child, without any adverse employment action.

The leave must be completed within 60 days after the date on which the employee received notice of the death of his or her child. However, in the event of the death of more than one child in a 12-month period, an employee is entitled to up to a total of six weeks of bereavement leave during the 12-month period, subject to certain restrictions under State and federal law. Other existing forms of leave may be substituted for the leave provided in the Child Bereavement Leave Act. This policy does not create any right for an employee to take child bereavement leave that is inconsistent with the Child Bereavement Leave Act.

Sabbatical Leave ⁷

Sabbatical leave may be granted in accordance with the School Code.

Personal Leave ⁸

Professional staff members are granted one personal leave day per year. A personal leave day is defined as a day to allow professional personnel time to conduct personal business (but not vacation, travel, or work stoppage), which is impossible to schedule at a time other than during a school day. Any unused personal leave day in a school year will be credited to the cumulative sick leave.

The use of a personal day is subject to the following conditions:

1. Except in cases of emergency or unavoidable situations, personal leave requests should be submitted to the Building Principal three days in advance of the requested date,
2. No personal leave days may be used immediately before or immediately after a holiday unless the Superintendent grants prior approval.
3. Personal leave may not be used in increments of less than one-half day,
4. Personal leave days are subject to a substitute's availability,
5. Personal leave days may not be used during the first and/or last five days of the school year,
6. Personal leave days may not be used on in-service and/or institute training days, and
7. Personal leave may not be used by more than 10% of the teaching staff in each building at the same time.

Leave of Absence Without Pay ⁹

The Board may grant a leave of absence without pay to tenured professional staff members who have rendered satisfactory service and desire to return to employment in a similar capacity at a time determined by the Board.

Each leave of absence shall be of the shortest possible duration required to meet the leave's purpose consistent with a reasonable continuity of instruction for students.

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

⁷ State law provides guidelines for sabbatical leaves but does not require boards to offer them. 105 ILCS 5/24-6.1.

⁸ State law does not address personal leave. It is not uncommon for professional staff to be granted more than one day of personal leave a year.

⁹ State law does not address leaves of absence without pay other than stating that a mutually agreed leave will not affect a teacher's contractual continued service. 105 ILCS 5/24-13

Leave to Serve as an Election Judge ¹⁰

Any staff member who was appointed to serve as an election judge under State law may, after giving at least 20-days' written notice to the District, be absent without pay for the purpose of serving as an election judge. The staff member is not required to use any form of paid leave to serve as an election judge. No more than 10% of the District's employees may be absent to serve as election judges on the same Election Day.

Child-Rearing Leave ¹¹

The Board shall grant a professional staff member's request for a non-paid, child-rearing leave, not to exceed the balance of the school year plus one additional school year (but in no event shall such leave exceed three semesters), provided the request complies with this policy. Nothing in this section shall prohibit a professional staff member from using paid sick days as provided in this policy. ¹²

A teacher should request, if possible, a child-rearing leave by notifying the Superintendent in writing no later than 90 days before the requested leave's beginning date. ¹³ The request should include the proposed leave dates. The leave shall end before a new school year begins or before the first day of school after winter recess. ¹⁴

Subject to the insurance carrier's approval, the teacher may maintain insurance benefits at his or her own expense during a child-rearing leave.

A professional staff member desiring to return before the leave's expiration will be assigned to an available vacancy for which the teacher is qualified, subject to scheduling efficiency and instruction continuity.

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

¹⁰ This paragraph restates 10 ILCS 5/13-2.5. The statute does not state whether the notice requirement is *calendar* days or *business* days. Support for it being *calendar* days is found in 10 ILCS 5/1-6; support for it being *business* days is found in 10 ILCS 5/1-3.

Rather than duplicate the statute's requirements in separate policies, policy 5:330, *Sick Days, Vacation, Holidays, and Leaves*, grants the leave to support personnel on the terms applicable to professional staff.

¹¹ The School Code does not address child-rearing. FMLA grants eligible employees a combined total of 12 weeks each year, with exceptions for teachers at the end of the school year, for, among other things, a child's: (1) birth and first-year care, and (2) adoption or foster placement (see policy 5:185, *Family and Medical Leave*). Districts not covered by the FMLA must treat a request for child-care leave to care for an adopted infant on terms comparable to those given biological mothers. *McWright v. Alexander*, 982 F.2d 222 (7th Cir. 1992).

¹² Districts offering a child-rearing or maternity leave must be very careful not to violate anti-discrimination laws. Districts can prohibit pregnant teachers from combining paid disability leave with an unpaid maternity leave, provided that non-pregnant teachers are likewise prohibited from combining a paid disability leave with an unpaid general leave of absence. *Maganuco v. Leyden Comm. High Sch. Dist. 212*, 939 F.2d 440 (7th Cir.: 1991); *U.S. v. Consol. High Sch. Dist. 230*, 983 F.2d 790 (7th Cir. 1993); *E.E.O.C. v. Elgin Teachers' Ass'n.*, 780 F.Supp. 1195 (N.D.Ill. 1991). A sick leave bank exclusion of maternity benefits violates Title VII. *U.S. v. Consol. High Sch. Dist. 230*, *supra*.

¹³ The length of the notice - here 90 days - is *not* covered by State or federal law. If an employee fails to provide this notice, the employee still has the right to request a family and medical leave which has a much shorter notice requirement (see policy 5:185, *Family and Medical Leave*), and could be followed by a child-rearing leave.

¹⁴ For a high school, omit "the first day of school after winter recess" and insert "at the semester break." Alternatively, the board may want to be more flexible by stating:

Every effort shall be made to have the leave minimally interrupt instructional continuity by ending . . .

Leaves for Service in the Military ¹⁵

Leaves for service in the U.S. Armed Services or any of its reserve components and the National Guard, as well as re-employment rights, will be granted in accordance with State and federal law. A professional staff member hired to replace one in military service does not acquire tenure.

General Assembly Leave ¹⁶

Leaves for service in the General Assembly, as well as re-employment rights, will be granted in accordance with State and federal law. A professional staff member hired to replace one in the General Assembly does not acquire tenure.

Leave for Employment in Department of Defense ¹⁷

The Board may grant teachers a leave of absence to accept employment in a Dept. of Defense overseas school.

School Visitation Leave

An eligible professional staff member is entitled to eight hours during any school year, no more than four hours of which may be taken on any given day, to attend school conferences, behavioral meetings, or academic meetings related to the teacher's child, if the conference or meeting cannot be scheduled during non-work hours.¹⁸ Professional staff members must first use all accrued vacation leave, personal leave, compensatory leave, and any other leave that may be granted to the professional staff member, except sick, and disability leave. ¹⁹

The Superintendent shall develop administrative procedures implementing this policy consistent with the School Visitation Rights Act. ²⁰

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

¹⁵ Required by the School Code (105 ILCS 5/10-20.7b, 5/24-13, and 5/24-13.1); the Service Member Employment and Reemployment Rights Act (330 ILCS 61/, added by P.A. 100-1101, streamlining several job-related protection laws into one statute, mandating leave for *active service*, and requiring the public employer to make up the difference between military pay and regular compensation); and the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §4301 *et seq.*).

¹⁶ Required by 105 ILCS 5/24-13.

¹⁷ State law provides guidelines for Dept. of Defense leaves but does not require boards to offer them. 105 ILCS 5/24-13.1.

¹⁸ 820 ILCS 147/15, amended by P.A. 101-486, eff. 8-1-20.

¹⁹ *Id.* The school visitation leave entitlement applies to both professional and educational support personnel. Rather than duplicate its requirements in separate policies, policy 5:330, *Sick Days, Vacation, Holidays, and Leaves*, grants the leave on the same terms applicable to professional staff.

²⁰ 820 ILCS 147/. Parents of children with *serious health conditions* may also be eligible to use FMLA leave for individualized education program (IEP) meetings. See U.S. Dept. of Labor *Wage and Hour Division Opinion Letter*, FMLA 2019-2-A (8-8-19), available at: www.dol.gov/whd/opinion-search/index.htm?FMLA www.dol.gov/agencies/whd/opinion-letters/search?FMLA.

Leaves for Victims of Domestic Violence, Sexual Violence, ~~or Gender Violence~~, or Other Crime of Violence²¹

An unpaid leave from work is available to any staff member who: (1) is a victim of domestic violence, sexual violence, ~~or gender violence~~, or any other crime of violence or (2) has a family or household member who is a victim of such violence whose interests are not adverse to the employee as it relates to the domestic violence, sexual violence, ~~or gender violence~~, or any other crime of violence. The unpaid leave allows the employee to seek medical help, legal assistance, counseling, safety planning, and other assistance without suffering adverse employment action.

The Victims' Economic Security and Safety Act governs the purpose, requirements, scheduling, and continuity of benefits, and all other terms of the leave. Accordingly, if the District employs at least 50 employees, an employee is entitled to a total of 12 work weeks of unpaid leave during any 12-month period.²² Neither the law nor this policy creates a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act of 1993 (29 U.S.C. §2601 *et seq.*).²³

Leaves to Serve as an Officer or Trustee of a Specific Organization

Upon request, the Board will grant: (1) an unpaid leave of absence to an elected officer of a State or national teacher organization that represents teachers in collective bargaining negotiations,²⁴ (2) twenty days of paid leave of absence per year to a trustee of the Teachers' Retirement System in accordance with 105 ILCS 5/24-6.3,²⁵ and (3) a paid leave of absence for the local association

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²¹ Required by the Victims' Economic Security and Safety Act, (VESSA) (820 ILCS 180/, amended by P.A. § 101-221 and 102-487, ~~eff. 1-1-20~~, and 56 Ill.Admin.Code §280). *Gender violence* means: (1) one or more acts of violence or aggression that is a criminal offense under State law committed, at least in part, on the basis of a person's actual or perceived sex or gender, (2) a physical intrusion or invasion of a sexual nature under coercive conditions that is a criminal offense under State law, or (3) a threat to commit one of these acts. 820 ILCS 180/10(12.5), added by P.A. 101-221, ~~eff. 1-1-20~~. *Other crime of violence* means conduct prohibited by 720 ILCS 5/9 (homicide), 720 ILCS 5/11 (sex offenses), 720 ILCS 5/12 (bodily harm), 720 ILCS 5/26.5 (harassing and obscene communications), 720 ILCS 5/29D (terrorism), and 720 ILCS 5/33A (armed violence), or similar provisions of the Criminal Code of 1961. 820 ILCS 180/10(2.5), added by P.A. 102-487. *Sexual violence* is not specifically defined in VESSA. While the law applies to all school districts (820 ILCS 180/10(10)), the number of employees determines the number of total workweeks of leave available during any 12-month period (820 ILCS 180/20(a)(2)). The term *employee* includes part-time workers. The Ill. Dept. of Labor must furnish to all employers a notice summarizing the law's requirements (*Your Rights Under Illinois Employment Laws* at: www2.illinois.gov/idol/Documents/flsposter.pdf#search=Your%20Rights%20Under%20Illinois%20Employment%20Laws). All districts must post this notice in a conspicuous place where notices to employees are customarily posted.

²² If the district employs fewer than 50 employees, it may substitute the following sentence: "Accordingly, if the District employs at least 15 but not more than 49 employees, an employee is entitled to a total of eight work weeks of unpaid leave during any 12-month period." 820 ILCS 180/20(a)(2).

If the district employs at least one but not more than 14 employees, it may substitute the following sentence: "Accordingly, if the District employs at least one but not more than 14 employees, an employee is entitled to a total four (4) work weeks of leave during any 12-month period." 820 ILCS 180/20(a)(2).

²³ VESSA states that an employee does not have a right to take unpaid leave that exceeds the unpaid leave time allowed under the FMLA. 820 ILCS 180/20(a)(2). Section 25 creates an ambiguity by stating, "[t]he employer may not require the employee to substitute available paid or unpaid leave for [leave available to victims of domestic violence, sexual violence, or gender violence]." 820 ILCS 180/25, amended by P.A. § 101-221 and 102-487, ~~eff. 1-1-20~~. Contact the board attorney for advice resolving this ambiguity.

²⁴ Required by 105 ILCS 5/24-13.

²⁵ Required by 105 ILCS 5/24-6.3. See policy 5:330, *Sick Days, Vacation, Holidays, and Leaves*, for the leave for an elected trustee for the Ill. Municipal Retirement Fund.

president of a State teacher association that is an exclusive bargaining agent in the District, or his or her designee, to attend meetings, workshops, or seminars as described in 105 ILCS 5/24-6.2. ²⁶

LEGAL REF.: 10 ILCS 5/13-2.5.
105 ILCS 5/24-6, 5/24-6.1, 5/24-6.2, 5/24-6.3, 5/24-13, and 5/24-13.1.
330 ILCS 61/, Service Member Employment and Reemployment Rights Act.
820 ILCS 147/, School Visitation Rights Act.
820 ILCS 154/, Child Bereavement Leave Act.
820 ILCS 180/, Victims' Economic Security and Safety Act.

CROSS REF.: 5:180 (Temporary Illness or Temporary Incapacity), 5:185 (Family and Medical Leave), 5:330 (Sick Days, Vacation, Holidays, and Leaves)

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


²⁶ Required by 105 ILCS 5/24-6.2.

25. First Reading of Revised Board of Education Policy 5:330 - Sick Days, Vacation, Holidays, and Leaves

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Recommended Motion: that the Board of Education accept for first reading the revised Board of Education Policy for Section 5:330, Sick Days, Vacation, Holidays, and Leaves, as presented. **See Attachment No. 23.**

TO: Members of the Board of Education

FROM: Todd DeTaeye, Assistant Superintendent for Administration and Human Resources 

DATE: January 6, 2022

SUBJECT: Approve Board Policy 5:330 – Sick Days, Vacation, Holidays, and Leaves

Reason for Board Consideration: The Board of Education approves updated Board Policy.

Action Necessary: Approve the updated Board Policy.


Facts: In the continuing quest to update the District's Board Policies, attached is Board Policy 5:330 – Sick Days, Vacation, Holidays, and Leaves, which was included as part of the November 2021 PRESS update review.

The revised policy was updated permitting eligible school employees to take up to 30 days of paid sick leave for birth, without medical certification, anytime within one year following the birth, and for adoption, placement for adoption, or acceptance of a child in need of foster care. In addition, it also added 2022 Election Day and Juneteenth (June 19) as a holiday.

Cost: None.

Recommended Action: That the Board of Education accept for first reading the revised Board of Education Policy for Section 5:330 – Sick Days, Vacation, Holidays, and Leaves, as presented.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

Educational Support Personnel

Sick Days, Vacation, Holidays, and Leaves ¹

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

Sick and Bereavement Leave ²

Full or part-time educational support personnel who work at least 600 hours per year receive 10 paid sick leave days per year. Part-time employees will receive sick leave pay equivalent to their regular

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

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

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

Districts must coordinate leaves provided by State law and the local bargaining agreement with the leave granted by the Family and Medical Leave Act (FMLA) (29 U.S.C. §2612), amended by Sec. 565 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84). The FMLA grants eligible employees 12 weeks unpaid leave each year for: (1) the birth and first-year care of a child; (2) the adoption or foster placement of a child; (3) the serious health condition of an employee's spouse, parent, or child; (4) the employee's own serious health condition; (5) the existence of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on (or has been notified of an impending call to) *covered active duty* in the Armed Forces; and (6) to care for the employee's spouse, child, parent, or next of kin who is a covered service member with a serious injury or illness. The definition of *covered servicemember* includes a veteran "who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness" if the veteran was a member of the Armed Forces "at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy." 29 U.S.C. §2611. Districts are permitted to count paid leave (granted by State law or board policy) taken for an FMLA purpose against an employee's FMLA entitlement. 29 C.F.R. §825.207. See policy 5:185, *Family and Medical Leave*.

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

² This section contains the minimum benefits provided by 105 ILCS 5/24-6. Each specified number of days in this section is the statutory minimum. The School Code does not address whether an employee's 10 paid sick leave days are available upon employment, accrued over months, or after working for a certain period of time, e.g., one year. Also be aware that the Employee Sick Leave Act (820 ILCS 191/) allows employees to use employer-provided sick leave to care for an ill or injured *family* member or to attend a medical appointment with a family member. The law defines family members as a child, stepchild, spouse, domestic partner, sibling, parent, mother- or father-in-law, grandchild, grandparent, or stepparent. *Id.* at 191/10(b). Leave may be taken under the same terms for which the employee would be permitted to take leave for his or her own illness or injury. Before adopting this policy or applying its provisions, the district should examine any applicable bargaining agreements. Strict accounting of unused sick days is important to avoid:

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

workday. Unused sick leave shall accumulate to a maximum of 180 days, including the leave of the current year.³

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

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

Employees are entitled to use up to 30 days of paid sick leave because of the birth of a child that is not dependent on the need to recover from childbirth. Such days may be used at any time within the 12-month period following the birth of the child. Intervening periods of nonworking days or school not being in session, such as breaks and holidays, do not count towards the 30 working school days. As a condition of paying sick leave beyond the 30 working school days, the Board or the Superintendent may require medical certification.⁴

The use of paid sick leave for purposes of adoption, or placement for adoption, or acceptance of a child in need of foster care, paid sick leave may be used for reasons related to the formal adoption or the formal foster care process prior to taking custody of the child or accepting the child in need of foster care, and for taking custody of the child or accepting the child in need to foster care. Such leave is limited to 30 days, unless a longer leave is provided in an applicable collective bargaining agreement, and need not be used consecutively once the formal adoption or foster care process is

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

³ As this policy is consistent with the minimum requirements of State law, this provision on the maximum number of sick days that may be accumulated is based on the minimum number required as stated in 105 ILCS 5/24-6, amended by P.A. 102-275. The number may be increased to meet or exceed the number IMRF will recognize for retirement credit purposes. The following alternative does this: "Unused sick leave shall accumulate to the maximum number of days that IMRF will recognize for retirement credit purposes."

The following optional provisions apply to boards that want to address the IMRF's requirement that public bodies must have a written plan allowing eligible employees to convert their eligible accumulated sick leave to service credit upon their retirement. See 40 ILCS 5/7-139(a)(8). See also IMRF General Memorandum #555 at: www.imrf.org/en/publications-and-archive/general-memos/2007-general-memos/general-memo-555.

Option 1: No collective bargaining agreement applies and the board wants to publicize its written plan. Insert the following sentence: This policy is the District's written plan allowing eligible employees to convert eligible accumulated sick leave to service credit upon a District employee's retirement under the Ill. Municipal Retirement Fund.

Option 2: A local collective bargaining agreement contains the written plan and the board wants to publicize it. Insert the following sentence: Please refer to the applicable collective bargaining agreement(s) for the District's written plan allowing eligible employees to convert eligible accumulated sick leave to service credit upon an employee's retirement under the Ill. Municipal Retirement Fund.

Option 3: A district maintains two separate sick leave plans, one for employees under a collective bargaining agreement, and one for non-unionized employees. Insert the text for both Option 1 and Option 2.

Note: If Options 1, 2, or 3 are chosen, add 40 ILCS 5/7-139 to the Legal References. If the board does not have a written sick leave plan for purposes of IMRF sick leave to service credit conversion or does not wish to include it in the policy, do not include any of the options above or add the citation to the Legal References.

⁴ 105 ILCS 5/24-6, amended by P.A. 102-275.

underway. The Board or Superintendent may require that the employee provide evidence that the formal adoption or foster care process is underway.⁵

Vacation⁶

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

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

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

Vacation days earned in one fiscal year must be used by the end of the following fiscal year; they do not accumulate. Employees resigning or whose employment is terminated are entitled to the monetary equivalent of all earned vacation.⁷

Holidays⁸

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

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

⁵ 105 ILCS 5/24-6, amended by P.A. 100-513 and 101-020.
⁶ State law does not require districts to give employees vacations.
⁷ Required by 820 ILCS 115/5 and 56 Ill.Admin.Code §300.520 (Earned Vacations).
⁸ Holidays are listed in 105 ILCS 5/24-2(a), (c), amended by P.A.s 101-642, 102-14, 102-15, and 102-334, 10 ILCS 5/2A-1, as added by P.A. 102-15 and scheduled to be repealed on 1-1-23 and 10 ILCS 5-20-10, added by P.A. 101-642. For information on the waiver process allowed by 105 ILCS 5/24-2(b), see 2:20-E, *Waiver and Modification Request Resource Guide*. Holidays not specified in the School or Election Codes may be added to the policy; however, boards adding additional holidays should monitor and review to ensure the list remains current.
 A State-mandated school holiday on Good Friday is unconstitutional according to *Metz v. Leininger*, 57 F.3d 618 (7th Cir. 1995). Closing school on religious holidays may be permissible for those districts able to demonstrate that remaining open would be a waste of educational resources because of widespread absenteeism. Also, districts may be able to close school on Good Friday by adopting a spring holiday rationale or ensuring that it falls within spring break. School districts should discuss their options, including the collective bargaining implications, with their board attorney.
 For more information about 2020 Election Day, see the discussion in ¶n 4 in 5:200, *Terms and Conditions of Employment and Dismissal*. 2020 Election Day remains a holiday listed in 105 ILCS 5/24-2(c), amended by P.A. 102-15, but no longer appears in this policy.

New Year's Day
Martin Luther King Jr.'s Birthday
Abraham Lincoln's Birthday
Casimir Pulaski's Birthday
Memorial Day
~~Juncteenth National Freedom Day~~
Independence Day

Labor Day
Columbus Day
Veteran's Day
2022~~20~~ Election Day
Thanksgiving Day
Christmas Day

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

Personal Leave⁹

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

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

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

Upon request, the Board will grant 20 days of paid leave of absence per year to a trustee of the Ill. Municipal Retirement Fund in accordance with 105 ILCS 5/24-6.3.¹⁰

Other Leaves

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

- ~~1. Leaves for Service in the Military and General Assembly.~~¹¹
- ~~2. Leave for Service in the General Assembly.~~¹²
- 2.3. School Visitation Leave.¹³

Commented [D31]: Text formerly in 7/n 11 now appears in a new 7/n 12.

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

⁹ State law does not address personal leave. It is not uncommon for boards to grant educational support personnel the same number of personal leave days as are granted to professional staff.

¹⁰ Required by 105 ILCS 5/24-6.3. A similar leave exists for an elected trustee for the Ill. Teachers' Retirement System. See 5:250, *Leaves of Absence*.

¹¹ Military leave is governed by the School Code (105 ILCS 5/10-20.7b, 5/24-13, and 13.1); the Service Member Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.); the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.); and the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.).

¹² Granting General Assembly leave to ESPs is optional.

~~3-4. Leaves for Victims of Domestic Violence, Sexual Violence, or Gender Violence, or Other Crime of Violence.~~ ¹⁴

4-5. Child Bereavement Leave. ¹⁵

5-6. Leave to serve as an election judge. ¹⁶

LEGAL REF.: 105 ILCS 5/10-20.7b, 5/24-2, and 5/24-6.
330 ILCS 61/, Service Member Employment and Reemployment Rights Act.
820 ILCS 147, School Visitation Rights Act.
820 ILCS 154/, Child Bereavement Leave Act.
820 ILCS 180/, Victims' Economic Security and Safety Act.
School Dist. 151 v. ISBE, 154 Ill.App.3d 375 (1st Dist. 1987); Elder v. Sch. Dist. No.127 1/2, 60 Ill.App.2d 56 (1st Dist. 1965).

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

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

¹³ 820 ILCS 147/, amended by P.A. 101-486. See policy 5:250, *Leaves of Absence*, and 5:250-AP, *School Visitation Leave*.

¹⁴ Required by Victims' Economic Security and Safety Act (820 ILCS 180/, amended by P.A. 101-221 and 101-487) and 56 Ill.Admin.Code Part 280. Important information about this leave is discussed in ¶ns 20, 21, 22 and 232 of 5:250, *Leaves of Absence*.

¹⁵ 820 ILCS 154/, 56 Ill.Admin.Code Part 252. Important information about this leave is discussed in ¶n 65 of 5:250, *Leaves of Absence*.

¹⁶ 10 ILCS 5/13-2.5.

5:330

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Educational Support Personnel

Sick Days, Vacation, Holidays, and Leaves

Sick Leave, Bereavement Leave, Personal Leave, Unpaid Leave of Absence

Please refer to the following Agreements:

“Agreement between Board of Education of Moline School District No. 40 and Local 672 AFSCME.”

“Contractual Agreement Between Board of Education of Moline District No. 40 and Moline Education Support Personnel Association (MESPA).”

Maternity/Adoptive Leave

Please refer to the following Agreement:

“Contractual Agreement Between Board of Education of Moline District No. 40 and Moline Education Support Personnel Association (MESPA).”

Association/Union Leave

Please refer to the following Agreements:

“Agreement between Board of Education of Moline School District No. 40 and Local 672 AFSCME.”

“Contractual Agreement Between Board of Education of Moline District No. 40 and Moline Education Support Personnel Association (MESPA).”

Vacation

Please refer to the following Agreements:

“Agreement between Board of Education of Moline School District No. 40 and Local 672 AFSCME.”

Holidays

Please refer to the following Agreements:

“Agreement between Board of Education of Moline School District No. 40 and Local 672 AFSCME.”

“Contractual Agreement Between Board of Education of Moline District No. 40 and Moline Education Support Personnel Association (MESPA).”

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

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

Other Leaves

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

1. Leaves for Service in the Military and General Assembly.
2. School Visitation Leave.
3. Leaves for Victims of Domestic Violence, Sexual Violence, or Gender Violence.
4. Child Bereavement Leave.
5. Leave to serve as an election judge.

Employees not covered by any agreement in most cases receive the same leaves and vacation as those of like positions who are covered.

LEGAL REF.: 105 ILCS 5/10-20.7b, 5/24-2, and 5/24-6.
330 ILCS 61/, Service Member Employment and Reemployment Rights Act.
820 ILCS 147 and 180/.
820 ILCS 154/.
School Dist 151 v. ISBE, 507 N.E.2d 134 (Ill.App.1, 1987); Elder v. School Dist. No.127 1/2, 208 N.E.2d 423 (Ill.App.1, 1965).

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

ADOPTED: November 9, 1999

PRESS REVISED: March 2010, May 2016, October 2016, February/March 2019, October 2019, August 2020, November 2021

BOE REVIEWED:

26. Approval of Change Order No. 1 - Moline High School A-Wing Abatement (ASPIRE)

181

Recommended Motion: that the Board of Education approve the Change Order for Moline High School A-Wing Abatement (ASPIRE) to M&O Environmental Company, Peoria, Illinois for an increased amount of \$2,400 or a total of \$27,180. **See Attachment No. 24.**

TO: Members of the Board of Education

FROM: Dave McDermott, Chief Financial Officer *DM*
Keith Karstens, Director of Facilities

DATE: January 6, 2022

SUBJECT: Approval of Change Order No. 1 - Moline High School A-Wing
Abatement (ASPIRE)

Reasons for Board of Education Consideration: Board of Education approval is required.

Action Necessary: Board of Education approval is requested.

Facts: On December 13, 2021 the Board approved the services for Moline High School A-Wing Abatement for the ASPIRE project to the lowest qualified bidder, M&O Environmental Company, for \$24,780. The abatement work started last week and unfortunately is more intense than originally estimated.

This request is being submitted for the costs associated with the extra work needed to proceed with the construction project. After the demolition of the hard lid ceilings and walls in the A-Wing, additional pipe fittings containing asbestos were discovered and need to be removed. The specific cost for the abatement associated with Room A-107 is \$2,400 for the twelve (12) pipe fittings containing asbestos. The following is the total change order:


Original Construction Contract	\$24,780
Change Order # 1- Additional abatement Room A-107	<u>\$2,400</u>
Total Project Cost	\$27,180

Therefore, it is the recommendation of the administration that the Board of Education approve the change orders with M&O Environmental Company, as presented.

Cost: The cost is an increase of \$2,400 to \$27,180 (original \$24,780) supported from the Capital Projects Fund (Fund 6).

Recommended Action: That the Board of Education approve the Change Order for Moline High School A-Wing Abatement (ASPIRE) to M&O Environmental Company, Peoria, Illinois for an increased amount of \$2,400 or a total of \$27,180.

Approved for Submission to the Board of Education



Dr. Rachel Savage
Superintendent of Schools

27. Reports, Requests and Open Discussion

A. Superintendent's Report

28. Adjournment

NOTICE OF NONDISCRIMINATION PRACTICES

The Moline-Coal Valley School District No. 40 does not discriminate against employees, students or the general public in its programs or practices, including vocational education opportunities, on the basis of race, color, religion, gender, disability, age, marital status, citizenship status, military status, unfavorable discharge from the military service, national origin or ancestry in accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. In accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, any individual who is in need of assistance or reasonable accommodations to be able to participate in a school district-related activity, including the employment application or interview process, should contact the Superintendent of Schools at the District administrative offices. Any individual who wishes to file a complaint of unlawful discrimination should contact the Superintendent of Schools or the Secretary of the Board of Education at the District administrative offices, 1619 Eleventh Avenue, Moline, IL 61265.