

\* Set 3 \*

## General Personnel

### Equal Employment Opportunity and Minority Recruitment <sup>1</sup>

The School District shall provide equal employment opportunities<sup>2</sup> to all persons regardless of their race; color; creed; religion;<sup>3</sup> national origin; sex;<sup>4</sup> sexual orientation;<sup>5</sup> age;<sup>6</sup> ancestry; marital status;<sup>7</sup> arrest record;<sup>8</sup> military status; order of protection status;<sup>9</sup> unfavorable military discharge;<sup>10</sup>

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

<sup>1</sup> 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.**

<sup>2</sup> *Equal employment opportunities* apply to virtually all terms and conditions of employment, e.g., discharge, hire, promotion, pay, demotion, and benefits (see legal references). The Illinois 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 protects the following categories from discrimination in employment: race, color, religion, national origin, ancestry, age, sex, marital status, physical or mental disability handicap, military status, order of protection status, sexual orientation, pregnancy, and unfavorable discharge from military service (775 ILCS 5/1-102 and 1-103).

The Equal Employment Opportunities Act (Title VII) 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, Pub.L. 111-2).

The Lilly Ledbetter Fair Pay Act 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.

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

<sup>3</sup> In addition to the Ill. Human Rights Act and the federal Equal Employment Opportunities Act (discussed in ~~footnote~~ f/n 2); see the Religious Freedom Restoration Act (775 ILCS 35/).

<sup>4</sup> In addition to the Ill. Human Rights Act and the federal Equal Employment Opportunities Act (discussed in *f/n 2*), see Title IX of the Education Amendments, 20 U.S.C. §1681 *et seq.* The federal Equal Pay Act prohibits an employer from paying persons of one gender less than the wage paid to persons of the opposite gender for equal work (29 U.S.C. §206(d). The State Equal Pay Act of 2003, 820 ILCS 112/, offers greater protection by prohibiting the payment of wages to one gender less than another gender *for the same or substantially similar work*. ~~Similar to the Lilly Ledbetter Fair Pay Act~~, now 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 Ill. Dept. of Labor (820 ILCS 112/15(b)). ~~The Pregnancy Discrimination Act amended the Equal Employment Opportunities Act to prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions (42 U.S.C. §2000e(k).~~

<sup>5</sup> Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* *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)).

<sup>6</sup> Age Discrimination in Employment Act (ADEA), 29 U.S.C. §621 *et seq.*, amended by The Lilly Ledbetter Fair Pay Act, Pub.L. 111-2 (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.

<sup>7</sup> 105 ILCS 5/10-22.4 and 775 ILCS 5/1-103(Q). The term *marital status* means an individual's legal status of being married, single, separated, divorced, or widowed (775 ILCS 5/1-103(J)). This statutory definition does not encompass the identity of one's spouse. Thus, school districts may adopt no-spouse policies. Boaden v. Dept. of Law Enforcement, 664 N.E.2d 61 (1996).

<sup>8</sup> Districts may not make employment decisions on the basis of arrest history, but may use job-disqualifying criminal convictions (775 ILCS 5/2-103). The Job Opportunities for Qualified Applicants Act, 820 ILCS 75/, ~~added by P.A. 98-774, eff. 1-1-2015,~~ 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. See also the U.S. Equal Employment Opportunity Commission's guidance, *Consideration of Arrest and Conviction Records in Employment Decisions*, at [www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

citizenship status provided the individual is authorized to work in the United States;<sup>11</sup> use of lawful products while not at work;<sup>12</sup> being a victim of domestic or sexual violence;<sup>13</sup> genetic information;<sup>14</sup> physical or mental handicap or disability, if otherwise able to perform the essential functions of the job with reasonable accommodation;<sup>15</sup> pregnancy, childbirth, or related medical conditions;<sup>16</sup> credit history, unless a satisfactory credit history is an established bona fide occupational requirement of a particular position;<sup>17</sup> or other legally protected categories. <sup>18</sup> <sup>19</sup> <sup>20</sup> <sup>21</sup> No one will be penalized solely

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<sup>9</sup> 775 ILCS 5/1-103(Q). The term *order of protection status* means a person protected under an order of protection issued pursuant to the Illinois Domestic Violence Act of 1986 or an order of protection issued by a court of another state (775 ILCS 5/1-103(K-5)).

<sup>10</sup> *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 Illinois Army National Guard or Illinois Air National Guard (775 ILCS 5/1-103). *Unfavorable military discharge* does not include those characterized as RE-4 or dishonorable, (Id.). The Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§4301 et seq., prohibits employers from discriminating or retaliating against any person for reasons related to past, present, or future service in a *uniformed service*. See ~~footnote 7/n~~ 9 in policy 5:30, *Hiring Process and Criteria*.

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

<sup>12</sup> 820 ILCS 55/5 prohibits discrimination based on use of lawful products, e.g., alcohol and tobacco, off premises during non-working hours.

<sup>13</sup> Victims' Economic Security and Safety Act, 820 ILCS 180/30, ~~amended by P.A. 98-766~~. 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 (820 ILCS 275//, ~~amended by P.A. 98-766~~) allows an employer to seek a *workplace protection restraining order* when there is a credible threat of violence at the workplace. Section 21 requires the employer seeking a *workplace protection restraining order* to notify the employee who is a victim of unlawful violence.

<sup>14</sup> Illinois' Genetic Information Protection 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. See ~~footnote 7/n~~ 75 in 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. In 2011, EEOC published an informative guidance letter, *ADA & GINA: Incentives for Workplace Wellness Program*, [EEOC Informal Discussion Letter](#). Consult the board attorney for guidance regarding specific application of these laws and how they integrate with other related laws, e.g., the Family Medical Leave Act, the Americans with Disabilities Act, and other State laws governing time off for sickness and workers' compensation.

<sup>15</sup> Americans with Disabilities Act, 42 U.S.C. §§121041 et seq., amended by the Americans with Disabilities Act Amendments Act (ADAAA), Pub. L. 110-325 and modified by the Lilly Ledbetter Fair Act, Pub. L. 111-2; Rehabilitation Act of 1973, 29 U.S.C. §791 et seq., ~~modified by the Lilly Ledbetter Fair Pay Act, Pub. L. 111-2~~.

<sup>16</sup> 775 ILCS 5/2-102(I). Employers must provide reasonable accommodations to employees with conditions related to pregnancy or childbirth (775 ILCS 5/2-102(J), ~~added by P.A. 98-1050, eff. 1-1-2015~~). Employers are required to post a notice summarizing the right to be free from unlawful discrimination and the right to certain reasonable accommodations. [Id. at 5/2-102\(K\)](#). The Ill. Dept. of Labor 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)). Pregnant workers with pregnancy-related impairments may have disabilities for which they may be entitled to reasonable accommodation under the ADA (42 U.S.C. §12112). Guidance from the U.S. Equal Employment Opportunity Commission (~~7/14/207-14-14~~) is available at: [www.eeoc.gov/laws/guidance/pregnancy\\_qa.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_qa.cfm).

<sup>17</sup> Employee Credit Privacy Act, 820 ILCS 70/. Unless a satisfactory credit history is an *established bona fide occupational requirement* of a particular position, an employer may not: (1) refuse to hire, discharge, or otherwise discriminate against an individual with respect to employment because of the individual's credit history or credit report, (2) inquire about an applicant's or employee's credit history, or (3) order or obtain an applicant's or employee's credit report from a consumer reporting agency. The Act identifies circumstances that permit a satisfactory credit history to be a job requirement, such as, the position's duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more.

<sup>18</sup> Optional sentence (775 ILCS 5/1-103 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.

for his or her status as a registered qualifying patient or a registered designated caregiver for purposes of the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/. 22

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. 23

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19 Optional provision (~~29 U.S.C. §705(10)(A) and (B), and 42 U.S.C. §12114~~):

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

1. Currently using illegal drugs (~~29 U.S.C. §705(10)(A) and (B), and 42 U.S.C. §12114~~);
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 29 U.S.C. §705(20)(D); or
3. Whose current alcohol or drug use prevents them from performing the job's duties or constitutes a direct threat to the property or safety of others. Id. at 705(20)(C)(ii)(I).

Persons who have successfully completed or are participating in a drug rehabilitation program are considered ~~disabled/handicapped~~. Id. at 705(20)(I).

20 Districts may not make residency in the district a condition of employment for teachers or educational support personnel (105 ILCS 5/24-4.1 and 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 School Dist.*, 632 N.E.2d 1073 (Ill.App.3, 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 (Id. at 55/10(b), amended by P.A. 99-610, eff. 1-1-17). While the law does not prohibit employers from viewing public information, consult the board attorney before engaging in this practice.

21 School districts must accommodate mothers who choose to continue breastfeeding after returning to work. See the Right to Breastfeed Act, 740 ILCS 137/; Nursing Mothers in the Workplace Act, 820 ILCS 260/; and Fair Labor Standards Act, 29 U.S.C. §207(r)(1), ~~added by P.L. 111-148~~. See sample language for a personnel handbook in 5:10-AP, *Administrative Procedure - Workplace Accommodations for Nursing Mothers*.

22 410 ILCS 130/40, ~~added by P.A. 98-122~~; 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 Pilot Program Act (410 ILCS 130//, ~~added by P.A. 98-122~~). There are many situations in which no one, even a registered qualifying patient, may possess or use cannabis, including in a school bus or on the grounds of any preschool, or primary or secondary school (410 ILCS 130/30(a)(2) & (3)). See policy 5:50, *Drug- and Alcohol-Free Workplace; Tobacco Prohibition*.

23 775 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 Ill. Human Rights Act (Id., ~~amended by P.A. 98-1050, eff. 1/1/2015~~). Most discrimination laws prohibit retaliation against employees who oppose practices made unlawful by those laws, including, for example, the Equal Employment Opportunities Act, Title IX, Americans with Disabilities Act, Age Discrimination in Employment Act, Victims' Economic Security and Safety Act, the Ill. Equal Pay Act, and the Ill. Whistleblower Act, 740 ILCS 174/.

The Ill. Whistleblower Act specifically prohibits employers from retaliating against employees for: (1) disclosing information to a government or law enforcement agency (740 ILCS 174/15(a)), (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(b)), (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 the Freedom of Information Act (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 and 20.2).

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 Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District’s current Nondiscrimination Coordinator and Complaint Managers. 24

**Nondiscrimination Coordinator:**

\_\_\_\_\_

Name

\_\_\_\_\_

Address

\_\_\_\_\_

Email

\_\_\_\_\_

Telephone

**Complaint Managers:**

|           |           |
|-----------|-----------|
| _____     | _____     |
| Name      | Name      |
| _____     | _____     |
| Address   | Address   |
| _____     | _____     |
| Email     | Email     |
| _____     | _____     |
| Telephone | 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. 25

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The Ill. False Claims Act, 740 ILCS 175/, defines *State* to include school districts. 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 Ill. Whistleblower Act and the tort of retaliatory discharge, see Thomas v. Guardsmark, 487 F.3d 531 (7<sup>th</sup> Cir., 2007)(discussing the elements of retaliatory discharge and Ill. Whistleblower Act), and Sherman v. Kraft General Foods, Inc., 651 N.E.2d 708 (Ill.App.4<sup>th</sup> Dist., 1995)(finding employee who reported asbestos hazard had a cause of action for retaliatory discharge).

24 Title IX regulations require districts to identify the name, address, and telephone number of the person who is responsible for coordinating the district’s compliance efforts. An email address is optional but may facilitate reporting. A policy should not be adopted with a person’s name in it; rather, the identifying information can be added and amended as necessary. Thus the policy should be adopted with blanks for the superintendent to fill in later.

25 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) and 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 26

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.: Age Discrimination in Employment Act, 29 U.S.C. §621 et seq.  
Americans With Disabilities Act, Title I, 42 U.S.C. §12111 et seq.  
Civil Rights Act of 1991, ~~29 U.S.C. §§621 et seq.~~, 42 U.S.C. §1981 et seq., ~~§2000e et seq.~~, and ~~§12101 et seq.~~  
Equal Employment Opportunities Act (Title VII of the Civil Rights Act of 1964), 42 U.S.C. §2000e et seq., 29 C.F.R. Part 1601.  
Equal Pay Act, 29 U.S.C. §206(d).  
Genetic Information Nondiscrimination Act, 42 U.S.C. §2000ff et seq.  
Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.  
Rehabilitation Act of 1973, 29 U.S.C. §791 et seq.  
Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq.  
Pregnancy Discrimination Act, 42 U.S.C. §2000e(k).  
Title IX of the Education Amendments, 20 U.S.C. §1681 et seq., 34 C.F.R. Part 106.  
Uniformed Services Employment and Reemployment Rights Act (1994), 38 U.S.C. §§4301 et seq.  
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.  
Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/40.  
Genetic Information Protection Act, 410 ILCS 513/25.  
Ill. Whistleblower Act, 740 ILCS 174/.  
Ill. Human Rights Act, 775 ILCS 5/1-103, 5/2-102, 5/2-103, and 5/6-101.  
Religious Freedom Restoration Act, 775 ILCS 35/5.  
Right to Privacy in the Workplace Act, 820 ILCS 55/10.  
Employee Credit Privacy Act, 820 ILCS 70/.  
Job Opportunities for Qualified Applicants Act, 820 ILCS 820 ILCS 75/.  
Ill. Equal Pay Act of 2003, 820 ILCS 112/.  
Victims' Economic Security and Safety Act, 820 ILCS 180/30.  
Nursing Mothers in the Workplace Act, 820 ILCS 260.

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<sup>26</sup> 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. (Equal Employment Opportunity Commission's guidelines for affirmative action plans); Wygant v. Jackson Board of Education, 106 S.Ct. 1842 (1986) (The goal of remedying societal discrimination does not justify race-based layoffs.); City of Richmond v. J.A. Croson Co., 109 S.Ct. 706 (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 Ill. Human Rights Act, 775 ILCS 5/1-101.1, 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.

~~23 Ill. Admin. Code §1.230.~~

CROSS REF.: 2:260 (Uniform 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; Tobacco 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

### Hiring Process and Criteria <sup>1</sup>

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.<sup>2</sup> The Superintendent is responsible for recruiting personnel and making hiring recommendations to the Board.<sup>3</sup> If the Superintendent's recommendation is rejected, the Superintendent must submit another.<sup>4</sup> No individual will be employed who has been convicted of a criminal offense listed in Section 5/21B-80(c) of the School Code. <sup>5</sup>

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

### Job Descriptions

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. <sup>7</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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).

<sup>3</sup> 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 ~~June 13, 206-13-11~~, 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 (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, ~~amended by P.A. 98-648~~ (reduction in force and recall). Consult the board attorney about these issues.

<sup>4</sup> 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.

<sup>5</sup> 105 ILCS 5/10-21.9(c), ~~amended by P.A. 97-607~~; 105 ILCS 5/21B-80, ~~amended by P.A. 99-667~~, 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.

<sup>6</sup> 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 a ~~certificated~~ 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.

<sup>7</sup> 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)). 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.<sup>8</sup> The Superintendent or designee shall notify an applicant if the applicant is identified in either database.<sup>9</sup> 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 Department of State Police and/or Statewide Sex Offender Database. <sup>10</sup>

Each newly hired employee must complete an Immigration and Naturalization Service Form as required by federal law. <sup>11</sup>

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 Section 5/21B-80 of the School Code or who falsifies, or omits facts from, his or her employment application or other employment documents.

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: <sup>12</sup>

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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 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, 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 particular function to be essential: (1) the employer must actually require employees in the position to perform it, and (2) the position would be fundamentally altered if the function were removed (id. at 1630.2(n)). Whether a particular function is essential is a factual determination.

**Important:** The ADAAA makes significant changes to the ADA's definition of disability that broadens the scope of coverage and overturns a series of U.S. Supreme Court decisions that made it difficult to prove that an impairment was a disability. The final regulations were by a bipartisan vote and approved on ~~March 25, 2003-25-~~11. There is information about the regulations and a link to them at: [www.eeoc.gov/laws/regulations/adaaa\\_fact\\_sheet.cfm](http://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm). Consult the board attorney regarding how these amendments impact the district's hiring processes.

<sup>8</sup> The policy's requirements on criminal records checks are mandated by 105 ILCS 5/10-21.9. See administrative procedure 5:30-AP2, *Investigations*, for the process and positions requiring criminal background investigation. The Statewide Sex Offender Database (a/k/a Sex Offender Registry) is available at: [www.isp.state.il.us/sor](http://www.isp.state.il.us/sor). The Statewide Murderer and Violent Offender Against Youth Database is available at: [www.isp.state.il.us/cmvo/](http://www.isp.state.il.us/cmvo/).

<sup>9</sup> ~~105 ILCS 5/10-21.9.~~

<sup>10</sup> ~~105 ILCS~~ id. at 5/10-21.9(b). 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.

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

<sup>11</sup> 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/). 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 fn 2 in 5:150-AP, *Personnel Records*, for a more detailed discussion of *E-Verify* issues.

<sup>12</sup> As an alternative to describing the prohibited investigations, a board may substitute this sentence:



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. 13
2. 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. 14
3. The District does not request of an applicant or employee access in any manner to his or her social networking website, including a request for passwords to such sites. 15
4. The District provides equal employment opportunities to all persons. See policy 5:10, *Equal Employment Opportunity and Minority Recruitment*.

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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 . . . .”

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

14 Right to Privacy in the Workplace Act, 820 ILCS 55/10(a), amended by P.A. 99-610, eff. 1-1-17.

15 ~~id. at 55/10(b)(1), 820 ILCS 55/10, amended by P.A. 99-610, eff. 1-1-17 (commonly known as the Facebook Password Law) and amended by P.A. 98-501. The exception is for a professional account (added by P.A. 98-501 [id. at 55/10(b)(5), amended by P.A. 99-610, eff. 1-1-17], is so limited that it appears to be unavailable to school employers. A professional account is defined as “an account, service, or profile created, maintained, used, or accessed by a current or prospective employee for business purposes of the employer.” Bracketed explanations follow the statutory language:~~

“Provided that the password, account information, or access sought by the employer relates to a professional account, and not a personal account, nothing in this subsection shall prohibit or restrict an employer from complying with a duty to screen employees or applicants prior to hiring”

[When read with the definition of *professional account*, it is implausible that an applicant would have an account, service, or profile for business purposes of a school employer.]

“... or to monitor or retain employee communications as required under Illinois insurance laws or federal law or by a self-regulatory organization as defined in the [Securities Exchange Act].”

[This clause appears to be inapplicable to school districts.]

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 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. Consult the board attorney about these issues.

## Physical Examinations 16

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, or an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a 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, or an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a 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.<sup>17</sup> 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*.

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

<sup>16</sup> 105 ILCS 5/24-5, ~~amended by P.A. 98-716~~. According to this statute, "[a] new or existing employee may be subject to additional health examinations, including tuberculosis screening, as required by rules adopted by the Ill. Dept. of Public Health or by order of a local public health official." ~~As of Aug. 2014, the Ill. Dept. of Public Health 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), ~~as amended by the ADAAA, Pub. L. 110-325~~); see also f/n 7 for an explanation regarding the ADAAA. 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.

<sup>17</sup> The State law (105 ILCS 5/24-5) allowing boards to require physicals of current employees "from time to time," has been superseded by federal law (ADA, 42 U.S.C. §12112(d)(4), ~~as amended by the ADAAA, Pub. L. 110-325~~). 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. Part 1630.2(r)). See f/n 7 for an explanation regarding the ADAAA.

See the f/n 16 for a discussion of examinations by spiritual leaders/practitioners.

- LEGAL REF.: 105 ILCS 5/10-21.9 and 5/24-5.  
 Employee Credit Privacy Act, 820 ILCS 70/.  
 Right to Privacy in the Workplace Act, 820 ILCS 55/.  
 Americans with Disabilities Act, 42 U.S.C. §12112, 29 C.F.R. Part 1630.  
 Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.  
 105 ILCS 5/10-16.7, 5/10-20.7, 5/10-21.4, 5/10-21.9, 5/21B-10, 5/21B-80, 5/10-22.34, 5/10-22.34b, 5/22-6.5, and 5/24-1 et seq.  
 820 ILCS 55/ and 70/.  
Duldulao v. St. Mary of Nazareth Hospital, 483 N.E.2d 956 (Ill.App.1, 1985), *aff'd in part and remanded* 505 N.E.2d 314 (Ill., 1987).  
Kaiser v. Dixon, 468 N.E.2d 822 (Ill.App.2, 1984).  
Molitor v. Chicago Title & Trust Co., 59 N.E.2d 695 (Ill.App.1, 1945).
- CROSS REF.: 3:50 (Administrative Personnel Other Than the Superintendent), 4:175 (Convicted Child Sex Offender; ~~Criminal Background Check and/or 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 (Educational Support Personnel - Duties and Qualifications)

## General Personnel

### Administrative Procedure - Investigations

#### Immigration Investigation

All newly hired employees must complete section one of the Immigration and Naturalization Service Form I-9 no later than three business days following their first working day (Immigration Reform and Control Act, 8 U.S.C. §1324a, 8 C.F.R. §274a.2). [www.uscis.gov/sites/default/files/files/form/i-9.pdf](http://www.uscis.gov/sites/default/files/files/form/i-9.pdf). If an individual is unable to provide the required documents to complete it, the individual may present a receipt for the application of the required documents within three days of the hire. The individual must then present the required documents within 90 days of the hire. The Superintendent or designee completes section two of the Form I-9 and confirms the employee's information.

If the Employment Eligibility Verification System (E-Verify) is used to complete Form I-9, the Superintendent or designee will review the Ill. Dept. of Labor's website and its E-Verify factsheet, available at: [www.uscis.gov/e-verify/what-e-verify](http://www.uscis.gov/e-verify/what-e-verify). See the Ill. Dept. of Labor Right to Privacy in the Workplace Act, 820 ILCS 55/12.

The completed Form I-9 shall be maintained in a file separate from other personnel records in order to prevent unauthorized review of personnel files. The Form I-9 shall be retained for a period of three years after the date of hire or one year after individual employment is terminated, whichever is later.

#### Fingerprint-based Criminal History Records Information Check (105 ILCS 5/10-21.9)

A fingerprint-based criminal history records information check must be initiated prior to employment, but the District may permit the individual to be hired and begin employment pending its outcome. See *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, at: [www.isbe.net/pdf/guidance\\_chr.pdf](http://www.isbe.net/pdf/guidance_chr.pdf).

A complete criminal history records check pursuant to 105 ILCS 5/10-21.9 consists of:

1. Fingerprint-based checks through (a) the Illinois State Police (ISP) for criminal history records information (CHRI) pursuant to the Uniform Conviction Information Act (20 ILCS 2635/1), and (b) the FBI national crime information databases pursuant to the Adam Walsh Child Protection and Safety Act (P.L. 109-248),
2. A check of the Illinois Sex Offender Registry (see the Sex Offender Community Notification Law, ~~§730 ILCS 152/404~~ et seq.), and
3. A check of the Murderer and Violent Offender Against Youth Registry (see the Murderer and Violent Offender Against Youth Community Notification Law, ~~§730 ILCS 154/75-105~~).

See also policy 4:175, *Convicted Child Sex Offender; Criminal Background Check and/or Screening; Notifications*, and administrative procedure 4:175-AP1, *Criminal Offender Notification Laws; Screening*. **Important:** 20 ILCS 2630/5.2(h)(2)(A) outlines how an individual may petition to have an arrest record expunged by the arresting authority and the records of the arrest sealed by the circuit court clerk. It also details offenses for which an individual cannot have his or her conviction sealed.

**Note:** The following criminal history records check guides are also available:

Guide to Understanding Criminal Background History Record Check Information is available at: [www.isp.state.il.us/docs/5-727.pdf](http://www.isp.state.il.us/docs/5-727.pdf).

1. ISBE's non-regulatory guidance document, Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel, at: [www.isbe.net/pdf/guidance\\_chr.pdf](http://www.isbe.net/pdf/guidance_chr.pdf).

The following individuals are responsible for the actions listed:

**Applicant** - Each applicant for employment in any position (except bus drivers employed by a private student transportation contractor) must provide a written authorization for a complete criminal history records check at the time he or she submits the application.

**Individual Student Teacher or beginning a required internship** - Each individual student teacher or beginning a required internship must provide written authorization for, and pay the costs of, his or her criminal history records check (including any applicable vendor's fees) prior to participating in any field experiences in the District. See 105 ILCS 5/10-21.9(g).

**Applicant for Bus Driver** - Each applicant for a bus driver position must complete the application required by the Secretary of State for a school bus driver permit (obtained from the District) and submit it to the District along with the necessary fingerprint submission as required by the Department of State Police to conduct a fingerprint-based criminal history records check. The Superintendent or designee will conduct a pre-employment interview with prospective school bus driver candidates, distribute school bus driver applications and medical forms, and submit the applicant's fingerprint cards to the Department of State Police. The Superintendent or designee will certify in writing to the Secretary of State that all pre-employment conditions have been successfully completed, including the successful completion of a criminal history records check as required by State law. The applicant must present the certification to the Secretary of State at the time of submitting the school bus driver permit application. See 625 ILCS 5/6-106.1; 92 Ill.Admin. Code 1035.

**Superintendent or designee** - *Note: Add any additional steps to efficiently receive a complete criminal history records check.*

1. Fingerprint-Based Criminal History Records Check:

For all applicants, the Superintendent or designee completes the required forms to request the criminal history records checks from an appropriate police or LiveScan vendor. This may include submitting the applicant's name, sex, race, date of birth, social security number, fingerprint images, and other identifiers to the ISP and FBI on the forms prescribed by each agency.

The Superintendent or designee will provide the applicant with a copy of the ISP and FBI reports. Required by 105 ILCS 5/10-21.9(b).

**Note:** For substitute teachers, superintendents will need to ensure that their districts perform these checks. Contact the board attorney and/or ISBE regarding the validity of a *certificate of authorization*, if a substitute teacher presents one. From ~~Jan. 1, 2011~~ through ~~July 1, 2011~~, the Regional Superintendent of Schools or Suburban Cook County Intermediate Service Center, whichever is appropriate, was allowed to issue *certificates of authorization* to substitute teachers. Issuance of a *certificate of authorization* was proof that the substitute teacher applicant had met all of the requirements to substitute teach in the educational service region; i.e., a fingerprint-based criminal history records check, a physical examination, and a negative tuberculin test. Because P.A. 97-607 deleted *certificates of authorization*, substitute teachers no longer receive them because they no longer exist. For those substitute teachers who did receive them, there is not an answer to the question of whether their *certificates of authorization* are still valid. Attorneys in the field suggest looking for an expiration date on the *certificate of authorization*. If the document has no expiration date, it is likely invalid

because the document no longer exists. If there is an expiration date, then the document is likely valid until the date listed.

For individuals student teachers or beginning a required internship, the Superintendent or designee ensures that the individual student teacher completes the required forms, authorizations, and provides payment to the District for the costs of completing a complete criminal history records check prior to student teaching or beginning a required internship (105 ILCS 5/10-21.9(g) and policy 5:260, *Student Teachers*). For more information, see also ISBE's non-regulatory guidance document, *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, available at: [-www.isbe.net/pdf/guidance\\_chr.pdf](http://www.isbe.net/pdf/guidance_chr.pdf).

2. ScreenCheck of the Statewide offender databases. The Superintendent or designee performs a screencheck for each applicant of:
  - a. The Statewide Sex Offender Registry, [www.isp.state.il.us/sor](http://www.isp.state.il.us/sor), as authorized by the Sex Offender Community Notification Law (730 ILCS 152/101 et seq.), and
  - b. The Statewide Murderer and Violent Offender Against Youth Registry [www.isp.state.il.us/cmvo/](http://www.isp.state.il.us/cmvo/), as authorized by the Child Murderer and Violent Offender Against Youth Community Notification Law (730 ILCS 154/75-105).

The Superintendent or designee notifies the individual an applicant if he or she the applicant is identified in the database as a sex offender. Required by 105 ILCS 5/10-21.9 (a-5), (a-6), and (b).

**State Police and FBI** – The ISP and FBI furnish records of convictions (until expunged), pursuant to the District's request, to the School Board President. **Note:** The ISP and FBI must “furnish, pursuant to a fingerprint-based criminal history records check, records of convictions, until expunged, to the president of the school board...”. See 105 ILCS 5/10-21.9(a) and (g). For a student teacher, the report shall be returned to the Superintendent or designee (see ISBE's non-regulatory guidance document, *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, at: [www.isbe.net/pdf/guidance\\_chr.pdf](http://www.isbe.net/pdf/guidance_chr.pdf)).

**Board President** - The School Code requires the Board President to keep a conviction record confidential. The information may only be shared between the Board President, the Superintendent or designee, Regional Superintendent (if the check was requested by the District), State Superintendent of Schools, State Educator Preparation and Licensure Board, any other person necessary to the hiring decision, or for clarification purposes, the Department of State Police and/or Statewide Sex Offender Registry. See 105 ILCS 5/10-21.9(b) and 105 ILCS 5/21B-10.

**Regional Superintendent/Suburban Cook County Intermediate Service Center** - The Superintendent or designee may require the applicant to authorize the Regional Superintendent or Suburban Cook County Intermediate Service Center, whichever is appropriate, to conduct the check when an applicant is (1) seeking employment in more than one District simultaneously as (a) a substitute teacher, (b) a concurrent part-time employee, and/or (c) educational support personnel, or (2) the employee works for a contractor holding contracts with more than one district. The Regional Superintendent or Suburban Cook County Intermediate Service Center, whichever is appropriate, also performs a check of the Statewide Sex Offender Registry, [www.isp.state.il.us/sor](http://www.isp.state.il.us/sor), as authorized by the Sex Offender Community Notification Law (730 ILCS 152/115) and the Violent Offender Against Youth Registry, [www.isp.state.il.us/cmvo/](http://www.isp.state.il.us/cmvo/), as authorized by the Murderer and Violent Offender Against Youth Community Notification Law (730 ILCS 154/75-105). See 105 ILCS 5/10-21.9 (a-5), (a-6), and (b).

**Contractors** - The above requirements for a complete criminal history records check apply to all employees and agents of contractors who have direct, daily contact with students (105 ILCS 5/10-21.9(f)). Every contractor with the District shall: (1) make every employee or agent who will have direct, daily contact with students submit to a complete criminal history records check, (2) agree to a contract provision that it will make those employees available to the District for the criminal history records check, and (3) submit payment for the costs of the check(s) to the District.

**Note:** The provisions in 105 ILCS 5/10-21.9(f) and (g) apply to employees of contractors who have “direct, daily contact with students.” To be comprehensive and to eliminate uncertainty, this procedure and policy 4:175, *Convicted Child Sex Offender; Criminal Background Check and/or Screening; Notifications*, may require a criminal history records check on *all* employees of contractors who may work in any school building or on school property. Whether the District uses the comprehensive language or the direct language from the School Code, the District, not the contractor, must perform the background checks. Contractors are not authorized under any State or federal law to: (1) conduct the required criminal history background checks, or (2) see the employee’s criminal history furnished by the ISP and the FBI. All contracts should also require the contractor to purchase insurance to cover misconduct by their employees and/or an indemnification clause. Additionally, the Superintendent or designee should check insurance coverage to determine whether employees of contractors are covered. See also policy 4:175, *Convicted Child Sex Offender; Criminal Background Check and/or Screening; Notifications*, and administrative procedure 4:60-AP3, *Criminal History Records Check of Contractor Employees*, for the responsibilities of contractors. Last, if the District has received, within the last year, information that concerns the record of conviction and identification as a sex offender of any contractors’ employees, the District must provide the information to another school, school district, community college district, or private school that requests it (105 ILCS 5/10-21.9(h)). For more information, see ISBE’s non-regulatory guidance document, *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, available at: [www.isbe.net/pdf/guidance\\_chr.pdf](http://www.isbe.net/pdf/guidance_chr.pdf). Unless notified by the individual named in a criminal history records information (CHRI) request or by the ISP that the information furnished in a CHRI report is inaccurate or incomplete, the District cannot be liable for damages to any person to whom the CHRI pertains for actions it reasonably took in reliance on the accuracy and completeness of CHRI report (20 ILCS 2635/7(A)(3)).

**District** - The School District complies with 105 ILCS 5/10-21.9 and 5/21B-80. It will not knowingly employ a person, or allow a person to work or student teach/complete a required internship (105 ILCS 5/21.9(g)) on school grounds, who:

1. Has been convicted of any one or more of the following offenses, until seven years following the end of the sentence<sup>1</sup> for the criminal offense:
  - a. Those defined in the Cannabis Control Act, 720 ILCS 550/, except: 720 ILCS 550/4(a), 550/4(b), 550/4(c), 550/5(a), 550/5(b), and any offense for which the holder of a license is placed on probation under the provisions of 550/10 provided that if the terms and conditions of probation required by the court are not fulfilled, the offense is not eligible for this exception.
  - b. Those defined in the Illinois Controlled Substances Act, 720 ILCS 570/100 et seq., except: any offense for which the holder of a license is placed on probation under the

The footnotes should be removed before the material is used.

<sup>1</sup> Sentence includes any period of supervision or probation that was imposed either alone or in combination with a period of incarceration. 105 ILCS 5/21B-80(a), amended by P.A. 99-667.

provisions of 570/410 provided that if the terms and conditions of probation required by the court are not fulfilled, the offense is not eligible for this exception.

- c. Those defined in the Methamphetamine Control and Community Protection Act, 720 ILCS 646/, except: any offense for which the holder of a license is placed on probation under the provisions of 646/70 provided that if the terms and conditions of probation required by the court are not fulfilled, the offense is not eligible for this exception.
- d. Any attempt to commit any of the offenses listed in (a)-(c) of this section.
- e. Any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in Illinois, would have been punishable as one or more of the offenses listed in (a)-(d) of this section.

1.2. Has been convicted of committing or attempting to commit any one or more of the following offenses:

- a. Attempting to commit, conspiring to commit, soliciting, or committing first-degree murder or any Class X felony.
- b. Attempting to commit, conspiring to commit, soliciting, or committing any ~~Sex offense.s~~ as defined in Sex offense means any offense defined in:
  - i. Sections 11-6 and 11-9 through 11-9.5, inclusive, and 11-30 (if punished as a Class 4 felony) of the Criminal Code of 1961 or the Criminal Code of 2012;
  - ii. Sections 11-14.1 through 11-21, inclusive, of the Criminal Code of 1961 or the Criminal Code of 2012;
  - iii. Sections 11-23 (if punished as a Class 3 felony), 11-24, 11-25, and 11-26 of the Criminal Code of 1961 or the Criminal Code of 2012; and
  - iv. Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-4.9, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-32, 12-33, 12C-45, and 26-4 (if punished pursuant to 26-4(d)(4) or (5)) of the Criminal Code of 1961 or the Criminal Code of 2012.
- b. ~~Those defined in the Cannabis Control Act, 720 ILCS 550/, except 720 ILCS 550/4(a), 550/4(b), and 550/5(a).~~
- e. ~~Those defined in the Illinois Controlled Substances Act, 720 ILCS 570/100 et seq.~~
- d. ~~Those defined in the Methamphetamine Control and Community Protection Act, 720 ILCS 646/.~~
- e.c. Any offense committed or attempted in any other state or against the laws of the United States, which if committed or attempted in Illinois, would have been punishable as one or more of the foregoing offenses.

2.3. Has been found to be the perpetrator of sexual or physical abuse of any minor less than 18 years of age pursuant to proceedings under Article II of the Juvenile Court Act of 1987.

#### Reporting New Hires

The Superintendent or designee shall timely file an IRS Form W-4 or IDES *New Hire Reporting Form* for each newly hired employee with the Illinois Department of Employment Security. See 820 ILCS 405/1801.1.



## General Personnel

### Expenses <sup>1</sup>

The Board regulates the reimbursement of all travel, meal, and lodging expenses by resolution.<sup>2</sup> Money shall not be advanced or reimbursed, or purchase orders issued for: (1) the expenses of any person except the employee,<sup>3</sup> (2) anyone's personal expenses,<sup>4</sup> or (3) entertainment expenses.<sup>5</sup> Entertainment includes, but is not limited to, shows, amusements, theaters, circuses, sporting events, or any other place of public or private entertainment or amusement, unless the entertainment is ancillary to the purpose of the program or event.<sup>6</sup> Employees must submit the appropriate itemized, signed, standardized form(s) to support any requests for expense advancements, reimbursements, or purchase orders that show the following: <sup>7</sup>

1. The amount of the estimated or actual expense, with attached receipts for actual incurred expenses.
2. The name and title of the employee who is requesting the expense advancement or reimbursement. Receipts from group functions must include the names, offices, and job titles of all participants.<sup>8</sup>

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

<sup>1</sup> State law controls this policy's content (105 ILCS 5/10-9, 5/10-10, and 5/22-1 (no compensation allowed, conflicts of interest prohibited); 105 ILCS 5/10-22.32 (expense advancements); and the Local Government Travel Expense Control Act (ECA) 50 ILCS 150/10, added by P.A. 99-604, eff. 1-1-17 (regulation of travel expenses)). The deadline for implementation of this policy under the ECA is 7-1-17, but as a practical matter due to other requirements in the law, the implementation deadline will be 3-2-17; see the third paragraph in f/n 3 of policy 2:125, *Board Member Compensation; Expenses*.

<sup>2</sup> 105 ILCS 5/10-22.32 states that "[t]he school board may advance to teachers and other certified employees the anticipated actual and necessary expenses incurred in attending meetings that are related to that employee's duties and will contribute to the professional development of that employee." This policy expands beyond those two categories (105 ILCS 5/10-20) of employees, and the limited purpose of attending meetings, to reimburse all employees for approved expenses necessary for the employee to perform his or her duties.

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. If a local collective bargaining agreement contains a provision on expenses, consult the board attorney about how this policy may impact it.

<sup>3</sup> 50 ILCS 150/10, added by P.A. 99-604, eff. 1-1-17. See f/n 4 through 8 in policy 2:125, *Board Member Compensation; Expenses*, for more discussion.

For a sample resolution, see 2:125-E3, *Resolution to Regulate Expense Reimbursements*.

<sup>4</sup> 105 ILCS 5/10-22.32. The final paragraph of this law prohibits money for expenses to be advanced or reimbursed to any person other than a board member or employee of the district.

<sup>5</sup> Optional. *Personal expenses* are not defined in 50 ILCS 150/25, added by P.A. 99-604, eff. 1-1-17 or 105 ILCS 5/10-22.32. Consult the board attorney about this term and delete it only at the direction of the board attorney. Excluding personal expenses from advancements, reimbursements, and purchase orders is a generally-accepted best practice. The practice also aligns well with the State's widely-accepted transparency movement. Reimbursing personal expenses is also a magnet for the media.

<sup>6</sup> 50 ILCS 150/25, added by P.A. 99-604, eff. 1-1-17.

<sup>7</sup> *Id.*

<sup>8</sup> 50 ILCS 150/20, added by P.A. 99-604, eff. 1-1-17. The School Code uses the term *voucher* for expense advancements (105 ILCS 5/10-22.32); the ECA requires submission of itemized, signed, standardized forms. Both 5:60-E1, *Employee Expense Reimbursement Form* and 5:60-E2, *Employee Estimated Expense Approval Form* incorporate *voucher* into the ECA's requirement to use standardized forms. See f/n 11 below, and see also f/n 20 of policy 2:125, *Board Member Compensation; Expenses*, for more discussion.

<sup>9</sup> *Id.* at (2) and (3). This sentence mirrors the statute. The term *offices* is not defined. Consult the board attorney about whether inserting *job titles* would be sufficient for this requirement.

3. The date(s) of the official business on which the expense advancement, reimbursement, or purchase order will be or was expended.<sup>9</sup>
4. The nature of the official business conducted when the expense advancement, reimbursement, or purchase order will be or was expended.<sup>10</sup>

### Advancements

The Superintendent may advance expenses to teachers and other licensed employees for the anticipated actual and necessary expenses to be incurred while attending meetings that are related to their duties and will contribute to their professional development,<sup>11</sup> provided they fall below the maximum allowed in the Board's expense regulations.<sup>12</sup>

Expense advancement requests must be submitted to the Superintendent or designee on the District's standardized estimated expense approval form for employees. After spending expense advancements, employees must use the District's standardized expense reimbursement form and submit to the Superintendent: (a) the itemized, signed advancement voucher that was issued, and (b) the amount of actual expenses by attaching receipts.<sup>13</sup> Any portion of an expense advancement not used must be returned to the District.<sup>14</sup> Expense advancements and vouchers shall be presented to the Board in its regular bill process.

### Reimbursements and Purchase Orders

Expense reimbursements and purchase orders may be issued by the Superintendent or designee to employees, along with other expenses necessary for the performance of their duties, provided the expenses fall below the maximum allowed in the Board's expense regulations.

Expense reimbursements and purchase order approvals are not guaranteed and, when possible, employees should seek pre-approval of expenses<sup>15</sup> by providing an estimation of expenses on the District's standardized estimated expense approval form for employees, except in situations when the expense is diminutive. When pre-approval is not sought, employees must seek reimbursement on the

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

<sup>9</sup> *Id.* at (4).

<sup>10</sup> *Id.*

<sup>11</sup> 105 ILCS 5/10-22.32 authorizes advancements for the listed items. This statute addresses expense advancements for certain activities; its language pre-dates the ECA and is narrower than the ECA. This policy seeks to reconcile the differences by separating advancements into a separate subhead. See ¶ 7 above, and see also ¶ 20 of policy 2:125, *Board Member Compensation; Expenses*, for more discussion.

<sup>12</sup> 50 ILCS 150/10 and 20, added by P.A. 99-604, eff. 1-1-17. This phrase recognizes that while advancements are allowed in these situations, they should remain below the MARA set by the board.

<sup>13</sup> 50 ILCS 150/20, added by P.A. 99-604, eff. 1-1-17.

<sup>14</sup> This paragraph's provisions are required by 105 ILCS 5/10-22.32.

<sup>15</sup> Optional. Consult the board attorney to determine whether a pre-approval process is appropriate for the district. Neither 105 ILCS 5/10-22.32 (expense advancements) nor 50 ILCS 150/ (expense reimbursements and estimates) address expense *pre-approvals*. 50 ILCS 150/20 states: "an *estimate* if expenses have not been incurred ..." or "a *receipt* ... if the expenses have already been incurred," suggesting no pre-approval is necessary. However, pre-approval is a best practice, and an employee who incurs expenses without pre-approval may run the risk that his or her expenses will not be approved. On the other hand, submitting estimated expenses for approval begs a pre-approval process, and some attorneys may read the law to require pre-approval of expenses. The pre-approval process also provides school officials with better information for financial planning.

Consult the board attorney to determine whether a pre-approval process is appropriate for the district. If it is required, ensure that 2:125-E3, *Resolution to Regulate Expense Reimbursements* reflects the district's specific pre-approval requirements. For an example of a standardized *estimated* expense form that could be used as a form of pre-approval, see 5:60-E2, *Employee Estimated Expense Approval Form*. The form provides three methods for employees to submit estimated expenses: providing estimated expenses (50 ILCS 150/), expense advancements for the specific activities (105 ILCS 5/10-22.32), or a purchase order.

District's standardized expense reimbursement form for employees. Expense reimbursements and purchase orders shall be presented to the Board in its regular bill process.

#### Use of Credit and Procurement Cards

Credit and procurement card usage is governed by policy 4:55, *Use of Credit and Procurement Cards*.

#### Exceeding the Maximum Allowable Expense Amount(s) 16

All requests for expense advancements, reimbursements, and purchase orders exceeding the maximum allowed in the Board's expense regulations may only be approved when:

1. The Board's resolution to regulate expenses allows for such approval;
2. An emergency or other extraordinary circumstance exists; and
3. The request is approved by a roll call vote at an open Board meeting.<sup>17</sup>

#### Registration 18

When possible, registration fees will be paid by the District in advance.

#### Travel

The least expensive method of travel will be used, provided that no hardship will be caused to the employee. Employees will be reimbursed for:

1. Air travel at the coach or economy class commercial airline rate. First class or business class air travel will be reimbursed only if emergency circumstances warrant. The emergency circumstances must be explained on the expense form and Board approval of the additional expense is required. Copies of airline tickets must be attached to the expense form.
2. Rail or bus travel at actual cost. Rail or bus travel costs may not exceed the cost of coach airfare. Copies of tickets must be attached to the expense form to substantiate amounts.
3. Use of personal automobiles at the standard mileage rate approved by the Internal Revenue Service for income tax purposes. The reimbursement may not exceed the cost of coach airfare. Mileage for use of personal automobiles in trips to and from transportation terminals will also be reimbursed. Toll charges and parking costs will be reimbursed.
4. Automobile rental costs when the vehicle's use is warranted. The circumstances for such use must be explained on the expense form.
5. Taxis, airport limousines, or other local transportation costs.

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<sup>16</sup> 50 ILCS 150/ does not define *maximum allowable reimbursement amount* (MARA). Consult the board attorney to assist with a conversation about how much authority the board wishes to delegate to the superintendent for purposes of setting the MARA. Topics for these conversations are listed in f/n 8 of policy 2:125, *Board Member Compensation; Expenses*.

<sup>17</sup> 50 ILCS 150/10 and 15. See f/n 13 in policy 2:125, *Board Member Compensation; Expenses* for more discussion.

<sup>18</sup> Amend the language in subheads **Registration, Travel, Meals, Lodging, and Miscellaneous Expenses** to align with the MARA defined in the board's expense regulation resolution. See 2:125-E3, *Resolution to Regulate Expense Reimbursements* for a sample resolution.

See f/n 4 in policy 2:125, *Board Member Compensation; Expenses*, for further discussion about the board's power to set the expense regulations by policy (105 ILCS 5/10-20) and f/n 8 for considerations and unanswered questions surrounding its statutorily-imposed duty to set a MARA (50 ILCS 150/10, added by P.A. 99-604, eff. 1-1-17).

Meals

Meals charged to the District should represent mid-fare selections for the hotel/meeting facility or general area.<sup>19</sup> Tips are included with meal charges. Expense forms must explain the meal charges incurred. Alcoholic beverages will not be reimbursed.

Lodging

Employees should request conference rate or mid-fare room accommodations. A single room rate will be reimbursed. Employees should pay personal expenses at checkout. If that is impossible, deductions for the charges should be made on the expense form.

Miscellaneous Expenses

Employees may seek reimbursement for other expenses incurred while attending a meeting sponsored by organizations described herein by fully describing the expenses on the expense form, attaching receipts.

LEGAL REF.: 105 ILCS 5/10-22.32.  
Local Government Travel Expense Control Act, 50 ILCS 150/.

CROSS REF.: 2:125 (Board Member Compensation; Expenses), 2:240 (Board Policy Development), 4:50 (Payment Procedures), 4:55 (Use of Credit and Procurement Cards)

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<sup>19</sup> Alternatively, a board could set a daily limit on meal costs, such as:

Employees will be reimbursed for meal costs and tips up to \$\_\_\_\_\_ per day consistent with the maximum reimbursement amount(s) set by the Board.

But see also f/n 8 of policy 2:125, *Board Member Compensation; Expenses* and ensure this amount is consistent with the MARA set by the board resolution.

## General Personnel

### Administrative Procedure - Expenses <sup>1</sup>

#### Registration Fees

When possible, registra

#### Transportation Costs

The least expensive transportation shall be used. Employees will be reimbursed for:

1. Air travel at the coach or single class commercial airline rate. Copies of airline tickets must be attached to the expense voucher.
2. Rail or bus travel at actual cost. Rail or bus travel costs may not exceed the cost of coach airfare. Copies of tickets will be attached to the expense voucher to substantiate amounts.
3. Use of personal automobiles at the standard mileage rate approved by the Internal Revenue Service for income tax purposes. The reimbursement may not exceed the cost of coach airfare. Mileage for personal automobile use in trips to and from transportation terminals will also be reimbursed. Toll charges and parking costs will be reimbursed.
4. Automobile rental costs when the vehicle's use is warranted. The circumstances for such use must be explained on the expense voucher.
5. Taxis, airport limousines, or other local transportation costs.

#### Hotel/Motel Charges

Employees should request conference rate or *mid-fare* room accommodations. A single room rate will be reimbursed. Other expenses incurred by employees will be reimbursed when specifically related to School District business. The expense voucher or hotel bill must explain the types of expenses incurred.

Employees shall pay personal expenses that are charged to hotel room bills at check-out. If this is not possible, deductions for the charges should be made on the expense voucher.

#### Meal Charges

Meal charges to the School District should represent *mid-fare* selections for the hotel/meeting facility or general area and generally should not exceed \$ \_\_\_\_\_ per day.<sup>2</sup> Tips shall be included with the meal charges. Expense vouchers must explain the meal charges incurred.

#### Personal Charges

All personal travel costs must be excluded from the expense voucher.

The footnotes should be removed before the material is used.

<sup>1</sup> If a local collective bargaining agreement contains a provision on expenses, it will supersede this policy and the school board policy should state, "Please refer to the following current Agreement: [actual title of Collective Bargaining Agreement (not including dates)]."

<sup>2</sup> Alternatively, a board could set a daily limit on meal costs, such as:  
Employees will be reimbursed for meal costs and tips up to \$ \_\_\_\_\_ per day.

# RENAMED & REWRITTEN

October 2016

5:60-E1

## General Personnel

### Exhibit - Employee Travel-Expense Voucher-Reimbursement Form

*Submit to the Superintendent. Use of this form is required by 2:125-E3, Resolution to Regulate Expense Reimbursements. Please print and attach receipts for all expenditures.*

Name: \_\_\_\_\_ Title/Office: \_\_\_\_\_

Destination: \_\_\_\_\_ Purpose: \_\_\_\_\_

Departure Date: \_\_\_\_\_ Return Date: \_\_\_\_\_

Receipts attached Request Date: \_\_\_\_\_

Approved expense advancement (voucher) attached, if applicable\* (Completed 5:60-E2, Employee Estimated Expense Approval Form.)

| Actual Expense Report   |         |      |                       |         |       |       |        |            |      |             |
|---|---------|------|-----------------------|---------|-------|-------|--------|------------|------|-------------|
| *Employees will be reimbursed for actual and necessary expenses that exceed the amount advanced, but must refund any expense advancement that exceeds the actual and necessary expenses incurred. (105 ILCS 5/10-22.32) |         |      |                       |         |       |       |        |            |      |             |
| Auto Travel Allowance: _____ per mile   |         |      |                       |         |       |       |        |            |      |             |
| Date  | Mileage |      | Comm. Travel Expenses | Lodging | Meals |       |        | Other Item | Cost | Daily Total |
|   | Miles   | Cost |                       |         | Bkfst | Lunch | Dinner |            |      |             |
|   |         |      |                       |         |       |       |        |            |      |             |
|   |         |      |                       |         |       |       |        |            |      |             |
|   |         |      |                       |         |       |       |        |            |      |             |
|   |         |      |                       |         |       |       |        |            |      |             |
|   |         |      |                       |         |       |       |        |            |      |             |
| <b>Subtotal</b>   |         |      |                       |         |       |       |        |            |      |             |
| <b>Advances</b>   |         |      |                       |         |       |       |        |            | -    |             |
| <b>TOTAL (A negative amount indicates refund due from employee.)</b>  |         |      |                       |         |       |       |        |            | \$   |             |

Superintendent (below maximum allowable amount): \_\_\_\_\_  Approved  Denied  
 Approved in Part

Superintendent Signature \_\_\_\_\_ Date \_\_\_\_\_

School Board Action (exceeds maximum allowable amount): \_\_\_\_\_  Approved  Denied  
 Approved in Part

Employee Signature \_\_\_\_\_ Date \_\_\_\_\_

**General Personnel**

**Exhibit - Employee Estimated Expense Approval Form**

*Submit to the Superintendent. Use of this form is required by 2:125-E3, Resolution to Regulate Expense Reimbursements. Please print.*

Name: \_\_\_\_\_ Title/Office: \_\_\_\_\_

Travel Destination: \_\_\_\_\_ Purpose: \_\_\_\_\_

**Estimated Expenses Approval Requested (50 ILCS 150/20)**

**Purchase Order Requested** Purchase Order #: \_\_\_\_\_

**Expense Advancement Voucher Requested (105 ILCS 5/10-22.32)**

Voucher Amount: \_\_\_\_\_

| Estimated Expense Report              |         |      |                       |         |                    |       |        |            |      |             |
|---------------------------------------|---------|------|-----------------------|---------|--------------------|-------|--------|------------|------|-------------|
| Departure date: _____                 |         |      |                       |         | Return date: _____ |       |        |            |      |             |
| Auto Travel Allowance: _____ per mile |         |      |                       |         |                    |       |        |            |      |             |
| Date                                  | Mileage |      | Comm. Travel Expenses | Lodging | Meals              |       |        | Other Item | Cost | Daily Total |
|                                       | Miles   | Cost |                       |         | Bkfst              | Lunch | Dinner |            |      |             |
|                                       |         |      |                       |         |                    |       |        |            |      |             |
|                                       |         |      |                       |         |                    |       |        |            |      |             |
|                                       |         |      |                       |         |                    |       |        |            |      |             |
|                                       |         |      |                       |         |                    |       |        |            |      |             |
|                                       |         |      |                       |         |                    |       |        |            |      |             |
|                                       |         |      |                       |         |                    |       |        |            |      |             |
|                                       |         |      |                       |         |                    |       |        |            |      |             |
| <b>Total</b>                          |         |      |                       |         |                    |       |        |            |      | \$          |

Superintendent (below maximum allowable amount):

**Approved**       **Denied**  
 **Approved in Part**

\_\_\_\_\_  
Superintendent Signature

\_\_\_\_\_  
Date

School Board Action (exceeds maximum allowable amount):

**Approved**       **Denied**  
 **Approved in Part**

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

## General Personnel

### Staff Development Program <sup>1</sup>

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 provide, at a minimum, at least once every ~~two~~ 2 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 disorder, the application of non-aversive behavioral interventions in the school environment, and the use of psychotropic or psychostimulant medication for school-age children. <sup>2</sup>

The staff development program shall provide, at a minimum, once every ~~two~~ 2 years, the in-service training of all District staff on educator ethics, teacher-student conduct, and school employee-student conduct. <sup>3 4 5</sup>

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

<sup>1</sup> State 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. ISBE*, 555 N.E.2d 725 (Ill.App.3, 1990).

105 ILCS 5/2-3.62, amended by P.A. 99-30 (repealing 105 ILCS 5.2-3.60), requires 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.

<sup>2</sup> This paraphrases 105 ILCS 5/10-20.36. 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 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.

<sup>3</sup> 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 5:120, *Ethics and Conduct*, and ¶n 8 in 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.

<sup>4</sup> Insert the following option if a board wants to list in-services and/or required trainings that the School Code requires, but are not required to be specified in board policy (105 ILCS 5/10-22.39 and 110/3.10(b)(2)). If the board does not choose this option, delete 325 ILCS 5/4 from the Legal References. The only non-School Code training requirement listed is from the Abused and Neglected Child Reporting Act.

In addition, the staff development program shall include each of the following:

1. At least, once every ~~two~~ 2 years, training of all District staff by a person with expertise on anaphylactic reactions and management.
2. At least every ~~two~~ 2 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 school personnel who work with students in grades 7 through 12 to identify the warning signs of mental illness and suicidal behavior in adolescents and teens 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 one year 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 ~~5~~five 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. 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.
7. 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, and developmentally appropriate disciplinary methods that promote positive and healthy school climates.
8. 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. 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 before 8-18-2014 must be certified by 8-19-2015; if hired on or after 8-19-2014, they must be certified before their position's start date.
10. 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 serving on the Concussion Oversight Team; athletic trainers; game officials of an interscholastic athletic activity; and physicians serving on the Concussion Oversight Team. Individuals covered by this training mandate ~~were to~~ must initially complete the training by 9-1-2016.
- ~~10.11. 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.~~

Alternative to paragraph number 2:

2. At least every ~~2~~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 10-22.39(d).
3. 105 ILCS 5/10-22.39(c).
4. 105 ILCS 5/10-22.39(b).
5. 105 ILCS 5/10-23.12; 325 ILCS 5/4; and *Erin's Law Taskforce Final Report*, authorized by 105 ILCS 5/22-65 and repealed by P.A. 99-30 because of submission of the Report at: [www.isbe.state.il.us/reports/erins-law-final0512.pdf](http://www.isbe.state.il.us/reports/erins-law-final0512.pdf) and see also <http://www.erinslawillinois.org/> for more resources based upon the report.
6. 105 ILCS 110/3.10(b)(2).
7. 105 ILCS 5/10-22.6(c-5), amended by P.A. 99-456, ~~eff. 9-15-16~~. School board members are also included.

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*. 6

8. 7 C.F.R. Part 210. Section 210.2 defines school nutrition program directors, managers and staff. 7 C.F.R. §§210.15(b)(8) (recordkeeping requirements) and 210.301(a), (c), (d), and (e) (professional standards requirements), and 210.301(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. §210.301(fg)). 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. They are available at: <http://professionalstandards.nal.usda.gov>.
9. 105 ILCS 25/1.15.
10. 105 ILCS 5/22-80(h), added by P.A. 99-245, and ~~possibly amended by SB219-P.A. 99-486(if approved by the House and signed by the Governor, SB219 will extend the effective date to the 2016-2017 school year).~~
11. 105 ILCS 5/22-30(j-15), amended by P.A. 99-843. Consult the board attorney about whether:
  - a. All asthma action plans should require immediate 911 calls based upon In re: Estate of Jeffery Stewart, 2016 IL App (2d) 151117, No. 2-15-1117 (8-24-16), at: [www.illinoiscourts.gov/Opinions/AppellateCourt/2016/2ndDistrict/2151117.pdf](http://www.illinoiscourts.gov/Opinions/AppellateCourt/2016/2ndDistrict/2151117.pdf). 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 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.

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/).

5 Different from the in-service training that school districts must provide to their staff, 105 ILCS 5/3-11, amended by P.A. 99-616, contains requirements that the regional superintendents must include during teachers institutes. Instruction on prevalent student chronic health conditions should have begun during school year 2009-2010. Educator ethics and teacher-student conduct training is also required (see also f/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 (ADA) 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.

6 Required by 105 ILCS 5/2-3.163, amended by P.A. 99-443.

- LEGAL REF.: 105 ILCS 5/2-3.62, 5/10-22.6(c-5), 5/10-22.39, 5/22-80(h), 5/10-23.12, 5/24-5, 25/1.15 and 110/3.  
325 ILCS 5/4, Abused and Neglected Child Reporting Act.  
745 ILCS 49/, Good Samaritan Act.  
7 C.F.R. Part 210.  
23 Ill.Admin.Code Part 525.
- CROSS REF.: 3:40 (Superintendent), 3:50 (Administrative Personnel Other Than the Superintendent), 4:160 (Environmental Quality of Buildings and Grounds), 5:20 (Workplace Harassment Prohibited), 5:90 (Abused and Neglected Child Reporting), 5:120 (Ethics and Conduct), 5:250 (Leaves of Absence), 6:15 (School Accountability), 6:20 (School Year Calendar and Day), 6:160 (English Learners), 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.: 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), 5:100-AP (Staff Development Program), 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)

## General Personnel

### Personal Technology and Social Media; Usage and Conduct <sup>1</sup>

#### 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.<sup>2</sup> This includes, but is not limited to, services such as *Facebook*, *LinkedIn*, *MySpace*, *Twitter*, *Instagram*, *Snapchat*, and *YouTube*.<sup>3</sup>

**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.<sup>4</sup> 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®).<sup>5</sup>

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

<sup>1</sup> This policy is optional. Consult the board attorney because personal technology and social media involve an unprecedented area of the law. Public employees' First Amendment rights involve an unsettled area of the law. 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, *Ethics and Conduct*, the Ill. Educators' Code of Ethics at 23 Ill.Admin.Code §22.20, and 105 ILCS 5/21B-75 by P.A. 97-607 (allows suspensions or revocations of certificates for *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*, 847 N.E.2d 810, 819 (4<sup>th</sup> Dist. Ill. App. 1, 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 ~~current~~ *[insert name of CBA]*.”

<sup>2</sup> 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 [en.wikipedia.org/wiki/Social\\_media](http://en.wikipedia.org/wiki/Social_media). Merriam-Webster's definition is at [www.merriam-webster.com/dictionary/social%20](http://www.merriam-webster.com/dictionary/social%20).

<sup>3</sup> Optional. A board may want to add other sites. As of October 2010, the publication *eBizMBA Inc.* lists the top 4 four social networking sites as Facebook, Myspace, Twitter, and LinkedIn, respectively.

<sup>4</sup> *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 [allthingsd.com/author/walt/](http://allthingsd.com/author/walt/). Many of the reviewed devices operate as described in this sample definition.

<sup>5</sup> Optional.

## Usage and Conduct 6

All District employees who use personal technology and social media shall: 7

1. Adhere to the high standards for appropriate school relationships required by policy 5:120, *Ethics and Conduct* 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, *Ethics and Conduct*; 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. 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 approval. For District employees, proper approval may include implied consent under the circumstances. 8
5. Refrain from using the District's logos without permission and follow Board policy 5:170, *Copyright*, and all District copyright compliance procedures. 9
6. 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

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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/n 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, *Ethics and Conduct*, for more discussion about how to initiate this conversation and f/n 3 of policy 5:100, *Staff Development Program*). 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.

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 Facebook.

9 17 U.S.C. §101 et seq.

7. 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. <sup>11</sup>
8. 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. <sup>12</sup>

The Superintendent shall: <sup>13</sup>

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, *Ethics and Conduct*.
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.

<sup>10</sup> 105 ILCS 5/24-9; Fair Labor Standards Act; 29 U.S.C. §201 *et seq.* See also *f/n*s 1 and 6 above.

<sup>11</sup> The Children's Internet Protection Act (CIPA), 20 U.S.C. §630147 U.S.C. §254, 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.

<sup>12</sup> 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*.

~~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/n*s 1 and 6). 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.*).~~

<sup>13</sup> 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, *Ethics and Conduct*."

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 (7<sup>th</sup> 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)).

3. Build awareness of this policy with students, parents, and the community.
4. Ensure that no one for the District, or on its behalf, requests of an employee or applicant access in any manner to his or her social networking website or requests passwords to such sites. <sup>14</sup>
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.

LEGAL REF.: 105 ILCS 5/21B-75 and 5/21B-80.  
 Ill. Human Rights Act, 775 ILCS 5/5A-102.  
 Code of Ethics for Ill. Educators, 23 Ill.Admin.Code §22.20.  
Garceetti 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.: 5:20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and Criteria),  
 5:100 (Staff Development Program), 5:120 (Ethics and Conduct), 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)

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

<sup>14</sup> Right to Privacy in the Workplace Act, 820 ILCS 55/10(b), ~~added by P.A. 97-875 and amended by P.A. 98-50499-610, eff. 1-1-17 (also known as the Facebook Password Law).~~ The exception for *professional accounts*, ~~added by P.A. 98-504~~, is unlikely to be available to school districts; see the explanation in ~~footnote 15~~ 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 ~~also states that it~~ 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.

## General Personnel

### Family and Medical Leave <sup>1</sup>

#### 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. <sup>2</sup>

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. <sup>3</sup>

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.<sup>4</sup> All policies and rules regarding the 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

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

<sup>1</sup> State or federal law 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.

All public (and private) school employers are covered by the FMLA without regard to their number of employees (29 C.F.R. §§825.104 & 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, Wage & Hour Division, has a very helpful website containing forms, compliance guidance, posters, etc. ([www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla)). It also contains a link to the complete FMLA rules, 29 C.F.R. Part 825.

<sup>2</sup> 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.

<sup>3</sup> 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 ~~military caregiver leaves~~ **servicemember family leave**. The latter leave extends the possible FMLA leave to 26 weeks in a *single 12-month period*. For more information, see *f/n* 6.

<sup>4</sup> 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. 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) & (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.



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. <sup>5</sup>

FMLA leave is available in one or more of the following instances: <sup>6</sup>

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.
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. <sup>7</sup>

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

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<sup>5</sup> 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.

<sup>6</sup> 29 C.F.R. §§825.112 & 825.200. See §§825.120 & 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 (2015).

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

<sup>7</sup> 29 C.F.R. §§825.120(a)(3) (birth) & 825.121(a)(3) (adoption and foster care).

<sup>8</sup> 29 C.F.R. §§825.121(b), 825.202 - 825.205 & 825.601.

## 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 1,250 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., National Guard or Reserve military service or when a written agreement exists concerning the District's intention to rehire the employee.
2. The employee is a full-time classroom teacher.

## 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

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

**9 29 C.F.R. §§825.110, 825.111, & 825.600. The default policy language exceeds federal 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 1,250 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 National Guard or Reserve military service 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](http://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)).

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.

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.

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 <sup>12</sup>

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.

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<sup>11</sup> 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/WHD/fmla/](http://www.dol.gov/WHD/fmla/). Districts must inform the employee of the medical certification requirement and of the consequences for failing to provide it.

<sup>12</sup> 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.

### 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 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

### 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

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

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.

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](http://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 5 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](http://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.

LEGAL REF.: Family and Medical Leave Act, 29 U.S.C. §2601 et seq., 29 C.F.R. Part 825.

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)

## Professional Personnel

### Teacher Qualifications <sup>1</sup>

A teacher, as the term is used in this policy, refers to a District employee who is required to be licensed under State law.<sup>2</sup> The following qualifications apply:

1. Each teacher must:
  - a. Have a valid Illinois Professional Educator License issued by the State Superintendent of Education with the required endorsements as provided in the School Code.
  - b. Provide the District Office with a complete transcript of credits earned in institutions of higher education.
  - c. On or before September 1 of each year, unless otherwise provided in an applicable collective bargaining agreement, provide the District Office with a transcript of any credits earned since the date the last transcript was filed.
  - d. Notify the Superintendent of any change in the teacher's transcript.
2. All teachers working in a program supported with federal funds under Title I, Part A must meet applicable State certification and licensure requirements with primary responsibility for instructing students in the core academic subject areas (science, the arts, reading or language arts, English, history, civics and government, economics, geography, foreign language, and

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

<sup>1</sup> State or federal law 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 concerns an area in which the law is unsettled.

<sup>2</sup> 105 ILCS 5/21B et seq.; 23 Ill.Admin. Code §1.610 et seq., §1.705 et seq. and Part 25. P.A. 97-607 repealed 105 ILCS 5/21-0.01 et seq. and added Article 21B titled *Educator Licensure* to the School Code. 23 Ill.Admin.Code §1.610 et seq. still refers to this repealed section of the School Code. 23 Ill.Admin.Code §1.705 et seq. still refers to *certification*, and Part 25 continues to incorporate P.A. 97-607. This law changed teacher *certification* to *educator licensure* as of July 1, 2013. ISBE's proposal to amend these rules is pending as of Feb. 2014. When the licensure system became operational, all certified employees automatically transitioned to the corresponding licensure.

School boards may participate in the Illinois Teacher Corps; however as of Sept. 1, 2011 individuals may no longer be admitted to Illinois Teacher Corps programs (105 ILCS 5/21-11.4, amended by P.A. 97-607 and repealed on June 30, 2013).

<sup>3</sup> Subparagraph 1a is required for all teachers by 105 ILCS 5/21B-15, added by P.A. 97-607 (professional educator licenses/qualifications of educators). See ~~fn 2 above~~. Three types of educator licenses are listed in 105 ILCS 5/21B-20: (1) Professional Educator License; (2) Educator License with Stipulations (including endorsements for provisional educator, alternative provisional educator, alternative provisional superintendent, resident teacher, career and technical educator, provisional career and technical educator, transitional bilingual educator, language, visiting international educator, paraprofessional educator, and chief school business official); and (3) Substitute Teaching License. ~~added by P.A. 97-607~~. See also 23 Ill.Admin.Code §1.610 et seq., §1.705 et seq. and Part 25 (per §25.100, teachers are no longer certified/endorsed in any course subjects in which they earn grades lower than a "C" in college), ~~although some of the rules refer to repealed sections of the School Code. Note that part-time provisional certificates issued to professionals and craftsmen are no longer issued (105 ILCS 5/21-10, amended by P.A. 97-607 and repealed on June 20, 2013).~~ ISBE's *Educator Licensure Information System* (ELIS) is a web-based system that allows educators, administrators, and the public to access licensure information. See [www.isbe.state.il.us/ELIS/default.htm](http://www.isbe.state.il.us/ELIS/default.htm).

Contact ISBE with all licensure questions during this time of implementation of the new Article 21B, added by P.A. 97-607.

Subparagraph 1b and 1c are required of all teachers by 105 ILCS 5/24-23. Some boards add the word "official" to the phrase, "complete official transcript of credits."

Subparagraph 1d is optional but informs the superintendent when a teacher may be eligible to should change lanes on the salary schedule.

mathematics) must be *highly qualified* for those assignments as determined by State and federal law. 4

The Superintendent or designee shall:

1. Monitor compliance with State and federal law requirements that teachers be appropriately licensed and highly qualified for their assignments; 5
2. Through incentives for voluntary transfers, professional development, recruiting programs, or other effective strategies, ensure that minority students and students from low-income families are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers; and 6
3. Ensure parents/guardians of students in schools receiving Title I funds are notified:—(a) of their right to request their students’ classroom teachers’ professional qualifications, and (b) whenever their child is assigned to, or has been taught for 4 or more consecutive weeks by, a teacher who is not highly qualified. 7

LEGAL REF.: 20 U.S.C. §6319~~2~~(e)(1)(A).  
34 C.F.R. §200.55, 56, 57, and 61.  
105 ILCS 5/10-20.15, 5/21-11.4, ~~5/21B-15~~, 5/21B-20, ~~5/21B-25~~, and 5/24-23.  
23 Ill.Admin.Code §1.610 et seq., §1.705 et seq., and Part 25.

CROSS REF.: 6:170 (Title I Programs)

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

<sup>4</sup> The *highly qualified* teacher requirement of the No Child Left Behind Act, formerly found in §6319 of the Elementary and Secondary Education Act (ESEA, 20 U.S.C. §6319), was repealed by the Every Student Succeeds Act (ESSA, Pub. L. 114-95, eff. 12-10-15).<sup>5</sup> ESEA federal and State implementing regulations at 34 C.F.R. §200.55; and 23 Ill. Admin.Code Part 25, Appendix D have not been updated, though amendments are highly likely within the next year. In *Every Student Succeeds Act (ESSA) Frequently Asked Questions* (8.12.16) ([isbe.net/essa/pdf/ESSA-faq.pdf](http://isbe.net/essa/pdf/ESSA-faq.pdf)), ISBE advises that districts need not comply with the “highly qualified” teacher requirement during the 2016-17 school year. ISBE’s website contains numerous resources on *highly qualified* requirements and determinations; see [www.isbe.net/nclb/htmls/edquality.htm](http://www.isbe.net/nclb/htmls/edquality.htm).

ESEA, as amended by ESSA, requires that each state plan contain assurances that the state educational agency will ensure that all teachers and paraprofessionals meet state certification/licensure requirements (20 U.S.C. §6311(g)(2)(J)).

<sup>5</sup> 20 U.S.C. §6319(a)(3); 34 C.F.R. §200.57(b). ISBE advises that effective July 1, 2016, teachers and paraprofessionals must meet state and local licensure requirements found in *Illinois Licensure, Endorsement, and Approval Requirements*, revised 8-25-16, at [www.isbe.net/licensure/requirements/endsmt\\_struct.pdf](http://www.isbe.net/licensure/requirements/endsmt_struct.pdf).

ESEA, as amended by ESSA, requires districts to provide parents timely notice that the parent’s child has been assigned, or has been taught for four or more consecutive weeks by, a teacher who does not meet applicable State certification or licensure requirements at the grade level and subject area in which the teacher has been assigned (20 U.S.C. §6312(e)(1)(B)(ii)). For a sample notice, see 5:190-E2, *Notice to Parents When Their Child Is Assigned To or Has Been Taught for at Least Four Straight Weeks By a Teacher Who Does Not Meet Applicable State Certification/Licensure Requirements*.

<sup>6</sup> 34 C.F.R. §200.57(b)(2).

<sup>7</sup> 20 U.S.C. §6312(e)(1)(A)-(h)(6); 34 C.F.R. §200.61.

## Professional Personnel

### Administrative Procedure - Plan to Ensure That All Teachers Who Teach Core Academic Subjects Are *Highly Qualified*<sup>1</sup>

| Actor                      | Requirements  | Actions That Must Be Completed  |
|----------------------------|---|---|
| Superintendent or designee | <p style="text-align: center; font-size: 2em; opacity: 0.5; font-weight: bold;">Deleted</p> | <p>teaching core subjects.</p> <p>hiring only teachers who are <i>highly qualified</i>, as defined by Title I of the Elementary and Secondary Education Act and its implementing regulations, State law, and School Board policy 5:190, <i>Teacher Qualifications</i>.</p> <p>Identify any teacher currently employed teaching a core subject who is not <i>highly qualified</i>.</p> <p>Inform the Building Principal of any teacher in his or her building teaching a core subject who is not <i>highly qualified</i>.</p> <p>Notify each teacher teaching a core subject and who is not <i>highly qualified</i> that federal law requires that all elementary and secondary teachers be <i>highly qualified</i>.</p> <p>Complete a roadmap for each not <i>highly qualified</i> teacher describing the specific activities that are appropriate to get the individual to <i>highly qualified</i> status within 2 years, benchmarks, proposed completion dates, resources necessary, date of completion, and a District contact person. These documents must be kept on file at the District office for ROE Teacher Audits and ISBE random audits. <a href="http://www.isbe.state.il.us/accountability/pdf/RMNQT_form.pdf">www.isbe.state.il.us/accountability/pdf/RMNQT_form.pdf</a>.</p> <p>Consult with Building Principals and other administrative staff members about methods to ensure that core-subject teachers are <i>highly qualified</i>, such as through incentives for voluntary transfers, professional development, recruiting programs, or other effective strategies.</p> <p>Appoint a committee to devise methods to: (1) ensure that core subjects are only taught by <i>highly qualified</i> teachers, and (2) assist teachers to become <i>highly qualified</i>.</p> <p>Ensure that minority students and students from low-income families are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers.</p> |

The footnotes should be removed before the material is used.

<sup>1</sup> NCLBA requires that all schools receiving Title I funds have a plan to ensure that all core-subject teachers are *highly qualified* (20 U.S.C. §6319(a)(3); 34 C.F.R. §200.57(b)). This sample procedure must be augmented in alignment with a district's specific conditions.



## Professional Personnel

### Exhibit - Notice to Parents of Their Right to Request Their Child's Classroom Teachers' Qualifications

*On District letterhead*

Date

Re: You May Request Your Child's Classroom Teachers' Qualifications

Dear Parents/Guardians:

As a parent/guardian of a student at a school receiving funds under Title I of the Elementary and Secondary Education Act, you have the right to request the professional qualifications of the teachers who instruct your child and the paraprofessionals, if any, who assist them. You may request the following information about each of your child's classroom teachers and their paraprofessional assistants, if any:

- Whether the teacher has met State ~~certification requirements~~ qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction;
- Whether the teacher is teaching under an emergency ~~permit~~ or other provisional status by through which State qualification or licensing criteria have been waived;
- ~~The teacher's college major;~~
- Whether the teacher is teaching in the field of discipline of the teacher's licensure ~~has any advanced degrees and, if so, the subject of the degrees~~; and
- Whether any instructional aides or paraprofessionals provide services to your child and, if so, their qualifications.

If you would like to receive any of this information, please contact the school office.

Sincerely,

Superintendent

**Professional Personnel**

**Exhibit - Notice to Parents When Their Child Is Assigned To or Has Been Taught for at Least Four Straight Weeks By a Teacher Who Is Not *Highly Qualified* Does Not Meet Applicable State Certification/Licensure Requirements**

*On District letterhead*

Date

Re: Your Child Is Assigned To or Has Been Taught for at Least Four Straight Weeks By a Teacher Who Is Not *Highly Qualified* as Defined by Federal Law Does Not Meet Applicable State Certification or Licensure Requirements

Dear Parents/Guardians:

All teachers working in a program supported with federal funds under Title I, Part A with primary responsibility for instructing students in the core academic subject areas (science, the arts, reading or language arts, English, history, civics and government, economics, geography, foreign language, and mathematics) must meet applicable State certification and licensure requirements ~~be highly qualified~~ for those assignments as determined by State and federal law.

The teacher listed below has taught your ~~child~~ student's class for the last four consecutive weeks. While the District is unable to verify that the teacher meets ~~the federal law's definition of highly qualified~~ applicable State certification or licensure requirements for the grade level and subject area to which he/she is assigned, our observations of his/her classroom indicate that he/she is providing a satisfactory educational program and experience. This notice is required by federal law (20 U.S.C. §6312(e)(1)(B)(ii)).

If you have any questions concerning this notice, please contact the school office.

Teacher: \_\_\_\_\_

Subject: \_\_\_\_\_

Sincerely,

Superintendent

## Professional Personnel

### Exhibit - Letter to Teacher Who Is Not *Highly Qualified* Does Not Meet Applicable State Certification/Licensure Requirements for the Grade Level and Subject Area of Assignment

*On District letterhead*

Date

Re: Your Roadmap for Becoming a *Highly Qualified* Teacher Educator Certification/License

Dear *[insert teacher's name]*:

Teachers working in a program supported with federal funds under Title I, Part A with primary responsibility for instructing students in the core academic subject areas (science, the arts, reading or language arts, English, history, civics and government, economics, geography, foreign language, and mathematics) are required to be *highly qualified* for those assignments meet applicable State certification and licensure requirements. The criteria contained in 23 Ill.Admin.Code Part 25, Appendix D determine if a teacher is highly qualified. See [www.ilga.gov/commission/jear/admincode/023/02300025ZZ9996dR.html](http://www.ilga.gov/commission/jear/admincode/023/02300025ZZ9996dR.html). For more information about No Child Left Behind (NCLB), see the Ill. State Board of Education's materials, available at [www.isbe.net/nclb/htmls/edquality.htm](http://www.isbe.net/nclb/htmls/edquality.htm).

Our records indicate you are teaching without being *highly qualified* meeting applicable State educator certification and licensure requirements for the grade level and subject to which you are assigned. As required by federal law, the District has provided to the parents of the students in your classes that you are teaching without the above-referenced certification or licensure (20 U.S.C. §6312(e)(1)(B)(ii)).

Please contact your Building Principal as soon as possible to cooperatively develop the ISBE required *Roadmap for Each Not Highly Qualified Teacher* discuss your educator certification and licensure requirements. If you believe this letter was sent to you by mistake, please contact your Building Principal as soon as possible so that we may correct our records if appropriate.

Sincerely,

Superintendent

## Professional Personnel

### Leaves of Absence <sup>1</sup>

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 <sup>2</sup>

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.

As a condition for paying sick leave after 3 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) an advanced practice nurse who has a written collaborative agreement with a

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<sup>1</sup> 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 current [*insert name of professional CBA*]."

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 (P.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/).

<sup>2</sup> The provisions in this section are required by 105 ILCS 5/24-6. 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 820 ILCS 191/, added by P.A. 99-841, eff. 1-1-17. 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 an ill or injured family member or to attend a medical appointment with a family member. The law defines family members as a child (biological, adopted, stepchild, or legal ward), 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.

collaborating physician that authorizes the advanced practice nurse to perform health examinations, (4) a 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 3 days for personal illness, the District shall pay the expenses incurred by the employee.

The use of paid sick leave for adoption or placement for adoption is limited to 30 days unless a longer leave is provided in an applicable collective bargaining agreement. The Superintendent may require that the employee provide evidence that the formal adoption process is underway. <sup>3</sup>

#### Child Bereavement Leave <sup>4</sup>

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 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 <sup>5</sup>

Sabbatical leave may be granted in accordance with the School Code.

#### Personal Leave <sup>6</sup>

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.

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<sup>3</sup> 105 ILCS 5/24-6.

<sup>4</sup> Child Bereavement Leave Act (Act), 820 ILCS 154/, added by P.A. 99-703. These paragraphs discuss child bereavement leave. 820 ILCS 154/5, added by P.A. 99-703 defines an *eligible employee* under the same terms as an employee under FMLA (29 U.S.C. 2601 et seq.). See f/n 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/, added by P.A. 99-703. 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.

<sup>5</sup> State law provides guidelines for sabbatical leaves but does not require boards to offer them (105 ILCS 5/24-6.1).

<sup>6</sup> State law does not address personal 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 3 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 5 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 7

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.

#### Leave to Serve as an Election Judge 8

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 9

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

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<sup>7</sup> 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).

<sup>8</sup> This paragraph restates 10 ILCS 5/13-2.5, amended by P.A. 98-691. 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, board policy 5:330, *Educational Support Personnel - Sick Days, Vacation, Holidays, and Leaves*, grants the leave to support personnel on the terms applicable to professional staff.

<sup>9</sup> The School Code does not address child-rearing. The Family and Medical Leave Act (FMLA), 29 U.S.C. §2612, 29 C.F.R. §825.200, 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., 1993).

exceed 3 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. <sup>10</sup>

A teacher must 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.<sup>11</sup> 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. <sup>12</sup>

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.

#### Leaves for Service in the Military <sup>13</sup>

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 <sup>14</sup>

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 <sup>15</sup>

The Board may grant teachers a leave of absence to accept employment in a Department of Defense overseas school.

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

<sup>10</sup> 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 School Dist. 212, 939 F.2d 440 (7th Cir., 1991); U.S. v. Consol. High School Dist. 230, 983 F.2d 790 (7th Cir., 1992); 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 School Dist. 230, Supra.

<sup>11</sup> 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.

<sup>12</sup> 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 . . .

<sup>13</sup> Required by: the School Code (105 ILCS 5/10-20.7b, 5/24-13, and 5/24-13.1); the Military Leave of Absence Act (5 ILCS 325), added mandatory leave for "other training or duty required by the United States Armed Forces" and requires the public employer to make up the difference between military pay and regular compensation); Service Member's Employment Tenure Act (330 ILCS 60/4); Public Employee Armed Services Rights Act (5 ILCS 330/4); National Guard Employment Rights (20 ILCS 1805/30.20); and Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §4301).

<sup>14</sup> Required by 105 ILCS 5/24-13.

<sup>15</sup> State law provides guidelines for Dept of Defense leaves but does not require boards to offer them (105 ILCS 5/24-13.1).

### School Visitation Leave

An eligible professional staff member is entitled to 8 hours during any school year, no more than 4 hours of which may be taken on any given day, to attend school conferences or classroom activities related to the teacher's child, if the conference or activity cannot be scheduled during non-work hours.<sup>16</sup> 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. <sup>17</sup>

The Superintendent shall develop administrative procedures implementing this policy consistent with the School Visitation Rights Act. <sup>18</sup>

### Leaves for Victims of Domestic or Sexual Violence <sup>19</sup>

An unpaid leave from work is available to any staff member who: (1) is a victim of domestic or sexual violence, or (2) has a family or household member who is a victim of domestic or sexual violence whose interests are not adverse to the employee as it relates to the domestic or sexual 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.<sup>20</sup> 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.). <sup>21</sup>

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

<sup>16</sup> 820 ILCS 147/15.

<sup>17</sup> Id. The school visitation leave entitlement applies to both professional and educational support personnel. Rather than duplicate its requirements in separate policies, board policy 5:330, Educational Support Personnel - *Sick Days, Vacation, Holidays, and Leaves*, grants the leave on the same terms applicable to professional staff.

<sup>18</sup> 820 ILCS 147/.

<sup>19</sup> Required by the Victims' Economic Security and Safety Act, 820 ILCS 180/~~amended by P.A. 98-766~~, and 56 Ill.Admin.Code §280. While the law applies to all school districts (820 ILCS 180/10(10), ~~amended by P.A. 99-765, eff. 1-1-17~~, the leave is only available to employees working for employers with at least 15 employees number of employees determines the number of total workweeks of leave available during any 12-month period (820 ILCS 180/20(a)(2), ~~amended by P.A. 99-765, eff. 1-1-17~~). 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 [www.illinois.gov/idol/Employers/Documents/flsposter.pdf](http://www.illinois.gov/idol/Employers/Documents/flsposter.pdf) ~~www.illinois.gov/idol/EmployerInformation/Pages/posters.aspx~~). All districts must post this notice in a conspicuous place where notices to employees are customarily posted.

<sup>20</sup> 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 8 work weeks of 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), amended by P.A. 99-765, eff. 1-1-17.

<sup>21</sup> The Victims' Economic Security and Safety Act states that an employee does not have a right to take unpaid leave that exceeds the unpaid leave time allowed under the Family and Medical Leave Act (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 or sexual violence]," (820 ILCS 180/25). Contact the board attorney for advice resolving this ambiguity.



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,<sup>22</sup> (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,<sup>23</sup> and (3) a paid leave of absence for the local association 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. <sup>24</sup>

LEGAL REF.: 10 ILCS 5/13-2.5  
20 ILCS 1805/30.1 et seq.  
820 ILCS 154/.  
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.  
820 ILCS 147/ and 180/.

CROSS REF.: 5:180 (Temporary Illness or Temporary Incapacity), 5:185 (Family and Medical Leave), 5:330 (Educational Support Personnel - Sick Days, Vacation, Holidays, and Leaves)

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<sup>22</sup> Required by 105 ILCS 5/24-13.

<sup>23</sup> Required by 105 ILCS 5/24-6.3. See 5:330, *Educational Support Personnel - Sick Days, Vacation, Holidays, and Leaves*, for the leave for an elected trustee for the Ill. Municipal Retirement Fund.

<sup>24</sup> Required by 105 ILCS 5/24-6.2.

## Professional Personnel

### Administrative Procedure - School Visitation Leave <sup>1</sup>

#### Eligible employees

These administrative procedures apply to both professional staff and educational service personnel. An employee is eligible for a school visitation leave if he or she has worked for the District at least six 6-consecutive months immediately before the request and works at least one-half of the full-time equivalent position. 820 ILCS 147/40. Periods when school is not in session will not count as a break in consecutive service. <sup>2</sup>

#### School Conference and Activity Leave 820 ILCS 147/15.

An employee is entitled to eight 8-hours during any school year, no more than four 4 hours of which may be taken on any given day, to attend school conferences or classroom activities related to the employee's child, if the conference or activity cannot be scheduled during non-work hours. Employees must first use all accrued vacation leave, personal leave, compensatory leave, and any other leave that may be granted to the employee, except sick and disability leave.

#### Request 820 ILCS 147/15 ~~30~~.

An employee must request a school conference and activity leave in writing at least seven-(7) days in advance; in an emergency situation, 24 hours' notice is required. The employee must consult with the employer to schedule the leave so as to minimize disruption. A leave request may be denied if granting the leave would result in more than 5% of the work force, or work force shift, taking leave at the same time. (820 ILCS 147/49).

#### Compensation

A school visitation leave is unpaid. The District will attempt, however, to give the employee the opportunity to make-up the time taken for such a leave, subject to the requirements relating to reduction of pay of exempt employees in the federal Fair Labor Standards Act. 820 ILCS 147/20. The employee taking a visitation leave will not lose any benefits. 820 ILCS 147/35.

#### Verification 820 ILCS 147/30.

An employee returning from a school visitation leave must provide the Building Principal with verification of the visitation from the school administrator of the school visited. Failure to provide this verification within two 2-working days of the visitation will subject the employee to the standard disciplinary procedures for unexcused absences from work.

LEGAL REF.: 820 ILCS 147/.

The footnotes should be removed before the material is used.

<sup>1</sup> The School Visitation Rights Act applies to only those districts employing at least 50 people (820 ILCS 147/40). Modify this procedure to align with board policy. Customize it to reflect the district's practice, particularly to specify the district's treatment of eligible employees.

<sup>2</sup> This provision is not in State law, but is consistent with other laws concerning school employees.

## Professional Personnel

### Student Teachers <sup>1</sup>

The Superintendent is authorized to accept students from university-approved teacher-training programs to do student teaching in the District. No individual who has been convicted of a criminal offense ~~listed in that would subject him or her to license suspension or revocation pursuant to Section 5/21B-80 of the School Code~~<sup>2</sup> or who has been found to be the perpetrator of sexual or physical abuse of a minor under 18 years of age pursuant to proceedings under Article II of the Juvenile Court Act of 1987 is permitted to student teach or ~~complete field or other clinical experience.~~

Before permitting an individual to student teach or ~~begin a required internship~~<sup>3</sup> ~~participate in any field experience~~ in the District, the Superintendent or designee shall ensure that:<sup>3</sup>

1. The District performed a ~~105 ILCS 5/10-21.9(g) complete criminal history records check~~ Check as described below; and
2. The individual furnished evidence of physical fitness to perform assigned duties and freedom from communicable disease pursuant to 105 ILCS 5/24-5. <sup>4</sup>

A ~~105 ILCS 5/21.9(g) complete criminal history records check~~ Check pursuant to 105 ILCS 5/10-21.9 shall include:

1. Fingerprint-based checks through (a) the Illinois State Police (ISP) for criminal history records information (CHRI) pursuant to the Uniform Conviction Information Act (20 ILCS 2635/1), and (b) the FBI national crime information databases pursuant to the Adam Walsh Child Protection and Safety Act (P.L. 109-248);
2. A check of the Illinois Sex Offender Registry (see the Sex Offender Community Notification Law (730 ILCS 152/101 et seq.); and
3. A check of the Illinois Murderer and Violent Offender Against Youth Registry (Murderer and Violent Offender Against Youth Community Notification Law (730 ILCS 154/75-105; ~~amended by 97-154~~).

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

<sup>1</sup> State or federal law 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 sample policy is consistent with the minimum requirements of State law. The local collective bargaining agreement may contain provisions which exceed these requirements. When a policy's subject matter is superseded by a bargaining agreement, the school board policy may state, "Please refer to the ~~current Professional Agreement between the Classroom Teachers' Association and the Board of Education~~ applicable collective bargaining agreement(s)."

<sup>2</sup> P.A. 99-667 amended the School Code at 105 ILCS 5/10-21.9, 5/21B-15, and 5/21B-80(b) to carve out an exception allowing individuals with convictions involving certain drug offenses to obtain educator licensure or reinstate a license suspension/revocation seven years after the end of an individual's sentence for these certain drug offenses. See 5:30-AP2, *Investigations*, for a list of these carved-out drug offenses.

<sup>3</sup> 105 ILCS 5/10-21.9(g) applies to individuals who will be student teachers or who are beginning a required internship. For boards that want to include students participating in any field or clinical experience, amend the introductory phrase to state "Before permitting an individual to student teach, ~~or begin a required internship, or participate in any field experience~~ in the District, . . ." For more discussion about students participating in any field or clinical experience, see ~~fn~~<sup>7</sup> below.

<sup>4</sup> The requirements for *physical fitness* and *freedom from communicable disease* apply to student teachers as of 7-16-2014 (105 ILCS 5/24-5, ~~amended by P.A. 98-716~~).

The School Code requires each individual student teacher or beginning a required internship to must provide the District with written authorization for, and pay the costs of, his or her 105 ILCS 5/21.9(g) criminal history records check (including any applicable vendor's fees).<sup>5</sup> Upon receipt of this authorization and payment, the Superintendent or designee will submit the student teacher's name, sex, race, date of birth, social security number, fingerprint images, and other identifiers, as prescribed by the Department of State Police, to the Department of State Police.<sup>6</sup> T, and the Superintendent or designee will provide each student teacher with a copy of his or her report. <sup>7</sup>

### Assignment

The Superintendent or designee shall be responsible for coordinating placements of all student teachers within the District. Student teachers should be assigned to supervising teachers whose qualifications are acceptable to the District and the students' respective colleges or universities. A teacher may be eligible for Continuing Professional Development Units (CPDU) for supervising a student teacher or teacher education candidate in clinical supervision.<sup>8</sup>

LEGAL REF.: Adam Walsh Child Protection and Safety Act, P.L. 109-248.  
Uniform Conviction Information Act, 20 ILCS 2635/1.  
105 ILCS 5/10-21.9, 5/21-14(e)(3)(E)(viii), 5/10-22.34, and 5/24-5.  
~~23 Ill.Admin.Code §25.875.~~

CROSS REF.: 5:190 (Teacher Qualifications), 4:175 (Convicted Child Sex Offender; ~~Criminal Background Check and/or Screening~~; Notifications)

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

<sup>5</sup> 105 ILCS 5/10-21.9(g).

<sup>6</sup> *Id.*

<sup>7</sup> ~~Id.~~ 105 ILCS 5/10-21.9(g), amended by P.A.s 97-154 and 97-607, require A student teacher or individual beginning a required internship ~~to~~ must undergo a fingerprint-based State and national criminal history records check and checks of the Statewide Sex Offender Registry and Statewide Murderer and Violent Offender Against Youth Registry prior to participating in any field experiences in the school. ~~The statutory phrase "...prior to participating in any field experiences" involves student teaching only.~~ For information about ~~criminal history records checks~~ screenings or fingerprint-based criminal history records information checks for students doing field or clinical experience other than student teaching, see number two in the subhead titled **Screening Individuals Who are Likely to Have Contact with Students at School or School Events** in 4:175-AP1, *Criminal Offender Notification Laws; Screening*.

20 ILCS 2635/7(A) requires the student teacher's written authorization and a district to provide a copy of the reports, and 105 ILCS 5/10-21.9 requires the student teacher to pay for the costs of the criminal history records check. *LiveScan* is the recommended equipment for criminal history records checks. The language in this policy does not distinguish whether the district uses an authorized LiveScan vendor or owns or leases its own LiveScan equipment. Delete "(including applicable vendor's fees)" if the district owns or leases its own LiveScan equipment.

For more guidance and information on navigating the records laws surrounding criminal history records checks, along with a LiveScan vendor directory, see ISBE's non-regulatory guidance document, *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, available at: [www.isbe.net/pdf/guidance\\_chr.pdf](http://www.isbe.net/pdf/guidance_chr.pdf).

~~<sup>8</sup> 105 ILCS 5/21-14(e)(3)(E)(viii); 23 Ill.Admin.Code §25.875.~~

## Educational Support Personnel

### Duties and Qualifications <sup>1</sup>

All support staff: (1) must meet qualifications specified in job descriptions, (2) must be able to perform the essential tasks listed and/or assigned, and (3) are subject to School Board policies as they may be changed from time to time at the Board's sole discretion.

### Paraprofessionals <sup>2</sup>

Paraprofessionals provide supervised instructional support. Service as a paraprofessional requires an educator license with stipulations endorsed for a paraprofessional educator unless a specific exemption is authorized by the Illinois State Board of Education (ISBE).

Individuals with only non-instructional duties (e.g., providing technical support for computers, providing personal care services, or performing clerical duties) are not paraprofessionals, and the requirements in this section do not apply. In addition, individuals completing their clinical experiences and/or student teaching do not need to comply with this section, provided their service otherwise complies with ISBE rules. <sup>3</sup>

### Noncertificated and Unlicensed Personnel Working with Students and Performing Non-Instructional Duties

Noncertificated and unlicensed personnel performing non-instructional duties may be used:

1. For supervising study halls, long-distance teaching reception areas used incident to instructional programs transmitted by electronic media (e.g., computers, video, and audio), detention and discipline areas, and school-sponsored extracurricular activities; <sup>4</sup>

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

<sup>1</sup> State or federal law 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.

<sup>2</sup> Educator licensure replaced the previous system of certification on 7-1-2013. All Illinois teaching, administrative, and school service personnel certificates were converted to a corresponding license. Except as provided in ISBE rule §1.630, all new applicants for a paraprofessional credential must hold an educator license with stipulations endorsed for a paraprofessional educator (23 Ill.Admin.Code §§1.630 and 25.510). See ISBE's explanation at: [www.isbe.net/licensure/html/paraprofessional.htm](http://www.isbe.net/licensure/html/paraprofessional.htm).

~~**Important:** After the 2013-2014 school year, ISBE will no longer approve the use of speech language paraprofessionals. Educators who served as speech language paraprofessionals who wish to continue providing speech language services after the 2013-2014 school year must obtain a support personnel endorsement for a non-teaching, speech language pathologist (23 Ill.Admin.Code §25.252) or qualify as a speech language pathologist intern (23 Ill.Admin.Code §25.255), or speech language pathology assistant (105 ILCS 5/14-6.03).~~

A district may continue to use the term *teacher aide* to describe licensed personnel performing instructional support activities. In that situation, use the following alternative for the subhead and first paragraph:

#### Paraprofessionals and Licensed Teacher Aides

Paraprofessionals and licensed teacher aides provide supervised instructional support. Personnel performing instructional support activities must hold a current educator license with stipulations endorsed for a paraprofessional educator unless a specific exemption is authorized by the Illinois State Board of Education (ISBE).

If a district uses teacher aides to perform non-instructional support activities, *unlicensed teacher aides* may be inserted in the subhead for next section as follows: "Noncertificated and Unlicensed Personnel (Including Unlicensed Teacher Aides) Working with Students and Performing Non-Instructional Duties."

<sup>3</sup> 105 ILCS 5/10-22.34; 23 Ill.Admin.Code §§1.630 and 25.620 (student teaching). This paragraph is optional and may be deleted if the board desires a streamlined policy.

<sup>4</sup> 105 ILCS 5/10-22.34(a)(2).

2. As supervisors, chaperones, or sponsors for non-academic school activities; or 5
3. For non-teaching duties not requiring instructional judgment or student evaluation.<sup>6</sup>

Nothing in this policy prevents a noncertificated person from serving as a guest lecturer or resource person under a certificated teacher's direction and with the administration's approval. <sup>7</sup>

#### Coaches and Athletic Trainers

Athletic coaches and trainers shall have the qualifications required by any association in which the School District maintains a membership.<sup>8</sup> Regardless of whether the athletic activity is governed by an association, the Superintendent or designee shall ensure that each athletic coach: (1) is knowledgeable regarding coaching principles, (2) has first aid training, and (3) is a trained Automated External Defibrillator user according to rules adopted by the Illinois Department of Public Health.<sup>9</sup> Anyone performing athletic training services shall be licensed under the Illinois Athletic Trainers Practice Act, be an athletic trainer aide performing care activities under the on-site supervision of a licensed athletic trainer, or otherwise be qualified to perform athletic trainer activities under State law.<sup>10</sup>

#### Bus Drivers

All school bus drivers must have a valid school bus driver permit.<sup>11</sup> The Superintendent or designee shall inform the Illinois Secretary of State, within 30 days of being informed by a school bus driver,

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<sup>5</sup> 105 ILCS 5/10-22.34a; 23 Ill.Admin.Code §1.630(a).

<sup>6</sup> 105 ILCS 5/10-22.34(a)(1); 23 Ill.Admin.Code §1.630(a).

<sup>7</sup> 105 ILCS 5/10-22.34b, last paragraph. Noncertificated personnel may be used to provide specialized instruction in a field that an individual is particularly qualified by reason of specialized knowledge or skill (23 Ill.Admin.Code §1.630(c)(3)(C)). Districts that frequently use noncertificated individuals to provide such instruction may consider adding the following optional sentence:

When appropriate, the Superintendent may seek approval from the responsible Regional Superintendent for a noncertificated individual to provide specialized instruction, that is not otherwise readily available in the school environment, in the field that the individual is particularly qualified by reason of specialized knowledge or skill.

<sup>8</sup> A district should consult the handbooks and by-laws of the appropriate associations, e.g., the Illinois High School Association, the Southern Illinois Junior High School Athletic Association, and the Illinois Elementary School Association.

An optional sentence follows:

The coach for an extracurricular athletic activity sponsored or sanctioned by the Illinois High School Association (IHSA) at or above the ninth grade level must have completed the IHSA's educational program and competency testing on preventing abuse of performance-enhancing substances, provided the program is available.

<sup>9</sup> Optional and may be amended. The first requirement identifies a basic competency, and the second two requirements are intended to ensure coaches are trained emergency responders. For AED training program requirements, see Automated External Defibrillator Act (410 ILCS 4/15) and Automated External Defibrillator Code (77 Ill.Admin.Code Part 525).

<sup>10</sup> 225 ILCS 5/3 and 5/4.

<sup>11</sup> The regional superintendent is authorized to conduct school bus driver instruction courses and investigate whether persons hired to operate school buses have valid school bus driver permits (105 ILCS 5/3-14.23).

School bus driver permits are issued by the Secretary of State (625 ILCS 5/6-106.1). Districts must conduct a pre-employment interview with bus driver candidates, distribute bus driver applications and medical forms, and submit the applicant's fingerprint cards to the State Police for criminal background investigations. Districts must also certify in writing to the Secretary of State that all pre-employment conditions were completed, including an Illinois-specific criminal background investigation through the State Police and the submission of necessary fingerprints to the Federal Bureau of Investigation for criminal history information (Id.). The applicant presents this certification to the Secretary of State when submitting the school bus driver permit application (Id.).

A school bus driver operating a school bus at the time of an accident is deemed by the implied consent law to agree to submit to tests at the direction of a law enforcement officer of the driver's breath, blood, or urine to determine the presence of alcohol, or other drugs, in the person's system (625 ILCS 5/6--516).

Anyone driving a bus chartered to transport students to or from interscholastic athletic or interscholastic or school-sponsored activities must have a valid school bus driver permit; this does not apply to any driver employed by a public

that the bus driver permit holder has been called to active duty.<sup>12</sup> New bus drivers and bus drivers who are returning from a lapse in their employment are subject to the requirements contained in Board policy 5:30, *Hiring Process and Criteria* and Board policy 5:285, *Drug and Alcohol Testing for School Bus and Commercial Vehicle Drivers*.

LEGAL REF.: ~~No Child Left Behind Act of 2001, 20 U.S.C. §6319(e).~~  
34 C.F.R. §§200.58 and 200.59.<sup>13</sup>  
105 ILCS 5/10-22.34, 5/10-22.34a, and 5/10-22.34b.  
625 ILCS 5/6-104 and 5/6-106.1.  
23 Ill.Admin.Code §§1.630 and 25.510.

CROSS REF.: 4:110 (Transportation), 4:170 (Safety), 5:30 (Hiring Process and Criteria), 5:35 (Compliance with the Fair Labor Standards Act), 5:285 (Drug and Alcohol Testing for School Bus and Commercial Vehicle Drivers), 6:250 (Community Resource Persons and Volunteers)

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transportation provider when the bus is on a regularly scheduled route for transporting other fare-paying passengers (625 ILCS 5/6-104(d-5)).

<sup>12</sup> This sentence is optional, but the notification is required by 625 ILCS 5/6-106.1(h). *Active duty* is defined in the statute as active duty pursuant to an executive order of the U.S. President, an act of the Congress, or an order of the Governor. Upon notification, the Secretary of State will characterize the permit as inactive until a permit holder renews the permit pursuant to 625 ILCS 5/6-106.1(h).

<sup>13</sup> The statute underlying these regulations (20 U.S.C. §6319) was repealed by the Every Student Succeeds Act, eff. 12-10-15; amendments to the regulations are highly likely within the next year.

## Educational Support Personnel

### Sick Days, Vacation, Holidays, and Leaves <sup>1</sup>

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 <sup>2</sup>

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

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<sup>1</sup> 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 current [*insert name of educational support CBA*]."

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 (P.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 servicemember 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." 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/).

<sup>2</sup> 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/, added by P.A. 99-841, eff. 1-1-17, 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 (biological, adopted, stepchild, or legal ward), 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. <sup>3</sup>

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. The Superintendent and/or designee shall monitor the use of sick leave.

As a condition for paying sick leave after ~~three~~ 3 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) an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, (4) a 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~~ 3 days for personal illness, the District shall pay the expenses incurred by the employee.

The use of paid sick leave for adoption or placement for adoption is limited to 30 days unless a longer leave is provided in an applicable collective bargaining agreement. The Superintendent may require that the employee provide evidence that the formal adoption process is underway. <sup>4</sup>

#### Vacation <sup>5</sup>

Twelve-month employees shall be eligible for paid vacation days according to the following schedule:

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<sup>3</sup> 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. 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)) and see also IMRF General Memorandum #555 at:

[www.imrf.org/en/publications-and-archiv/general-memos/2007-general-memos/general-memo-555](http://www.imrf.org/en/publications-and-archiv/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 ~~if a board wants to comply with the IMRF's requirement that public bodies have a written plan allowing eligible employees to convert their eligible accumulated sick leave to service credit upon their retirement:~~

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 Illinois Municipal Retirement Fund.

**Option 2:** A The local collective bargaining agreement ~~may contains~~ this written plan and the board wants to publicize it. If it does, the board policy can refer to the agreement. Insert the following sentence:

Please refer to the applicable collective bargaining agreement(s) ~~current~~ [insert name of CBA or use a generic reference, e.g., "agreement between the bargaining representative and the School Board"] 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 Illinois Municipal Retirement Fund.

**Option 3:** If a 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 options.~~

If Options 1, 2, or 3 are either or both options 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 Reference.

<sup>4</sup> 105 ILCS 5/24-6.

<sup>5</sup> State law does not require districts to give employees vacations.

| <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. <sup>6</sup>

### Holidays <sup>7</sup>

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 holiday listed below, District employees will not be required to work on:

|                                   |                  |
|-----------------------------------|------------------|
| New Year's Day                    | Labor Day        |
| Martin Luther King Jr.'s Birthday | Columbus Day     |
| Abraham Lincoln's Birthday        | Veteran's Day    |
| Casimir Pulaski's Birthday        | Thanksgiving Day |
| Memorial Day                      | Christmas Day    |
| Independence 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 Leave <sup>8</sup>

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~~ 3 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~~ 5 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.

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<sup>6</sup> Required by 820 ILCS 115/5 and 56 Ill.Admin.Code §300.520 (Earned Vacations).

<sup>7</sup> Holidays are listed in 105 ILCS 5/24-2. For information on the waiver process, see 2:20-E, *Waiver and Modification Request Resource Guide*. Holidays not specified in the statute 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 *Metzl v. Leininger*, 57 F.3d 618 (7<sup>th</sup> 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.

<sup>8</sup> State law does not address personal leave.

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 Illinois Municipal Retirement Fund in accordance with 105 ILCS 5/24-6.3. <sup>9</sup>

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. <sup>10</sup>
2. School Visitation Leave. <sup>11</sup>
3. Leaves for Victims of Domestic or Sexual Violence. <sup>12</sup>
- ~~3.4. Child Bereavement Leave.~~ <sup>13</sup>
- ~~4.5. Leave to serve as an election judge.~~ <sup>14</sup>

LEGAL REF.: 20 ILCS 1805/30.1 et seq.  
 105 ILCS 5/10-20.7b, 5/24-2, and 5/24-6.  
 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)

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<sup>9</sup> 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, *Professional Personnel - Leaves of Absence*.

<sup>10</sup> Military leave is governed by: The School Code (105 ILCS 5/10-20.7b, 5/24-13, and 5/24-13.1); the Military Leave of Absence Act (5 ILCS 325/ added mandatory leave for "other training or duty required by the United States Armed Forces" and to require the public employer to make-up the difference between military pay and regular compensation); Service Member's Employment Tenure Act (330 ILCS 60/4); Public Employee Armed Services Rights Act (5 ILCS 330/4); National Guard Employment Rights (20 ILCS 1805/30.20); and Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §4301).

Granting General Assembly leave to ESPs is optional.

<sup>11</sup> 820 ILCS 147/. See policy 5:250, *Leaves of Absence*, and administrative procedure 5:250-AP, *School Visitation Leave*.

<sup>12</sup> Required by Victims' Economic Security and Safety Act, 820 ILCS 180/, amended by P.A. 99-765, eff. 1-1-17, and 56 Ill.Admin.Code §280. Important information about this leave is discussed in ~~the foot~~notes 19 and 20 of in policy 5:250, *Professional Personnel - Leaves of Absence*.

<sup>13</sup> 820 ILCS 154/, added by P.A. 99-703. Important information about this leave is discussed in ¶n 4 of policy 5:250, *Professional Personnel - Leaves of Absence*.

<sup>14</sup> 10 ILCS 5/13-2.5, amended by P.A. 98-691.