

## School Board

### Administrative Procedure - Access to and Copying of District Public Records

Actor	Action
School Board	<p>Appoints, or designates the Superintendent to appoint, a Freedom of Information Officer to perform the duties of that office as specified in the Freedom of Information Act (FOIA) and is responsible for managing the District's compliance with FOIA.</p> <p>Determines from time-to-time by Board resolution:</p> <ol style="list-style-type: none"> <li>1. Copying fees that are reasonably calculated to reimburse the District for the actual costs of reproducing and certifying the records.</li> <li>2. The amount by which copy fees will be reduced if the person making the request states a specific purpose for the request that is in the public interest (5 ILCS 140/6). A request is in the <i>public interest</i> if its purpose is to access and disseminate information regarding the health, safety and welfare, or the legal rights of the general public, and is not for the principal purpose of personal or commercial benefit. In setting the reduction, the Board may consider the amount of materials requested and the cost of copying them.</li> </ol> <p>Monitors full compliance with FOIA and Board policy 2:250, <i>Access to District Public Records</i>.</p> <p>Budgets sufficient resources to enable full compliance with FOIA.</p> <p>Receives the report from the Superintendent during regular meetings concerning each FOIA request and the status of the District's response. 105 ILCS 5/10-16.</p>
Freedom of Information Officer	<p><u>Manages FOIA compliance</u></p> <p>Manages the District's compliance with FOIA, 5 ILCS 140/, and performs the following duties as specified in FOIA, 5 ILCS 140/3.5:</p> <ol style="list-style-type: none"> <li>1. Receives FOIA requests, ensures that the District responds to requests in a timely fashion, and issues responses under FOIA.</li> <li>2. Develops a list of documents or categories of records that will be immediately disclosed upon request. See 2:250-E2, <i>Immediately Available Public Records</i>.</li> <li>3. Upon receiving a request for a public record, (a) notes the date the District receives the written request; (b) computes the day on which the period for response will expire and makes a notation of that date on the written request; (c) maintains an electronic or paper copy of a written request, including all documents submitted with the request until the request has been complied with or denied; and (d) creates a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.</li> </ol> <p>Identifies other staff members to assist with FOIA compliance and delegates specific responsibilities to them. These individuals may</p>

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	<p>include the information technology specialist and department heads.</p> <p>Informs and/or trains staff members concerning their respective responsibilities regarding FOIA. This includes explaining the requirement that all FOIA requests must be immediately forwarded to the Freedom of Information Officer including those that are received via email.</p> <p><u>Training requirements prior to July 1, 2010</u></p> <p>Successfully completes the training program administered by the Public Access Counselor in the Attorney General's office.</p> <p><u>Training requirements after July 1, 2010</u></p> <p>Successfully completes the annual training program developed by the Public Access Counselor in the Attorney General's office. Each newly appointed Freedom of Information Officer must successfully complete the training program within 30 days after assuming the position.</p> <p><u>Posting and availability requirements</u></p> <p>Prominently displays at each administrative office and school, and posts on the District website, if any, the following: (1) a brief description of the District, and (2) the methods for requesting information and District public records, directory information listing the Freedom of Information officer and where requests for public records should be directed, and any fees. 5 ILCS 140/4. This information must be copied and mailed if requested. <u>Id.</u></p> <p>Maintains and makes available for inspection and copying a reasonably current list of all types or categories of records under the District's control. 5 ILCS 140/5. The following list contains both exempt and non-exempt records:</p> <ul style="list-style-type: none"> <li>Board governance <ul style="list-style-type: none"> <li>Includes: Board meeting calendar and notices, Board meeting agendas and minutes, Board policy</li> </ul> </li> <li>Fiscal and business management <ul style="list-style-type: none"> <li>Includes: levy resolution and certificate of tax levy, audit, line-item budget, grant documents, account statements, accounts payable list, contracts, legal notices, bidding specifications, requests for proposals</li> </ul> </li> <li>Personnel <ul style="list-style-type: none"> <li>Includes: employee contact information, salary schedules, staff handbook, collective bargaining agreements, personnel file material</li> </ul> </li> <li>Students and instruction <ul style="list-style-type: none"> <li>Includes: accountability documents, calendars, student handbooks, learning outcomes, student school records</li> </ul> </li> </ul> <p><u>Copying fees</u></p> <p>Recommends a copying fee schedule to the Board from time-to-time as appropriate that complies with 5 ILCS 140/6, including the following:</p> <ol style="list-style-type: none"> <li>1. The copying fee, except when it is otherwise fixed by statute, must be reasonably calculated to reimburse the District's actual cost for</li> </ol>

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	<p>reproducing and certifying public records and for the use, by any person, of its equipment to copy records. The costs of any search for and review of the records or other personnel costs associated with reproducing the records are not included in the fee calculation.</p> <ol style="list-style-type: none"> <li>2. Statutory fees applicable to copies of public records when furnished in a paper format are not applicable to those records when furnished in an electronic format.</li> <li>3. No fee is charged for the first 50 pages of black and white, letter or legal sized copies furnished to a requester.</li> <li>4. The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page.</li> <li>5. If the District provides copies in color or in a size other than letter or legal, the fee may not be more than its actual cost for reproducing the records.</li> </ol> <p>Manages and collects the copying fees described above.</p> <p><u>Response</u></p> <p>Complies with or denies a request for inspection or copying within 5 business days of receiving a records request, unless the time for response is extended. 5 ILCS 140/3. Makes decisions whether to comply or deny the request according to Board policy 2:250, <i>Access to District Public Records</i>.</p> <p>Redacts any and all exempt portion(s) of requested records containing both exempt and non-exempt material and releases the remaining material. 5 ILCS 140/7. Reviewing past responses to FOIA requests will promote uniform treatment of requests for similar records.</p> <p>Complies with the Personnel Record Review Act concerning a request for a disciplinary report, letter of reprimand, or other disciplinary action. Does not provide any of these documents that is more than 4 years old. Provides the employee with written notice on or before the day any such document is released, unless notice is not required under the Personnel Record Review Act. 5 ILCS 140/7.5(q); 820 ILCS 40/7 and 40/8.</p> <p><u>Extension of time</u></p> <p>Identifies the need to extend the time for a response for any of the reasons stated in 5 ILCS 140/3(e)(i-vii), quoted below:</p> <ol style="list-style-type: none"> <li>(i) the requested records are stored in whole or in part at other locations than the office having charge of the requested records;</li> <li>(ii) the request requires the collection of a substantial number of specified records;</li> <li>(iii) the request is couched in categorical terms and requires an extensive search for the records responsive to it;</li> <li>(iv) the requested records have not been located in the course of routine search and additional efforts are being made to locate them;</li> <li>(v) the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under Section 7 of FOIA or should be revealed only with appropriate deletions;</li> </ol>

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	<p>(vi) the request for records cannot be complied with by the public body within the time limits prescribed by paragraph (c) of Section 3 of FOIA without unduly burdening or interfering with the operations of the public body; or</p> <p>(vii) there is a need for consultation, which shall be conducted with all practicable speed, with another public body or among two or more components of a public body having a substantial interest in the determination or in the subject matter of the request.</p> <p>Performs one of the following actions within 5 business days after receipt of the request:</p> <ol style="list-style-type: none"> <li>1. Notifies the person making the request that the District is extending its time for response for no longer than 5 business days from the original due date, and identifies the reason for the delay and the date on which a response will be made. 5 ILCS 140/3(e) and (f).</li> <li>2. Confers with the person making the request in an attempt to reach an agreement on an extended compliance date. The agreement must be in writing. 5 ILCS 140/3(e).</li> </ol> <p><u>Unduly burdensome requests</u></p> <p>Confers with the person making an unduly burdensome request in an attempt to reduce the request to manageable proportions. A request may be unduly burdensome due, for example, to the request's breadth. Explains to the requester in writing when a request continues to be unduly burdensome specifying the reason why the request is unduly burdensome.</p> <p><u>Requests for commercial purposes</u></p> <p>Handles requests for commercial purposes according to 5 ILCS 140/3.1. <i>Commercial purpose</i> is defined in 5 ILCS 140/2(c-10) as:</p> <p>[T]he use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered to be made for a <i>commercial purpose</i> when the principal purpose of the request is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education.</p> <p>Responds to a request for records to be used for a commercial purpose within 21 working days after receipt. The response must be one of the following: (a) provide an estimate of the time required by the District to provide the records and an estimate of the fees, which the requester may be required to pay in full before copying the requested documents, (b) deny the request pursuant to one or more of the exemptions, (c) notify the requester that the request is unduly burdensome and extend an opportunity to attempt to reduce the request to manageable proportions,</p>

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	<p>or (d) provide the records requested.</p> <p>Complies with a request, unless the records are exempt from disclosure, within a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes.</p> <p><u>Denying a request</u></p> <p>Complies with 5 ILCS 140/9 by:</p> <ol style="list-style-type: none"> <li>1. Providing the requester with a written response containing: (a) the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, (b) the names and titles or positions of each person responsible for the denial, and (c) information about his or her right to review by the Public Access Counselor (include the address and phone number for the Public Access Counselor), and to judicial review under 5 ILCS 140/11.</li> <li>2. Specifying the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority when the denial is based on the grounds that the records are exempt under 5 ILCS 140/7.</li> <li>3. Provides written notice to the requester and the Public Access Counselor, within the time periods provided for responding to a request, of the District's intent to deny the request in whole or in part under Section 7(1)(c) (personal information) or Section 7(1)(f) (preliminary drafts, notes, recommendations, memoranda, and other records in which opinions are expressed, or policies or actions are formulated). Includes in this notice: (a) a copy of the request, (b) the District's proposed response, and (c) a detailed summary of the District's basis for asserting the exemption. 5 ILCS 140/9(b).</li> </ol> <p>Retains copies of all notices of denial in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested. 5 ILCS 140/9.1.</p> <p><u>Consults with the Board Attorney</u></p> <p>Consults with the Board Attorney:</p> <ol style="list-style-type: none"> <li>1. As necessary for legal advice concerning compliance with FOIA and responses to specific requests.</li> <li>2. For legal advice when communicating with or upon receiving communications from the office of the Illinois Attorney General or Public Access Counselor.</li> </ol>

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

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**Text from P.A. 96-542 containing some of the more utilized FOIA exemptions**

Section 7. Exemptions (5 ILCS 140/7)

- (1) When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining

information available for inspection and copying. Subject to this requirement, the following shall be exempt from inspection and copying:

- (a) Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.
- (b) Private information, unless disclosure is required by another provision of this Act, a State or federal law or a court order.
- (c) Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. "Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.
- (d) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:
  - (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request;
  - (ii) interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;
  - (iii) create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;
  - (iv) unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request;
  - (v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request;
  - (vi) endanger the life or physical safety of law enforcement personnel or any other person; or
  - (vii) obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

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- (f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.
- (g) Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.
  - (i) All trade secrets and commercial or financial information obtained by a public body, including a public pension fund, from a private equity fund or a privately held company within the investment portfolio of a private equity fund as a result of either investing or evaluating a potential investment of public funds in a private equity fund. The exemption contained in this item does not apply to the aggregate financial performance information of a private equity fund, nor to the identity of the fund's managers or general partners. The exemption contained in this item does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless the disclosure of the identity of a privately held company may cause competitive harm.

Nothing contained in this paragraph (g) shall be construed to prevent a person or business from consenting to disclosure.

- (h) Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.
- (i) Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this paragraph (i) does not extend to requests made by news media as defined in Section 2 of this Act when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public.
- (j) The following information pertaining to educational matters:
  - (i) test questions, scoring keys and other examination data used to administer an academic examination;
  - (ii) information received by a primary or secondary school, college, or university under its procedures for the evaluation of faculty members by their academic peers;
  - (iii) information concerning a school or university's adjudication of student disciplinary cases, but only to the extent that disclosure would unavoidably reveal the identity of the student; and
  - (iv) course materials or research materials used by faculty members.
- (k) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, including but not limited to power generating and distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security.
- (l) Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act.
- (m) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.
- (n) Records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.
- (o) Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.
- (p) Records relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying.
- (q) Test questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment.
- (r) The records, documents and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act, records, documents and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the Illinois Supreme Court. The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated.
- (s) Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self insurance pool or jointly self administered health and accident

cooperative or pool. Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.

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- (v) Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.
- (x) Maps and other records regarding the location or security of generation, transmission, distribution, storage, gathering, treatment, or switching facilities owned by a utility, by a power generator, or by the Illinois Power Agency.
- (y) Information contained in or related to proposals, bids, or negotiations related to electric power procurement under Section 1.75 of the Illinois Power Agency Act and Section 16.111.5 of the Public Utilities Act that is determined to be confidential and proprietary by the Illinois Power Agency or by the Illinois Commerce Commission.

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#### Section 7.5. Statutory Exemptions (5 ILCS 140/7.5)

To the extent provided for by the statutes referenced below, the following shall be exempt from inspection and copying:

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- (b) Library circulation and order records identifying library users with specific materials under the Library Records Confidentiality Act.
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- (h) Information the disclosure of which is exempted under the State Officials and Employees Ethics Act, and records of any lawfully created State or local inspector general's office that would be exempt if created or obtained by an Executive Inspector General's office under that Act.
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- (g) Information prohibited from being disclosed by the Personnel Records Review Act.
  - (r) Information prohibited from being disclosed by the Illinois School Student Records Act.

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**School Board**

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

Actor	Action
<p>All Staff and School Board Members</p>	<p>No district record, as defined in the Illinois Local Records Act, shall be destroyed except as provided herein.</p> <p><i>“Public record means any book, paper, map, photograph, digitized electronic material, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, or any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein.” 50 ILCS 205/3.</i></p> <p>Do not destroy any District record, no matter its form, if it is subject to a litigation hold.</p> <p>In federal lawsuits there is an automatic discovery of virtually all types of electronically created or stored data that might be relevant. Attorneys will generally notify their clients at the beginning of a legal proceeding to not destroy any electronic records that might be relevant. The receipt of a <i>litigation hold</i> or preservation letter from the Board’s attorney requires all potentially relevant electronic information to be identified, located, and preserved. This includes all e-mail, e-documents, the tapes and servers of discarded systems, and backup data stored elsewhere.</p>
<p>Superintendent</p>	<p>Assign the following activities to the Records Custodian and Head of Information Technology (IT):</p> <ol style="list-style-type: none"> <li><b>1. Develop and maintain a protocol for preserving and categorizing District records;</b></li> <li><b>2. Develop and maintain a record retention and destruction schedule; and</b></li> <li><b>3. Develop protocols to implement a litigation hold.</b></li> </ol>
<p>Records Custodian and Head of IT</p>	<ol style="list-style-type: none"> <li><b>1. Develop and maintain a protocol for preserving and categorizing District records.</b></li> </ol> <p>Develop and maintain a list of all District records organized in categories and sub-categories, e.g., records relating to business,</p>

Actor	Action
	<p>students, personnel, board meetings, etc. Align this list with the list District records required by the Freedom of Information Act. 5 ILCS 140/5.</p> <p>Paper records may be easier to locate than electronic records. Electronic records will potentially exist in all of the available servers, tapes, hard drives, computers, and similar types of electronic devices (e.g., laptops, Blackberrys, cell phones, Palm Pilots, voicemail, etc.).</p> <p>Provide for keeping only “records” and destroying non-records. Avoid filing non-record material with records. Determine what is a non-record, e.g., identical copies of documents maintained in the same file; extra copies of printed or processed materials (official copies of which are retained by the office); blank forms; and personal communications.</p> <p>The goal is to control excessive accumulation of material. Non-record material may be destroyed at any time. 50 ILCS 205/9.</p> <p>Absent a litigation hold, email must be retained only when it contains: (1) evidence of the District’s organization, function, policies, procedures, or activities, or (2) informational data appropriate for preservation. Email that is conversational, personal, or contains brainstorming may generally be deleted.</p> <p>A consistent email retention policy for use across the District ensures that the necessary emails are being retained and emails that are not required to be preserved are purged on a regular basis.</p> <p>Identify and index the location of each category and sub-category of District records. Organize electronic record and data storage.</p> <p>The goal is to ensure that all documents, including electronically created ones, are retained for the required timeframes and are easy to retrieve and produce if necessary.</p> <p><b>2. Develop and maintain a record retention schedule for submission to the Superintendent and eventually to the Local Records Commission.</b></p> <p>Prepare a list of public records that: (1) are not needed for current business, and (2) do not have sufficient administrative, legal, or fiscal value to warrant their further preservation. Stated differently, identify records that have no administrative, legal, or fiscal value.</p> <p>Records that have no administrative, legal, or fiscal value may be destroyed according to provisions in the Local Records Act. 50 ILCS 205/1 et seq.</p> <p>Prepare a schedule for record destruction by identifying the length of</p>

Actor	Action
	<p>time a record category or series warrants retention after it has been received or produced by the District.</p> <p>The ultimate goal is to obtain permission to destroy unnecessary public records. The Local Records Commission must approve the destruction of any public record. 50 ILCS 205/7, 44 Ill.Admin.Code Part 4000 (Local Records Commission for agencies comprising counties of less than 3,000,000 inhabitants); 44 Ill.Admin.Code Part 4500 (Local Records Commission of Cook County). See the Archives Department on the Secretary of State's website.</p> <p>A list can be used when applying for authority to destroy records. A schedule can be used when applying for continuing authority to destroy records after specified periods of time or the occurrence of specified events.</p> <p><u>The School Code</u> and other statutes (e.g., statutes of limitations) contain mandatory retention timelines. The Board's attorney should be consulted.</p> <p>The e-discovery rules provide a safe harbor for parties during a lawsuit that cannot provide information because it was destroyed as a result of routine practices.</p> <p>Determine whether each sub-category of documents should be reproduced by photography, microphotographic processes, or digitized electronic format.</p> <p>If a record is reproduced in accordance with standards published by the Local Records Commission, the original may be destroyed. The reproduction's destruction must be according to the approved record retention schedule.</p> <p><b>3. Develop protocols to implement a litigation hold.</b></p> <p>Understand what a <i>litigation hold</i> is.</p> <p>A litigation hold refers to the notification made by the Board's attorney telling the District to preserve all information that may be relevant to current or anticipated litigation. While it may occur anytime in the legal process, it will usually occur during discovery, the pretrial phase of a lawsuit designed to compel the exchange of information between parties. A litigation hold triggers the need to immediately suspend destruction of electronic and other records relevant to the current or potential claim.</p> <p>Specify how to implement a litigation hold, i.e.:</p> <ul style="list-style-type: none"> <li>• Who can trigger a litigation hold?</li> <li>• How is a litigation hold communicated?</li> <li>• Who should gather the records?</li> </ul>

Actor	Action
	<ul style="list-style-type: none"> <li>• What records are subject to a litigation hold and who determines this?</li> <li>• In what format should records be gathered?</li> <li>• Where should records be gathered?</li> </ul> <p>Identify how to implement a litigation hold for all IT systems, including backup tapes, to ensure they are not deleted or overwritten as part of the normal tape rotation process.</p> <p>Prepare a map of potentially relevant data and otherwise assist the Board's attorneys in locating all potentially relevant information.</p>
Superintendent	<p>Submit new or revised record retention and destruction lists and schedules to the Local Records Commission for approval.</p> <p>Disseminate the record retention and destruction schedule, along with instructions, to all affected staff members and Board members.</p> <p>Immediately inform the Records Custodian and Head of IT whenever a record must be preserved because: (1) it may be relevant to present or future litigation, or (2) the Board attorney has notified the District to preserve a record, including electronic information (<i>litigation hold</i>).</p>

LEGAL REF.: Federal Rules of Civil Procedure, Rules 16 and 26.  
5 ILCS 140/1 et seq., Freedom of Information Act.  
50 ILCS 205/1 et seq., Local Records Act.  
105 ILCS 10/1 et seq., IL School Student Records Act.  
820 ILCS 40/1 et seq., IL Personnel Record Review Act.

## School Board

### Exhibit - Written Request for District Public Records

All requests to inspect and/or to obtain a copy of a District record must be made in writing. This form is provided for convenience – its use is not required. Please submit all requests to the District’s Freedom of Information Officer. Copying fees, if any, must be paid before copies will be provided. The Freedom of Information Officer can give you an estimate of the copying fees, if any.

Name of individual(s) requesting District records	Email address
Address	Telephone number
City	Date of request
State	Zip

Please check if this request of records is being made for a commercial purpose. Section 2 of the Freedom of Information Act states: “*Commercial purpose* means the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered to be made for a "commercial purpose" when the principal purpose of the request is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education. Section 3.1 states: “It is a violation of this Act for a person to knowingly obtain a public record for a commercial purpose without disclosing that it is for a commercial purpose, if requested to do so by the public body.”

Please check if a fee waiver or reduction is being requested. Section 6 of the Freedom of Information Act states: “Documents shall be furnished without charge or at a reduced charge, as determined by the public body, if the person requesting the documents states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. Waiver or reduction of the fee is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public and is not for the principal purpose of personal or commercial benefit.”

Please indicate your reason for requesting a fee waiver: \_\_\_\_\_

<b>Record description (Please be specific)</b>	<i>Check if you are requesting:</i>		
	Electronic Copy	Inspection	Copy

## School Board

### Exhibit - Immediately Available District Public Records <sup>1</sup>

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

The following public records are designated by the District's Freedom of Information Officer as being immediately available on the District's website and may be inspected, downloaded, printed, and/or copied. Any asterisked public record is immediately available for inspection or copying upon request at the District's administrative office during its regular business hours, provided any applicable fees are paid. Records without an asterisk will be provided within 5 business days as allowed by the Freedom of Information Act, provided any applicable fees are paid.

Web-posted records and information	Web-posting statutory reference and special instructions
*Annual schedule of regular meetings for the current school year that are posted at the beginning of each calendar or fiscal year *Public notice of each Board meeting that is posted at least 48 hours before the meeting and remains posted until the meeting is concluded *Agenda of each regular meeting that is posted at least 48 hours before a meeting and remains posted until the meeting is concluded	5 ILCS 120/2.02.
*Official open meeting minutes that are posted within 10 days of the Board's approval and remain posted for at least 60 days	5 ILCS 120/2.06(b), amended by P.A. 96-1473 (eff. 1-1-2011).
*Description of the District and its records including: Summary of the District's purpose Functional subdivisions Total amount of operating budget Number and location of all of its separate offices Approximate number of full and part-time employees (see also, salary and benefits information report for the Superintendent, administrators, and teachers, District's	5 ILCS 140/4, amended by P.A.96-542. The District must prominently post the list at each administrative office and make it available for inspection and copying.

<sup>1</sup> Several laws mandate school districts to post information on their websites. This exhibit lists the required items for web-posting. Many attorneys agree that using the required items for web-posting is an easy and practical way for the Freedom of Information Officer to develop a list of public records that the school board will make *immediately available* as required by 5 ILCS 140/3.5(a), added by P.A. 96-542. Some attorneys disagree and prefer that the district also retain copies of its web-posted public records for immediate inspection and/or copying upon request at the administrative office. The second and third introductory sentences manage this issue by indicating that copies of certain identified public records will also be immediately available in the district's administrative office. This sample exhibit suggests identifying public records that are easily reproduced and stored, i.e., not voluminous. The Freedom of Information Officer should customize this list as appropriate to the district's circumstances. Consult the board attorney for ideas to manage the district's specific FOIA compliance issues.

The "Intermediate Service Center" is given as an alternative to "Regional Superintendent" herein because 105 ILCS 5/2-3.62, amended by P.A. 96-893, abolished the Regional Office of Education for Suburban Cook County and transferred its powers and duties to Intermediate Service Centers.

<b>Web-posted records and information</b>	<b>Web-posting statutory reference and special instructions</b>
<p>Statement of Affairs)  Identification and membership of the Board  Brief description of the methods whereby the public may request information and public records  Directory for the Freedom of Information Officer  Address where requests for public records should be directed  Fees</p>	
<p>Annual budget for current fiscal year, itemized by receipts and expenditures</p>	<p>105 ILCS 5/17-1.2. This may be accomplished using ISBE's School District Budget Form 50-36 or the summary pages from it. <sup>2</sup>  The District must notify the parents or guardians of its students that the budget has been web-posted and what the website's address is.</p>
<p>*District's current report card (ISBE School Report Card Data Form 86-43)</p>	<p>105 ILCS 5/10-17a.</p>
<p>Administrator Salary Compensation Report (itemized salary compensation report for every employee holding an administrative certificate and working in that capacity, including the Superintendent).  For each District administrator:</p> <ul style="list-style-type: none"> <li>• Base salary</li> <li>• Bonuses</li> <li>• Pension contributions</li> <li>• Retirement increases</li> <li>• Cost of health insurance</li> <li>• Cost of life insurance</li> <li>• Paid sick and vacation day payouts</li> <li>• Annuities</li> <li>• Other forms of compensation or income paid on behalf of the employee; e.g., travel and business expense reimbursements, non-base compensation such as use of a District vehicle, wellness incentives, gym memberships, etc.</li> </ul>	<p>105 ILCS 5/10-20.50, added by P.A. 96-434 and renumbered by P.A. 96-1000.  The Report must also be presented at a regular Board meeting and provided to the Regional Superintendent or a Suburban Cook County Intermediate Service Center, whichever is appropriate, on or before October 1 of each year.</p>
<p>Current contracts with an exclusive bargaining</p>	<p>105 ILCS 5/10-20.46, added by P.A. 96-</p>

<sup>2</sup> For school officials that are concerned that some of their district's constituents may not have the proper software to access these documents, ISBE provides links to free *viewer* or *reader* products that support the ISBE School District Budget Form (50-36). These products can be downloaded and used to access the budget as posted on the district's website. See [www.isbe.net/sfms/budget/freeviewer.htm](http://www.isbe.net/sfms/budget/freeviewer.htm).

<b>Web-posted records and information</b>	<b>Web-posting statutory reference and special instructions</b>
representative(s)	434.
A listing of all contracts over \$25,000 for the current fiscal year The report made to ISBE on the total number and value of all such contracts broken down by category of awardee.	105 ILCS 5/10-20.44. After the initial web-posting, contracts should be added to the list as they are awarded by the Board.
A description of activities to address intergroup conflict (an optional program authorized by Sec. 27-23.6)	105 ILCS 5/27-23.6(c).

**School Board**

**Exhibit - Inspection Report for District Records**

*Superintendent or designee completes at time of inspection.*

<hr/>			<hr/>
Name of Individual(s) Requesting District Records			Organization
<hr/>			<hr/>
Address			Telephone Number
<hr/>			<hr/>
City	State	Zip	

*To be completed by the staff member present at the requested record inspection or who provided requested copies.*

- The individual(s) listed above has completed/or picked up requested copies at the District's main office.
- Amount of copy fees paid \$\_\_\_\_\_.
- Copies were mailed to the above listed address.

<hr/>	<hr/>
Staff Member Present at Inspection or Who Provided Copies	Date of Inspection and/or Copies Provided or Mailed

## School Board

### Uniform Grievance Procedure <sup>1</sup>

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

1. Title II of the Americans with Disabilities Act <sup>2</sup>
2. Title IX of the Education Amendments of 1972
3. Section 504 of the Rehabilitation Act of 1973
4. Individuals With Disabilities Education Act, 20 U.S.C. §1400 *et seq.*
5. Title VI of the Civil Rights Act, 42 U.S.C. §2000d *et seq.*
6. Equal Employment Opportunities Act (Title VII of the Civil Rights Act), 42 U.S.C. §2000e *et seq.*
7. Sexual harassment (Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972)
8. Misuse of funds received for services to improve educational opportunities for educationally disadvantaged or deprived children <sup>3</sup>
9. Curriculum, instructional materials, and/or programs
10. Victims' Economic Security and Safety Act, 820 ILCS 180
11. Illinois Equal Pay Act of 2003, 820 ILCS 112
12. Provision of services to homeless students
13. Illinois Whistleblower Act, 740 ILCS 174/1 *et seq.* <sup>4</sup>
14. Misuse of genetic information (Illinois Genetic Information Privacy Act (GIPA), 410 ILCS 513/ and Titles I and II of the Genetic Information Nondiscrimination Act (GINA), 42 U.S.C. §2000ff *et seq.*) <sup>5</sup>

<sup>2</sup> The Americans with Disabilities Act Amendments Act (ADAAA), Pub. L. 110-325, makes significant changes to the Americans with Disabilities Act's definition of *disability* by broadening the scope of coverage. ADAAA also overturned a series of U.S. Supreme Court decisions that interpreted the Americans with Disabilities Act of 1990 in a way that made it difficult to prove that impairments were a *disability*. On June 17, 2009, the Equal Employment Opportunity Commission (EEOC) voted to approve a proposed Notice of Proposed Rulemaking (NPRM) to conform its current ADA regulations to the ADAAA. The latest information about the NPRM to the ADA regulations is available at: [www.eeoc.gov/ada/amendments\\_notice.html](http://www.eeoc.gov/ada/amendments_notice.html).

The EEOC has stated that it may immediately begin using the positions set forth in its proposed regulations for its litigation and enforcement proceedings because it views ADAAA as restorative to ADA. Boards should consult with their attorneys regarding how the ADAAA and its implementing regulations impact their districts.

<sup>3</sup> Parents/guardians of educationally disadvantaged children may sue a district for misuse of funds allocated by State law for the benefit of such children. *Noyola v. Board of Education*, 688 N.E.2d 81 (1997), (affirming the appellate court's conclusion in *Noyola v. Board of Education*, 671 N.E.2d 802 (Ill.App.1, 1996) that parents/guardians may pursue a claim to enforce the requirements of *The School Code* but holding that the proper action for enforcement is by means of mandamus not an implied right of action).

<sup>4</sup> The Illinois Whistleblower Act, 740 ILCS 174/, as amended by P.A. 95-128, includes school districts in the definition of employer. It protects employees from employer retaliation for disclosing information to a government or law enforcement agency. Section 15 also contains language prohibiting employers from retaliating against employees who disclose information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding where the employee has reasonable cause to believe that the information reveals a violation of a State or federal law, rule or regulation. The Public Act also amends the Illinois Whistleblower Reward and Protection Act (740 ILCS 175/). Its definition of "State" includes school districts. A strict interpretation of this language appears to allow school boards to collect civil penalties and costs against someone making a false claim. Before disciplining any employee, Boards should thoroughly investigate the ramifications of this Public Act in consultation with their attorney and liability insurance carriers.

The Complaint Manager will attempt to resolve complaints without resorting to this grievance procedure and, if a complaint is filed, to address the complaint promptly and equitably. The right of a person to prompt and equitable resolution of a complaint filed hereunder shall not be impaired by the person's pursuit of other remedies. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies and use of this grievance procedure does not extend any filing deadline related to the pursuit of other remedies. All deadlines under this procedure may be extended by the Complaint Manager as he or she deems appropriate. As used in this policy, "school business days" means days on which the District's main office is open.

### Filing a Complaint

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

### Investigation

The Complaint Manager will investigate the complaint or appoint a qualified person to undertake the investigation on his or her behalf. <sup>6</sup> If the Complainant is a student, the Complaint Manager will notify his or her parent(s)/guardian(s) that they may attend any investigatory meetings in which their child is involved. The complaint and identity of the Complainant will not be disclosed except: (1) as required by law, this policy, or (2) as necessary to fully investigate the complaint, or (3) as authorized by the Complainant.

The identity of any student witnesses will not be disclosed except: (1) as required by law or any collective bargaining agreement, or (2) as necessary to fully investigate the complaint, or (3) as

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<sup>5</sup> The Genetic Information Nondiscrimination Act (GINA) is a federal law. Title I, eff. 5-2-08, addresses the use of genetic information pertaining to health insurance. Title II, eff. 11-21-09, protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. GINA covers employers with 15 or more employees.

GINA broadly defines genetic information to include information about an individual's genetic tests, their family members, and, among other things, the manifestation of a disease or disorder in the individual or family members. Information about an individual's or family member's age or gender is excluded from genetic information. Its remedies mirror those available under a Title VII of the Civil Rights Act claim: back pay, reinstatement, attorneys' fees and compensatory and punitive damages. Retaliation against an individual who brings a claim under GINA is also prohibited. Federal regulations have been proposed and are available at: [www.eeoc.gov/policy/docs/qanda\\_geneticinfo.html](http://www.eeoc.gov/policy/docs/qanda_geneticinfo.html).

The Ill. Genetic Information Protection Act (GIPA), 410 ILCS 513/, as amended by P.A. 95-927, also prohibits employers from making employment decisions on the basis of any employee's genetic testing information. P.A. 95-927 amended GIPA to include the federal GINA's definition of genetic information and created more stringent obligations on Ill. employers. While the federal GINA exempts small employers (those with less than 15 employees), Illinois' GIPA covers all employers, even those with one employee. P.A. 95-297 also increased GIPA's penalties for negligent and intentional mishandling of genetic information. Note that Title II of GINA does not preempt GIPA's greater protections to Illinois employees.

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

<sup>6</sup> The Ill. sex equity regulations require districts to have "specific timelines for completion of each step and rendering of a written decision, and shall provide for final appeal of grievance decisions made at the system level to the system's governing board" (23 Ill.Admin.Code §200.40). To avoid arguments over these timelines, this sample policy provides that the failure to strictly follow the timelines does not prejudice any party. The grievance procedure is worthless if complaints are not thoroughly and promptly investigated.

## School Board

### Uniform Grievance Procedure 1

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

1. Title II of the Americans with Disabilities Act <sup>2</sup>
2. Title IX of the Education Amendments of 1972
3. Section 504 of the Rehabilitation Act of 1973
4. Title VI of the Civil Rights Act, 42 U.S.C. §2000d *et seq.*
5. Equal Employment Opportunities Act (Title VII of the Civil Rights Act), 42 U.S.C. §2000e *et seq.*
6. Sexual harassment (Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972)
7. Bullying, 105 ILCS 5/27-23.7 <sup>3</sup>
8. Misuse of funds received for services to improve educational opportunities for educationally disadvantaged or deprived children <sup>4</sup>

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<sup>1</sup> State or federal law requires this subject matter be covered by policy. 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.

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

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

Attorneys disagree whether the Individuals with Disabilities Education Act (IDEA) should be included in the list of statutes that may serve as the basis of a grievance. Many believe that IDEA provides the exclusive remedy; others believe that including IDEA allows parents an opportunity to get their position before the board. Unique and specific complaint resolution mechanisms are expressly provided under IDEA, Article 14 of The School Code, and their respective implementing regulations. These mechanisms follow: (1) IDEA at 20 U.S.C. §1415 (procedural safeguards-mediation and due process); (2) IDEA regulations at 34 C.F.R. §§300.151-300.153 (state complaints), 300.506 (mediation), and 300.507 *et seq.* (due process); (3) School Code at §§14/8.02a (mediation and due process) and 14/8.02b (expedited due process); and (4) special education regulations at 23 Ill.Admin.Code §§226.560 (State complaints), 226.570 (mediation), and Subpart G (due process). A board that would like to include IDEA should consult the board attorney.

<sup>2</sup> The Americans with Disabilities Act Amendments Act (ADAAA), Pub. L. 110-325, made significant changes to the Americans with Disabilities Act's definition of disability by broadening the scope of coverage. ADAAA also overturned a series of U.S. Supreme Court decisions that interpreted the Americans with Disabilities Act of 1990 in a way that made it difficult to prove that impairments were a disability. EEOC's regulations, 29 C.F.R. Part 1603, can be found at:

[www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm)

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

<sup>3</sup> All districts must have a policy on bullying (105 ILCS 5/27-23.7, amended by P.A. 96-952). See policy 7:180, *Preventing Bullying, Intimidation, and Harassment*. The inclusion of *bullying* in the list of topics that may serve as the basis of a grievance furthers the obligation to communicate this policy to students and their parents/guardians.

<sup>4</sup> Parents/guardians of educationally disadvantaged children may sue a district for misuse of funds allocated by State law for the benefit of such children. *Noyola v. Board of Education*, 688 N.E.2d 81 (1997), (affirming the appellate court's conclusion in *Noyola v. Board of Education*, 671 N.E.2d 802 (Ill.App.1, 1996) that parents/guardians may pursue a claim to enforce the requirements of The School Code but holding that the proper action for enforcement is by means of mandamus not an implied right of action).

9. Curriculum, instructional materials, and/or programs
10. Victims' Economic Security and Safety Act, 820 ILCS 180
11. Illinois Equal Pay Act of 2003, 820 ILCS 112
12. Provision of services to homeless students
13. Illinois Whistleblower Act, 740 ILCS 174/. <sup>5</sup>
14. Misuse of genetic information (Illinois Genetic Information Privacy Act (GIPA), 410 ILCS 513/ and Titles I and II of the Genetic Information Nondiscrimination Act (GINA), 42 U.S.C. §2000ff et seq.) <sup>6</sup>
15. Employee Credit Privacy Act, 820 ILCS 70/. <sup>7</sup>

The Complaint Manager will attempt to resolve complaints without resorting to this grievance procedure and, if a complaint is filed, to address the complaint promptly and equitably. The right of a person to prompt and equitable resolution of a complaint filed hereunder shall not be impaired by the person's pursuit of other remedies. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies and use of this grievance procedure does not extend any filing deadline related to the pursuit of other remedies. All deadlines under this procedure may be extended by the Complaint

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<sup>5</sup> The Illinois Whistleblower Act, 740 ILCS 174/, includes school districts in the definition of employer. It protects employees from employer retaliation for disclosing information to a government or law enforcement agency. Section 15 also contains language prohibiting employers from retaliating against employees who disclose information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding where the employee has reasonable cause to believe that the information reveals a violation of a State or federal law, rule or regulation. The Public Act also amends the Illinois Whistleblower Reward and Protection Act (740 ILCS 175/). Its definition of "State" includes school districts. A strict interpretation of this language appears to allow school boards to collect civil penalties and costs against someone making a false claim. Before disciplining any employee, Boards should thoroughly investigate the ramifications of this Public Act in consultation with their attorney and liability insurance carriers.

<sup>6</sup> The Genetic Information Nondiscrimination Act (GINA) is a federal law. Title I, eff. 5-2-08, addresses the use of genetic information pertaining to health insurance. Title II, eff. 11-21-09, protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. GINA covers employers with 15 or more employees.

GINA broadly defines genetic information to include information about an individual's genetic tests, their family members, and, among other things, the manifestation of a disease or disorder in the individual or family members. Information about an individual's or family member's age or gender is excluded from genetic information. Its remedies mirror those available under a Title VII of the Civil Rights Act claim: back pay, reinstatement, attorneys' fees and compensatory and punitive damages. Retaliation against an individual who brings a claim under GINA is also prohibited. Federal regulations have been proposed and are available at: [www.eeoc.gov/policy/docs/qanda\\_geneticinfo.html](http://www.eeoc.gov/policy/docs/qanda_geneticinfo.html). An FAQ titled, "FAQs on the Genetic Information Nondiscrimination Act" is available at: [www.dol.gov/ebsa/faqs/faq-GINA.html](http://www.dol.gov/ebsa/faqs/faq-GINA.html).

The Ill. Genetic Information Protection Act (GIPA), 410 ILCS 513/, as amended by P.A. 95-927, also prohibits employers from making employment decisions on the basis of any employee's genetic testing information. P.A. 95-927 amended GIPA to include the federal GINA's definition of genetic information and created more stringent obligations on Ill. employers. While the federal GINA exempts small employers (those with less than 15 employees), Illinois' GIPA covers all employers, even those with one employee. P.A. 95-297 also increased GIPA's penalties for negligent and intentional mishandling of genetic information. Note that Title II of GINA does not preempt GIPA's greater protections to Illinois employees.

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

<sup>7</sup> 820 ILCS 70/, added by P.A. 96-1426. Unless a satisfactory credit history is an *established bona fide occupational requirement* of a particular position, an employer may not: (1) refuse to hire, discharge, or otherwise discriminate against an individual with respect to employment because of the individual's credit history or credit report, (2) inquire about an applicant's or employee's credit history, or (3) order or obtain an applicant's or employee's credit report from a consumer reporting agency. The Act identifies circumstances that permit a satisfactory credit history to be a job requirement, such as, when the position's duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more. A person who is injured by a violation of this Act may bring a civil action to obtain injunctive relief and/or damages (820 ILCS 70/25, added by P.A. 96-1426). The court must award costs and reasonable attorney's fees to a prevailing plaintiff.

Manager as he or she deems appropriate. As used in this policy, "school business days" means days on which the District's main office is open.

#### Filing a Complaint

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

#### Investigation

The Complaint Manager will investigate the complaint or appoint a qualified person to undertake the investigation on his or her behalf. <sup>8</sup> If the Complainant is a student under 18 years of age, the Complaint Manager will notify his or her parent(s)/guardian(s) that they may attend any investigatory meetings in which their child is involved. The complaint and identity of the Complainant will not be disclosed except: (1) as required by law, this policy, or (2) as necessary to fully investigate the complaint, or (3) as authorized by the Complainant.

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

Within 30 school business days of the date the complaint was filed, the Complaint Manager shall file a written report of his or her findings with the Superintendent. The Complaint Manager may request an extension of time. If a complaint of sexual harassment contains allegations involving the Superintendent, the written report shall be filed with the Board, which will make a decision in accordance with the following section of this policy. The Superintendent will keep the Board informed of all complaints.

#### Decision and Appeal

Within 5 school business days after receiving the Complaint Manager's report, the Superintendent shall mail his or her written decision to the Complainant by U.S. mail, first class, as well as to the Complaint Manager.

Within 10 school business days after receiving the Superintendent's decision, the Complainant may appeal the decision to the Board by making a written request to the Complaint Manager. The Complaint Manager shall promptly forward all materials relative to the complaint and appeal to the Board. Within 30 school business days, the Board shall affirm, reverse, or amend the Superintendent's decision or direct the Superintendent to gather additional information. Within 5 school business days of the Board's decision, the Superintendent shall inform the Complainant of the Board's action. <sup>9</sup>

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<sup>8</sup> The Ill. sex equity regulations require districts to have "specific timelines for completion of each step and rendering of a written decision, and shall provide for final appeal of grievance decisions made at the system level to the system's governing board" (23 Ill.Admin.Code §200.40). To avoid arguments over these timelines, this sample policy provides that the failure to strictly follow the timelines does not prejudice any party. The grievance procedure is worthless if complaints are not thoroughly and promptly investigated.

<sup>9</sup> Note: ISBE is authorized "[t]o hear and determine all controversies arising under the school laws of the State, coming to it by appeal from a regional superintendent of schools," (105 ILCS 5/2-3.8, 5/3-10).

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

**Appointing Nondiscrimination Coordinator and Complaint Managers 10**

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

The Superintendent shall appoint at least one Complaint Manager to administer the complaint process in this policy. If possible, the Superintendent will appoint 2 Complaint Managers, one of each gender. The District's Nondiscrimination Coordinator may be appointed as one of the Complaint Managers.

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

**Nondiscrimination Coordinator:**

Dr. Karen Sirgany

Name

311 S. Water Street

Address

Warren, IL 61087

815/745-2653

Telephone

**Complaint Managers:**

Mrs. DeeDee Calow

Name

311 S. Water Street

Address

Warren, IL 61087

815/745-2653

Telephone

Mr. Bill Kussner

Name

311 S. Water Street

Address

Warren, IL 61087

815/745-2641

Telephone

LEGAL REF.: Age Discrimination in Employment Act, 29 U.S.C. §621 et seq.  
Americans With Disabilities Act, 42 U.S.C. §12101 et seq.  
Equal Employment Opportunities Act (Title VII of the Civil Rights Act), 42 U.S.C. §2000e et seq.  
Equal Pay Act, 29 U.S.C. §206(d).  
Genetic Information Nondiscrimination Act, 42 U.S.C. §2000ff et seq.  
Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.  
McKinney Homeless Assistance Act, 42 U.S.C. §11431 et seq.  
Rehabilitation Act of 1973, 29 U.S.C. §791 et seq.  
Title VI of the Civil Rights Act, 42 U.S.C. §2000d et seq.  
Title IX of the Education Amendments, 20 U.S.C. §1681 et seq.

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<sup>10</sup> Title IX regulations require districts to identify the name, address, and telephone number of the person who is responsible for coordinating the district's compliance efforts. A policy should not be adopted with a person's name in it; rather, the identifying information can be added and amended as necessary.

105 ILCS 5/2-3.8, 5/3-10, 5/10-20.7a, 5/10-22.5, 5/22-19, 5/24-4, 5/27-1, 5/27-23.7, and 45/1-15.

Illinois Genetic Information Privacy Act, 410 ILCS 513/.

Illinois Whistleblower Act, 740 ILCS 174/.

Illinois Human Rights Act, 775 ILCS 5/.

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

Equal Pay Act of 2003, 820 ILCS 112.

Employee Credit Privacy Act, 820 ILCS 70/.

23 Ill.Admin.Code §§1.240 and 200-40.

CROSS REF.: 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and Criteria), 6:140 (Education of Homeless Children), 6:170 (Title I Programs), 6:260 (Complaints About Curriculum, Instructional Materials, and Programs), 7:10 (Equal Educational Opportunities), 7:20 (Harassment of Students Prohibited), 7:180 (Preventing Bullying, Intimidation, and Harassment), 8:70 (Accommodating Individuals with Disabilities), 8:110 (Public Suggestions and Complaints)

## School Board

### Administrative Procedure - Guidelines for Investigating Complaints and Allegations of Misconduct

As a general rule, all complaints should be investigated, even when the complainant requests that nothing be done or is anonymous.

#### **Step 1: Before the Investigation**

- A. School employees must immediately report a suspicion of child abuse or neglect to the Illinois Department of Child and Family Services in compliance with policy 5:90, *Abused and Neglected Child Reporting*. Reporting is required before proceeding further with the investigation.
- B. According to policy 2:260, *Uniform Grievance Procedure*, the Superintendent appoints at least two District Complaint Managers, one of each gender. A Complaint Manager investigates: (1) complaints filed under policy 2:260, *Uniform Grievance Procedure*, and (2) allegations of employee misconduct.
- C. The appropriate Building Principal or designee investigates all allegations of student misconduct.
- D. Anyone with a complaint or making an allegation of misconduct should be referred to a Complaint Manager of their choosing or a Building Principal without delay.
- E. A Complaint Manager or Building Principal (hereafter referred to as "investigator") will investigate all complaints or allegations of misconduct, except that, depending on the circumstances, the Superintendent or School Board may appoint a special investigator. Whenever the Superintendent deems necessary an attorney may serve as a special investigator. The investigator should not have any involvement with the complainant or the alleged wrongdoer outside of the investigation. The Superintendent will ensure that investigators have sufficient authority and resources, including access to the School Board Attorney.
- F. The investigator should provide a fair opportunity for both sides to be heard.
- G. The investigator should begin by carefully reading the complaint. Next the investigator should review applicable Board policies, administrative procedures and manuals, laws, regulations, and collective bargaining agreements.
- H. The investigator should develop a plan, including:
  - Witness list
  - Order of interviews
  - Questions for witnesses
  - Physical evidence needed, e.g., records, documents, reports, photos, and letters
- I. The investigator should make logistical arrangements, e.g., determine interview location and the need for photographs and/or a video or audio recording.
- J. If the investigator encounters an issue with legal ramifications outside of his/her understanding, either before or during the investigation, he/she should consult the Board Attorney before proceeding further on that legal issue, as well as any other areas of the investigation it impacts.

#### **Step 2: The Investigation**

- A. Typically, interview the complainant first, next the subject of the investigation, and, finally, all witnesses. The following applies to all interviews:
  - If possible, statements should be written, dated, and signed by the person being interviewed. Consider audio or video recording statements.
  - Ask open-ended questions and do not suggest answers to questions.
  - Record important details, essentially who, did what, to whom, when and how done and, if appropriate, why?
  - Be objective and nonjudgmental; do not prejudge an alleged wrongdoer's guilt. Never show outrage or dismay.
  - Ask for the names of any other witnesses.
  - Deal with emotional outbursts and anger by patiently explaining that details are needed for an accurate investigation.
  - If a witness cannot be interviewed, record the reason.
- B. While confidentiality should be maintained, do not make promises of confidentiality or anonymity. Only the Superintendent may promise confidentiality or anonymity.
- C. Keep the Superintendent informed, but do not discuss the investigation with Board members in order to avoid the appearance of prejudice or unfairness.
- D. Obtain copies of all necessary papers. Originals are not needed, but record how to get them.
- E. Collect physical evidence and photographs. Keep a record of when, and where, or from whom physical evidence was gathered.
- F. Document any information about the interview that is, or may become relevant, including the person's demeanor, gestures, accuracy of memory, and overall credibility.
- G. During the investigation, keep the investigation file separate from personnel or student record files. In a subsequent hearing, the opposing side may be able to view the investigation file. Records relating to a public body's adjudication (hearing) of employee grievances or disciplinary cases are exempt from Freedom of Information Act public records requests under 5 ILCS 140/7(1)(n). However, the exemption does not extend to the final outcome of cases in which discipline is imposed.

**Step 3: Following the Investigation**

- A. Report to the Superintendent or designee the investigation results, that is, the matters investigated, facts, conclusions, and recommendations. Prepare a written report if requested.
  - Answer who, what, when, where, why, and how.
  - Factual findings are based on whether an incident's occurrence is more likely than not. Identify as many factual findings as possible to support a conclusion. In a "he said, she said" scenario, a decision can be based on the credibility of the parties and witnesses. Include in the report any findings that are inconclusive.
  - Make a determination regarding credibility of specific evidence, that is, how believable is it and why by explaining the basis for the determination. Credible evidence is capable of belief by a reasonable person.
- B. Be prepared to testify as to the fairness of the investigation, the authenticity of the evidence, and the contents of the investigation report.

## **School Board**

### **Administrative Procedure - Nondiscrimination Coordinator and Complaint Manager 1**

The Nondiscrimination Coordinator directs the District's compliance with federal and State laws governing discrimination and harassment in the workplace. The Complaint Manager administers the complaint process in Board policy 2:260, *Uniform Grievance Procedure*.

#### **Superintendent Responsibilities**

- A. Appoints individuals to serve as a Nondiscrimination Coordinator and Complaint Manager whose skill set suggest they could effectively fulfill the responsibilities identified in this procedure. One individual may serve in both capacities. The Superintendent may serve in either capacity. If possible, at least 2 Complaint Managers are appointed, one of each gender.
- B. Identifies individuals to supervise the performance of the Nondiscrimination Coordinator and Complaint Manager. The supervisor must understand the responsibilities of each role and have authority to take action. If possible, a different individual is assigned to supervise each role as a control measure, e.g., the Human Resources Manager supervises the Nondiscrimination Coordinator's performance and the Superintendent supervises the Complaint Manager's performance.
- C. Requires each Nondiscrimination Coordinator and/or Complaint Manager to possess or obtain:
  1. In-depth knowledge of Board policies as well as rules and conduct codes for students and employees.
  2. General knowledge of State and federal laws concerning equal employment and educational opportunities.
  3. Ability to:
    - a. Communicate effectively, both orally and in writing, and to establish rapport with others;
    - b. Plan, implement, evaluate, and report activities conducted;
    - c. Be both consistent and flexible as circumstances warrant; and
    - d. Analyze, clarify, and mediate differences of opinion.
- D. Facilitates the effective performance of the Nondiscrimination Coordinator and Complaint Managers by:
  1. Providing them with clear expectations concerning their roles and responsibilities.
  2. Communicating to employees and students their functions and responsibilities.
  3. Providing them resources and professional development opportunities.
  4. Providing them access to the Board Attorney for legal advice concerning their responsibilities.

#### **Nondiscrimination Coordinator Responsibilities**

- A. Directs the District's efforts to provide equal employment and educational opportunities and prohibit the harassment of employees, students, and others. Manages compliance with Board policies 2:260, *Uniform Grievance Procedure*; 5:10, *Equal Employment Opportunity and Minority Recruitment*; 5:20, *Sexual Harassment*; and 7:20, *Harassment of Students Prohibited*.

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<sup>1</sup> This sample procedure must be customized to assure alignment with the district's policies, procedures, and practices. At least one employee must be designated to complete the coordinator/complaint manager responsibilities (34 C.F.R. §106.8(a); see also 29 C.F.R. §1604.11). Even small districts should strongly consider having a coordinator/complaint manager of each gender – this is an important measure to uncover sexual harassment and minimize liability exposure.

- B. Develops and manages a program that will fully inform all employees and students about the District's commitment to equal employment and educational opportunities and a harassment-free environment. A component of this program is to inform employees and students about Board policies and administrative procedures.
- C. Provides ongoing consultation, technical assistance, and information services regarding compliance requirements and programs.
- D. Assists the Human Resources Manager with monitoring compliance with the recordkeeping and notice requirements contained in federal and State laws concerning discrimination and harassment in schools and the workplace.
- E. Maintains grievance and compliance records and files.
- F. Makes recommendations for action by appropriate decision makers.
- G. Establishes a positive climate for nondiscrimination compliance efforts. This effort includes encouraging individuals to come forward with suggestions and complaints.

**Complaint Manager Responsibilities**

- A. Implements and administers the grievance process contained in Board policy 2:260, *Uniform Grievance Procedure*.
- B. Manages complaints alleging a violation of any Board policy or procedure listed in the next section.
- C. Assists complainants and potential complainants by, among other things, providing consultation and information to them.
- D. Attempts to resolve complaints without resorting to the formal grievance process provided in Board policy 2:260, *Uniform Grievance Procedure*.
- E. Informs potential complainants, complainants, and witnesses that the District prohibits any form of retaliation against anyone who, in good faith, brings a complaint or provides information to the individual investigating a complaint.
- F. Receives formal complaints and notifies relevant individuals of the ensuing process.
- G. Investigates complaints or appoints a qualified individual to undertake the investigation on his or her behalf. Each complaint shall be investigated promptly, thoroughly, and impartially, and as confidentially as possible.
- H. For each formal complaint, prepares a comprehensive written report describing the: (a) complaint, (b) investigation, and (c) findings and recommendations. Provides the report to the Superintendent or School Board if the Superintendent is an alleged responsible party.
- I. Receives a request from a complainant to appeal the Superintendent's resolution of the complaint and promptly forwards all relevant material to the Board.
- J. Monitors compliance with all requirements and time-lines specified in Board policy 2:260, *Uniform Grievance Procedure*.

**Applicable Policies and Procedures**

Section 2

- 2:260 Uniform Grievance Procedure
- 2:260-AP2 Administrative Procedure - Nondiscrimination Coordinator and Complaint Manager

Section 5

- 5:10 Equal Employment Opportunity and Minority Recruitment
- 5:20 Sexual Harassment
- 5:20-AP Administrative Procedure - Sample Questions for Conducting the Internal Sexual Harassment in the Workplace Investigation

### Section 6

- 6:120 Education of Children with Disabilities
- 6:140 Education of Homeless Children
- 6:140-AP Administrative Procedure - Education of Homeless Children
- 6:170 Title I Programs
- 6:260 Complaints About Curriculum, Instructional Materials, and Programs

### Section 7 - Students

- 7:10 Equal Educational Opportunities
- 7:20 Harassment of Students Prohibited
- 7:20-AP Administrative Procedure - Harassment of Students Prohibited
- 7:180 Preventing Bullying, Intimidation, and Harassment
- 7:190 Student Discipline

### Section 8 - Community Relations

- 8:70 Accommodating Individuals with Disabilities
- 8:110 Public Suggestions and Complaints

### **Resources**

U.S. Equal Employment Opportunity Commission, [www.eeoc.gov](http://www.eeoc.gov).

“Enforcement Guidances and Related Documents,” U.S. Equal Employment Opportunity Commission, [www.eeoc.gov/policy/guidance.html](http://www.eeoc.gov/policy/guidance.html).

“Sexual Harassment: It's Not Academic” U.S. Dept. of Education, Office for Civil Rights, [www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html](http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html).

“Frequently Asked Questions about Sexual Harassment,” U.S. Dept. of Education, Office for Civil Rights, [www.ed.gov/about/offices/list/ocr/qa-sex.html](http://www.ed.gov/about/offices/list/ocr/qa-sex.html).

“Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties,” Office for Civil Rights, [www.ed.gov/about/offices/list/ocr/docs/shguide.html](http://www.ed.gov/about/offices/list/ocr/docs/shguide.html).

“Q&A Regarding Title IX Procedural Requirements,” U.S. Dept. of Justice, [www.usdoj.gov/crt/cor/coord/TitleIXQandA.php](http://www.usdoj.gov/crt/cor/coord/TitleIXQandA.php).