

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 ²
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 ³
8. Misuse of funds received for services to improve educational opportunities for educationally disadvantaged or deprived children ⁴

¹ 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.

² 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.

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

³ 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.

⁴ 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/. ⁵
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.) ⁶
15. Employee Credit Privacy Act, 820 ILCS 70/. ⁷

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

⁵ 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.

⁶ 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. An FAQ titled, "FAQs on the Genetic Information Nondiscrimination Act" is available at: 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.

⁷ 820 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. **8** 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. **9**

8 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.

9 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:

Name

Address

Telephone

Complaint Managers:

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

- LEGAL REF.: Age Discrimination in Employment Act, 29 U.S.C. §621 et seq.
 Americans With Disabilities Act, 42 U.S.C. §12101 et seq.
 Equal Employment Opportunities Act (Title VII of the Civil Rights Act), 42 U.S.C.
 §2000e et seq.
 Equal Pay Act, 29 U.S.C. §206(d).
 Genetic Information Nondiscrimination Act, 42 U.S.C. §2000ff et seq.
 Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.
 McKinney 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.

10 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)