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

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 1630, can be found at:

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

3 Consult the board attorney to ensure the district’s non-discrimination coordinator and complaint managers are trained to appropriately respond to allegations of discrimination based upon bullying and/or sexual violence under Title IX’s sexual harassment umbrella. The U.S. Dept. of Education’s guidance states that while acts of sexual violence are crimes, they may also be discrimination under Title IX. Many attorneys agree these guidance documents are a heads-up to schools to ensure appropriate responses and training to these issues. The guidance documents highlight appropriate responses to sexual violence under Title IX. They are titled as follows: (1) Dear Colleague Letter: Sexual Violence Background, Summary, and Fast Facts, 111 LRP 23852 (OCR 04/04/11) and available at: www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html, and (2) Dear Colleague Letter: Harassment and Bullying, 55 IDELR 174 (OCR 10/26/10) and available at: www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201010.html, and (3) Revised Sexual Harassment Guidance: Harassment of Student by School Employees, Other Students, or Third Parties, January 2001, at www2.ed.gov/offices/OCR/archives/pdf/shguide.pdf.
7. Bullying, 105 ILCS 5/27-23.7  
8. Misuse of funds received for services to improve educational opportunities for educationally disadvantaged or deprived children  
9. Curriculum, instructional materials, and/or programs  
12. Provision of services to homeless students  
13. Illinois Whistleblower Act, 740 ILCS 174/6  
15. Employee Credit Privacy Act, 820 ILCS 70/8

Consult the board attorney regarding proper filing and storage of these investigation documents, including whether certain student-related investigation documents are sole possession records, a Family Policy Compliance Office (FPCO)-created exemption to the Family Education Rights Privacy Act (FERPA). See Letter to Ruscio, 115 LRP 18601 (FPCO, Dec. 17, 2014).

1. All districts must have a policy on bullying (105 ILCS 5/27-23.7). See policy 7:180, Prevention of and Response to 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.

2. 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).

3. The Illinois Whistleblower Act, 740 ILCS 174/6, 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.

4. 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/esa/facts/fdq-GINA.html.

5. Illinois Genetic Information Privacy Act (GIPA), 410 ILCS 513/ also prohibits employers from making employment decisions on the basis of any employee’s genetic testing information. This amendment to GIPA includes 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. GIPA’s also provides 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.

6. 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.
The Complaint Manager will first attempt to resolve complaints without resorting to this grievance procedure. If a formal complaint is filed under this procedure, the Complaint Manager will address the complaint promptly and equitably. A student and/or parent/guardian filing a complaint under this procedure may forego any informal suggestions and/or attempts to resolve it and may proceed directly to the grievance procedure. The Complaint Manager will not require a student or parent/guardian complaining of any form of harassment to attempt to resolve allegations directly with the accused (or the accused’s parents/guardians); this includes mediation.

Right to Pursue Other Remedies Not Impaired

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, e.g., criminal complaints, civil actions, etc. 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. If a person is pursuing another remedy subject to a complaint under this policy, the District will continue with a simultaneous investigation under this policy.

Deadlines

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.

For bullying and cyber-bullying, the Complaint Manager shall process and review the complaint according to Board policy 7:180, Prevention of and Response to Bullying, Intimidation, and Harassment, in addition to any response required by this policy.

Investigation

The Complaint Manager will investigate the complaint or appoint a qualified person to undertake the investigation on his or her behalf. The Complaint Manager shall ensure both parties have an equal opportunity to present evidence during an investigation. 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.

The Complaint Manager will inform, at regular intervals, the person(s) filing a complaint under this procedure about the status of the investigation. 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 and the accused by first class U.S. mail as well as to the Complaint Manager. All decisions shall be based upon the preponderance of evidence standard. 10

Within 10 school business days after receiving the Superintendent’s decision, the Complainant or the accused 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 and the accused of the Board’s action.

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 11
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 Nondiscrimination Coordinator also serves as the District’s Title IX Coordinator.

10 Preponderance of evidence is a standard of proof in civil cases. It means “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” See Black’s Law Dictionary (9th ed. 2009).

11 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. OCR prefers that school districts make Title IX information and coordinators visible to the community, and it has provided materials designed to remind schools of their obligation to designate a Title IX coordinator. These materials include (a) a Dear Colleague Letter on Title IX Coordinators, (b) a Letter to Title IX Coordinators that provides them with more information about their role, and (c) a Title IX Resource Guide that includes an overview of Title IX’s requirements with respect to several key issues. They are listed at: www2.ed.gov/policy/rights/guid/ocr/title-ix-coordinators.html.

The names are not part of the adopted policy, and the policy should not be adopted with a person’s name in it. This allows for additions and amendments as necessary. It is important for an updated, accurate name and contact information to be inserted into this policy and monitored on a regular basis.
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:**
15W 451 91st Street, Burr Ridge, IL 60527

**Telephone:**

**Complaint Managers:**

**Name:**
15W 451 91st Street, Burr Ridge, IL 60527

**Telephone:**

**Email:**
630-734-6600

**Mail Box:**

**LEGAL REF.:** Age Discrimination in Employment Act, 29 U.S.C. §621 et seq.
Immigration Reform and Control Act, 8 U.S.C. §1324a 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.
Illinois Genetic Information Privacy Act, 410 ILCS 513/.
Illinois Whistleblower Act, 740 ILCS 174/.
Illinois Human Rights Act, 775 ILCS 5/.
Equal Pay Act of 2003, 820 ILCS 112/.
Employee Credit Privacy Act, 820 ILCS 70/.
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 (Prevention of and Response to Bullying, Intimidation, and Harassment), 8:70 (Accommodating Individuals with Disabilities), 8:110 (Public Suggestions and Concerns)
School Board

Administrative Procedure - Guidelines for Investigating Complaints and Allegations of Misconduct

All complaints are to 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 State law and 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 one District Complaint Manager to administer the complaint process. If possible, the Superintendent will appoint two 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. See considerations under F below. 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. Contact the Board Attorney to discuss the investigation process, including without limitation:

1. Whether the investigator’s notes and investigation records (including, without limitation, any audio or video recordings, photographs, or electronic images) are education records for purposes of the federal Family Education Rights and Privacy Act (FERPA) and/or school student records as defined in the Ill. School Student Records Act (105 ILCS 10/, implemented by 23 Ill.Admin.Code §375.10)?

2. Whether the investigator’s notes and investigation records (including, without limitation, any audio or video recordings, photographs, or electronic images) will be subject to disclosure pursuant to a FOIA request? A PAC opinion, binding on the parties, found that a city’s investigatory records of an employee were not private or adjudicatory records and must be disclosed pursuant to a FOIA request (PAC Opinion 13-110).

3. Whether to record conversations, and if so, how to obtain and document consent under the criminal eavesdropping statute? 720 ILCS 5/14-1 et seq., amended by P.A. 98-1142, prohibits recording a conversation in which someone has a reasonable expectation of privacy without the consent of all parties.
4. Whether the Board Attorney should participate in or conduct the investigation? Whether an outside attorney should serve as a special investigator? Considerations include:
   a. The U.S. Supreme Court has held that a private attorney temporarily retained by government to perform an investigation of an employee is entitled to seek qualified immunity from suit under Section 1983. Filarsky v. Delia, 132 S.Ct. 1657 (2012).
   b. The FOIA exemption for communications between a public body and its attorney is available in only limited situations. See PAC Opinion 14-02 interpreting 5 ILCS 140/7(m).
   c. Documents prepared by attorneys conducting an investigation under the prospect of litigation will not be subject to discovery during a subsequent lawsuit. Sandra TE v. South Berwyn School Dist., 600 F. 3d 612 (7th Circuit 2010) (when attorneys, as attorneys, perform a factual investigation, their documents are protected by the attorney-client privilege and the work-product doctrine).

G. The investigator should provide a fair opportunity for both sides to be heard.

H. 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.

I. The investigator should develop a plan, including:
   1. Witness list
   2. Order of interviews
   3. Questions for witnesses
   4. Physical evidence needed, e.g., records, documents, reports, photos, and letters

J. The investigator should make logistical arrangements, e.g., determine interview location and the need for photographs and/or a video or audio recording.

K. 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:
   1. If possible, statements should be written, dated, and signed by the person being interviewed. Do not audio or video record statements without first obtaining the Board Attorney’s advice concerning legal prerequisites and treatment of the recordings.
   2. Ask open-ended questions and do not suggest answers to questions.
   3. Record important details, essentially who, did what, to whom, when, and how done and, if appropriate, why?
   4. Be objective and nonjudgmental; do not prejudge an alleged wrongdoer’s guilt. Never show outrage or dismay.
   5. Ask for the names of any other witnesses.
   6. Deal with emotional outbursts and anger by patiently explaining that details are needed for an accurate investigation.
7. 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 relevant written or electronic communications. 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 relevant, 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 appropriate or requested.

1. Answer who, what, when, where, why, and how.

2. 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.

3. 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.
Policy Reviewed March 2002
Policy Adopted April 2002
Exhibit Reviewed August 2010
Exhibit Adopted September 2010
Policy/Exhibit Reviewed December 2010
Policy/Exhibit Adopted January 2011
Policy Reviewed September 2015
Policy Adopted November 2015

The Collective Bargaining Agreement will supersede any personnel policy that is contradictory to the Collective Bargaining Agreement between the CCSD 180 Board of Education and the Teachers' Organization of Palisades – IEA/NEA.