

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

February 1, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: First Reading-Equal Employment Opportunity and Minority
Recruitment - Policy 5:10

This policy has been updated to include the Illinois Genetic Information Protection Act, the State Equal Pay Act, the Illinois Human Rights Act, the ADA Amendments Act, and the Illinois Whistleblowers Act. Additionally, we are changing the names of the complaint managers and the non-discrimination manager from Dr. Menzer and Julie Vroman to Ellen Mauer, Mary Taylor, and Jason Lind.

General Personnel

Equal Employment Opportunity and Minority Recruitment 1

The School District shall provide equal employment opportunities² to all persons regardless of their race, color, creed, religion,³ national origin, sex,⁴ sexual orientation,⁵ age,⁶ ancestry, marital status,⁷ arrest record,⁸ military status, order of protection status,⁹ or unfavorable military discharge,¹⁰

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

¹ Federal and State law (see the policy's legal references) require that all districts have a policy on equal employment opportunities and control this policy's content.

² "Equal employment opportunities" applies to virtually all terms and conditions of employment, e.g., discharge, hire, promotion, pay, demotion, and benefits (see legal references). The Illinois Constitution protects the following categories from discrimination in employment: race, color, creed, national ancestry, and handicap (Art. I, §§17, 18, and 19). The Ill. Human Rights Act protects the following categories from discrimination in employment: race, color, religion, national origin, ancestry, age, sex, marital status, handicap, military status, order of protection status, sexual orientation, and unfavorable discharge from military service (775 ILCS 5/1-102, amended by P.A. 96-447).

The Equal Employment Opportunities Act (Title VII) prohibits discrimination because of an individual's race, color, religion, sex, or national origin (42 U.S.C. §2000e, amended by The Lilly Ledbetter Fair Pay Act, Pub.L. 111-2).

The Lilly Ledbetter Fair Pay Act clarifies that a discriminatory compensation decision or other practice occurs each time an employee is paid or receives a last benefits check pursuant to the discriminatory compensation decision as opposed to only from the time when the discriminatory compensation decision or other practice occurred. The Act passed with little debate and has no legislative history available to define what the phrase *or other practice* might mean beyond a discriminatory compensation decision. Consult the board attorney for guidance regarding the Lilly Ledbetter Fair Pay Act's specific applications to the district.

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

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

⁴ In addition to the Ill. Human Rights Act and the federal Equal Employment Opportunities Act (discussed in footnote 2), see Title IX of the Education Amendments, 20 U.S.C. §1681 et seq. The federal Equal Pay Act prohibits an employer from paying persons of one gender less than the wage paid to persons of the opposite gender for equal work (29 U.S.C. §206(d)). The State Equal Pay Act of 2003, 820 ILCS 112/, amended by P.A. 96-467, offers greater protection by prohibiting the payment of wages to one gender less than another gender "for the same or substantially similar work". Similar to the Lilly Ledbetter Fair Pay Act, P.A. 96-467 now defines "date of underpayment" as each time wages are underpaid. Employees have one year from the time they become aware of the underpayment to file a complaint with the Ill. Dept. of Labor. The Pregnancy Discrimination Act amended the Equal Employment Opportunities Act to prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions (42 U.S.C. §2000e(k)).

⁵ Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. *Sexual orientation* means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity; it does not include a physical or sexual attraction to a minor by an adult (775 ILCS 5/1-103(O-1)).

⁶ Age Discrimination in Employment Act (ADEA), 29 U.S.C. §621 et seq., amended by The Lilly Ledbetter Fair Pay Act, Pub.L. 111-2 (see f/n 2 above). 29 C.F.R. Part 1625, amended the EEOC regulations under ADEA to reflect the U.S. Supreme Court's decision in General Dynamic Systems, Inc. v. Cline, 540 U.S. 581(2004), holding the ADEA to permit employers to favor older workers because of age. Thus favoring an older person over a younger person is not unlawful discrimination, even when the younger person is at least 40 years old.

⁷ 105 ILCS 5/10-22.4 and 775 ILCS 5/1-103(Q). The term *marital status* means an individual's legal status of being married, single, separated, divorced, or widowed (775 ILCS 5/1-103(J)). This statutory definition does not encompass the identity of one's spouse. Thus, school districts may adopt no-spouse policies. Boaden v. Dept. of Law Enforcement, 664 N.E.2d 61 (1996). See policy 5:30, *Hiring Process and Criteria*, for a sample no-spouse rule.

⁸ Districts may not make employment decisions on the basis of arrest history, but may use conviction information (775 ILCS 5/2-103).

⁹ 775 ILCS 5/1-103(Q), amended by P.A. 96-447, eff. 1-1-10. The term *order of protection status* means a person protected under an order of protection issued pursuant to the Illinois Domestic Violence Act of 1986 or an order of protection issued by a court of another state (775 ILCS 5/1-103(K-5), amended by P.A. 96-447, eff. 1-1-10).

citizenship status provided the individual is authorized to work in the United States,¹¹ use of lawful products while not at work,¹² being a victim of domestic or sexual violence,¹³ genetic information,¹⁴ physical or mental handicap or disability,¹⁵ if otherwise able to perform the essential functions of the job with reasonable accommodation, and other legally protected categories. ^{16 17 18}

Persons who believe they have not received equal employment opportunities should report their claims to the Nondiscrimination Coordinator and/or a Complaint Manager for the Uniform Grievance Procedure. These individuals are listed below. No employee or applicant will be discriminated or retaliated against because he or she initiated a complaint, was a witness, supplied information, or otherwise participated in an investigation or proceeding involving an alleged violation of this policy or State or federal laws, rules or regulations, provided the employee or applicant did not make a knowingly false accusation nor provide knowingly false information. ¹⁹

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¹⁰ *Military status* means a person's status on active duty in the U.S. Armed Forces (775 ILCS 5/1-103). *Unfavorable military discharge* does not include those characterized as RE-4 or "dishonorable," (*Id.*). The Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§4301 et seq., prohibits employers from discriminating or retaliating against any person for reasons related to past, present, or future service in a *uniformed service*. See footnote 9 in policy 5:30, *Hiring Process and Criteria*.

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

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

¹³ Victims' Economic Security and Safety Act, 820 ILCS 180/30.

¹⁴ 410 ILCS 513/25, amended by P.A. 95-927. Illinois' Genetic Information Protection Act (GIPA) and Title II of Genetic Information Nondiscrimination Act (GINA), effective 11-21-09, 42 U.S.C. §2000ff et seq. Both laws protect job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. Note that GIPA provides greater protections to Illinois employees than Title II of GINA. See footnote 5 in 2:260, *Uniform Grievance Procedure* for the definition of genetic information and a detailed description of both statutes, including of Title I of GINA, effective May 21, 2008 (Title I only affects the use of genetic information in health insurance). Consult the board attorney for guidance regarding the GIPA's and GINA's specific applications to the district and how these laws integrate with other related laws such as the Family Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), and other State laws governing time off for sickness and workers' compensation.

¹⁵ Americans with Disabilities Act, 42 U.S.C. §§12111 et seq., amended by the Americans with Disabilities Act Amendments Act (ADAAA), Pub. L. 110-325 and modified by the Lilly Ledbetter Fair Act, Pub. L. 111-2; Rehabilitation Act of 1973, 29 U.S.C. §791 et seq., modified by the Lilly Ledbetter Fair Pay Act, Pub. L. 111-2.

¹⁶ Optional sentence (775 ILCS 5/1-103 and 29 U.S.C. §631):

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

¹⁷ Optional provision (29 U.S.C. §705(10)(A) and (B), and 42 U.S.C. §12114):

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

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

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

¹⁸ Districts may not make residency in the school district a condition of employment for teachers or educational support personnel (105 ILCS 5/24-4.1 and 10-23.5). The statutory ban on residency requirements for teachers applies only to instructional personnel, and not, for example, to assistant principals. *Owen v. Kankakee School Dist. No. 111*, 632 N.E.2d 1073 (Ill.App.3, 1994). Districts also may not ask an applicant, or the applicant's previous employer, whether the applicant ever received, or filed a claim for, benefits under the Workers' Compensation Act or Workers' Occupational Diseases Act (820 ILCS 55/10).

Administrative Implementation

The Superintendent shall appoint a Nondiscrimination Coordinator for personnel who shall be responsible for coordinating the District's nondiscrimination efforts. The Nondiscrimination Coordinator may be the Superintendent or a Complaint Manager for the Uniform Grievance Procedure. The Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers. ²⁰

Nondiscrimination Coordinator:

Ellen Mauer

Name

18550 Millburn Road

Address

Wadsworth, IL 60083

847-245-2900

Telephone

Complaint Managers:

Mary Taylor

Name

18550 Millburn Road

Address

Wadsworth, IL 60083

847-245-2899

Telephone

Jason Lind

Name

18550 Millburn Road

Address

Wadsworth, IL 60083

847-245-2800

Telephone

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¹⁹ Most discrimination laws prohibit retaliation against employees who oppose practices made unlawful by those laws, including, for example, the Equal Employment Opportunities Act, Title IX, Americans with Disabilities Act, Age Discrimination in Employment Act, Victims' Economic Security and Safety Act, the Ill. Equal Pay Act, and now the Ill. Whistleblower Act, 740 ILCS 174/, amended by P.A. 95-128, which included school districts in the definition of employer.

The Ill. Whistleblower Act specifically prohibits employers from retaliating against employees for: (1) disclosing information to a government or law enforcement agency (740 ILCS 174/15(a), amended by P.A. 95-128), (2) disclosing information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding where the employee has reasonable cause to believe that the information reveals a violation of a State or federal law, rule or regulation (740 ILCS 174/15(b), amended by P.A. 95-128), (3) refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation, including, but not limited to, violations of the Freedom of Information Act (740 ILCS 174/20, changed by P.A. 96-555), and (4) disclosing or attempting to disclose public corruption or wrongdoing (740 ILCS 174/20.1, added by P.A. 96-555). The definition of retaliation is expanded to include *other retaliation and threatening retaliation* (740 ILCS 174/20.1 and 20.2, added by P.A. 96-555).

Ill. Whistleblower Reward and Protection Act, 740 ILCS 175/, amended by P.A. 95-128, defines "State" to include school districts. A strict interpretation of this language appears to allow school boards to collect civil penalties and civil action costs for violation of Section 3. School boards should thoroughly investigate the ramifications of this Public Act in consultation with their attorney and liability insurance carriers. For additional information regarding the Ill. Whistleblower Act and the tort of retaliatory discharge, see Thomas v. Guardsmark, 487 F.3d 531, (7th Cir., 2007)(discussing the elements of Ill. tort of retaliatory discharge and Ill. Whistleblower Act), and Sherman v. Kraft General Foods, Inc., 651 N.E.2d 708 (Ill.App.4th Dist., 1995)(finding employee who reported asbestos hazard had a cause of action for tort of retaliatory discharge).

²⁰ 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. Thus the policy should be adopted with blanks for the superintendent to fill in later.

The Superintendent shall also use reasonable measures to inform staff members and applicants that the District is an equal opportunity employer, such as, by posting required notices and including this policy in the appropriate handbooks. ²¹

Minority Recruitment ²²

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

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²¹ In addition to notifying employees of the Uniform Grievance Procedure, a district must notify them of the person(s) designated to coordinate the district's compliance with Title IX and the Rehabilitation Act of 1973 (34 C.F.R. §§106.8(a) and 104.8(a)). The Nondiscrimination Coordinator may be the same individual for both this policy and policy 7:10, *Equal Educational Opportunities*, as well as a Complaint Manager for policy 2:260, *Uniform Grievance Procedure*. A comprehensive faculty handbook can provide required notices, along with other important information, to recipients. The handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and school board. Any "working conditions" contained in the handbook may be subject to mandatory collective bargaining.

²² All districts must have a policy on minority recruitment (105 ILCS 5/10-20.7a). Unlike minority recruitment efforts, affirmative action plans are subject to significant scrutiny because of the potential for reverse discrimination. The U.S. Constitution's guarantee of equal protection prohibits school districts from using racial hiring quotas without evidence of past discrimination. See 29 C.F.R. §1608.1 *et seq.* (Equal Employment Opportunity Commission's guidelines for affirmative action plans); *Wygant v. Jackson Board of Education*, 106 S.Ct. 1842 (1986) (The goal of remedying societal discrimination does not justify race-based layoffs.); *City of Richmond v. J.A. Croson Co.*, 109 S.Ct. 706 (1989) (Minority contractor quota struck; quotas must be narrowly tailored to remedy past discrimination and the city failed to identify the need for remedial action and whether race-neutral alternatives existed.).

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

LEGAL REF.:	<p>Age Discrimination in Employment Act, 29 U.S.C. §621 <u>et seq.</u> Americans With Disabilities Act, Title I, 42 U.S.C. §12111 <u>et seq.</u> Civil Rights Act of 1991, 29 U.S.C. §§621 <u>et seq.</u>, 42 U.S.C. §1981 <u>et seq.</u>, §2000e <u>et seq.</u>, and §12101 <u>et seq.</u> Equal Employment Opportunities Act (Title VII of the Civil Rights Act of 1964), 42 U.S.C. §2000e <u>et seq.</u>, 29 C.F.R. Part 1601. Equal Pay Act, 29 U.S.C. §206(d). Genetic Information Nondiscrimination Act, 42 U.S.C. §2000ff <u>et seq.</u> Immigration Reform and Control Act, 8 U.S.C. §1324a <u>et seq.</u> Rehabilitation Act of 1973, 29 U.S.C. §791 <u>et seq.</u> Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d <u>et seq.</u> Pregnancy Discrimination Act, 42 U.S.C. §2000e(k). Title IX of the Education Amendments, 20 U.S.C. §1681 <u>et seq.</u>, 34 C.F.R. Part 106. Uniformed Services Employment and Reemployment Rights Act (1994), 38 U.S.C. §§4301 <u>et seq.</u> <u>Ill. Constitution</u>, Art. I, §§17, 18, and 19. 105 ILCS 5/10-20.7, 5/10-20.7a, 5/10-21.1, 5/10-22.4, 5/10-23.5, 5/22-19, 5/24-4, 5/24-4.1, and 5/24-7. Genetic Information Protection Act, 410 ILCS 513/25. Ill. Whistleblower Act, 740 ILCS 174/. Ill. Human Rights Act, 775 ILCS 5/1-103 and 5/2-102. Religious Freedom Restoration Act, 775 ILCS 35/5. Ill. Equal Pay Act of 2003, 820 ILCS 112/. Victims' Economic Security and Safety Act, 820 ILCS 180/30. 23 Ill.Admin.Code §1.230.</p>
CROSS REF.:	<p>2:260 (Uniform Grievance Procedure), 5:20 (Sexual Harassment), 5:30 (Hiring Process and Criteria, 5:40 (Communicable and Chronic Infectious Disease), 5:70 (Religious Holidays), 5:180 (Temporary Illness or Temporary Incapacity), 5:200 (Terms and Conditions of Employment and Dismissal), 5:250 (Leaves of Absence), 5:270 (Employment, At-Will, Compensation, and Assignment), 5:300, (Schedules and Employment Year), 5:330 (Sick Days, Vacation, Holidays, and Leaves), 7:10 (Equal Educational Opportunities), 7:180 (Preventing Bullying, Intimidation, and Harassment), 8:70 (Accommodating Individuals with Disabilities)</p>

General Personnel

Equal Employment Opportunity and Minority Recruitment

The School District shall provide equal employment opportunities to all persons regardless of their race, color, religion, creed, national origin, sex, age, ancestry, marital status, arrest record, military status or unfavorable military discharge, citizenship status, use of lawful products while not at work, physical or mental handicap or disability, if otherwise able to perform the essential functions of the job with reasonable accommodation, and other legally protected categories.

Persons who believe they have not received equal employment opportunities should report their claims to the Nondiscrimination Coordinator and/or a Complaint Manager for the Uniform Grievance Policy. These individuals are listed below. Initiating a complaint shall not adversely affect the complainant's terms or conditions of employment.

Administrative Implementation

The Superintendent shall appoint a Nondiscrimination Coordinator for personnel who shall be responsible for coordinating the District's nondiscrimination efforts. The Nondiscrimination Coordinator may be the Superintendent or a Complaint Manager for the Uniform Grievance Procedure. The Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers.

Nondiscrimination Coordinator:

Name	<u>Dr. James Menzer</u>
Address	<u>18550 Millburn Road</u>
	<u>Wadsworth, IL 60083</u>
Telephone No.	<u>847/356-8331</u>

Complaint Managers:

Name	<u>Dr. James Menzer</u>	<u>Ms. Julie Vroman</u>
Address	<u>18550 Millburn Road</u>	<u>18550 Millburn Road</u>
	<u>Wadsworth, IL 60083</u>	<u>Wadsworth, IL 60083</u>
Telephone No.	<u>847/356-8331</u>	<u>847/356-8331</u>

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

Minority Recruitment

The District will recruit and hire minority employees. The implementation of this policy may include advertising openings in minority publications, participating in minority job fairs, and recruiting at colleges and universities with significant minority enrollments.

LEGAL REF.: Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq.
Americans With Disabilities Act, Title I, 42 U.S.C. § 12111 et seq.
Equal Pay Act, 29 U.S.C. § 206(d).
Ill. Constitution, Art. 1, §§ 17, 18, and 19.
Immigration Reform and Control Act, 8 U.S.C. § 1324a et seq.
Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq.
Religious Freedom Restoration Act, 775 ILCS 35/5.
Title VII of Civil Rights Act, 42 U.S.C. § 2000e et seq., 29 C.F.R. Part 1601.
Title IX of the Education Amendments, 20 U.S.C. § 1681 et seq., 34 C.F.R.
Part 106.
105 ILCS 5/10-20.7, 5/10-20.7a, 5/10-21.1, 5/10-22.4, 5/10-23.5, 5/22-19,
5/24-4, 5/24-4.1, and 5/24-7.
775 ILCS 5/1-103 and 5/2-102.
820 ILCS 105/1 et seq.
23 Ill. Admin. Code § 1.230.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:20 (Sexual Harassment), 8:70
(Accommodating Individuals with Disabilities)

ADOPTED: May 20, 2002