

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

June 7, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: First Reading-Hiring Process and Criteria-5:30

This policy has been updated for changes. Wording was added to reflect reference to our collective bargaining agreement. Language regarding fingerprints is added to the investigations section. All legal references have been updated.

We ask that you use this as your first reading period and then put this on the next BOE meeting agenda for a second reading and approval.

## General Personnel

### Hiring Process and Criteria 1

The District hires the most qualified personnel consistent with budget and staffing requirements and in compliance with School Board policy on equal employment opportunity and minority recruitment. 2 The Superintendent is responsible for recruiting personnel and making hiring recommendations to the Board. 3 If the Superintendent's recommendation is rejected, the Superintendent must submit another. 4 No individual will be employed who has been convicted of a criminal offense listed in Section 5/21-23a of The School Code. 5

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

### Job Descriptions

The Superintendent shall develop and maintain a current comprehensive job description for each position or job category; however, a provision in a collective bargaining agreement or individual contract will control in the event of a conflict. 7

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

1 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.

2 See policy 5:10, *Equal Employment Opportunity and Minority Recruitment*. Districts may not classify a job as either a "male" or "female" job (29 C.F.R. §1604.5, 34 C.F.R. §106.55).

3 Boards must consider the superintendent's recommendations concerning, among other things, "the selection, retention, and dismissal of employees," 105 ILCS 5/10-16.7. The board may want this alternative sentence:

All personnel decisions are made by the Board, but only on the recommendation of the Superintendent.

4 An additional optional sentence follows:

The Superintendent may select personnel on a short-term basis for a specific project or emergency condition before the Board's approval.

5 105 ILCS 5/10-21.9(c), amended by P.A. 96-431.

6 Any person who applies for employment as a teacher, principal, superintendent, or other certificated employee who willfully makes a false statement on his or her application for employment, material to his or her qualifications for employment, which he or she does not believe to be true, is guilty of a Class A misdemeanor (105 ILCS 5/22-6.5). District employment applications must contain a statement to this effect (Id.).

Each employment application for a certificated position must state the following (Id.):

Failure to provide requested employment or employer history which is material to the applicant's qualifications for employment or the provision of statements which the applicant does not believe to be true may be a Class A misdemeanor.

7 Districts should have job descriptions for each position in order to establish the position's essential functions. The Americans with Disabilities Act protects individuals who have a disability and are qualified, with reasonable accommodation, to perform the *essential functions* of the job (42 U.S.C. §12101, amended by the ADA Amendments Act (ADAAA), Pub. L. 110-325). Determining which functions are essential may be critical to determining if an individual with a disability is qualified. An individual is qualified to perform a job even though he or she is unable, due to a disability, to perform tasks which are incidental to the job. Only when an individual is unable to perform the *essential functions* of a job may a district deny the individual employment opportunities (29 C.F.R. §1630.2(m)).

A job description is evidence of a position's *essential functions* (29 C.F.R. §1630.2(n)). In order for a particular function to be essential: (1) the employer must actually require employees in the position to perform it, and (2) the position would be *fundamentally altered* if the function were removed (Id.). Whether a particular function is essential is a factual determination.

## Investigations

The Superintendent or designee shall ensure that a fingerprint-based criminal history records check and a check of the Statewide Sex Offender Database and Violent Offender Against Youth Database (when available) is performed on each applicant as required by State law. <sup>8</sup> The Superintendent or designee shall notify an applicant if the applicant is identified in either database. <sup>9</sup> The Board President will keep a conviction record confidential and share it only with the Superintendent, Regional Superintendent, State Superintendent, State Teacher Certification Board, or any other person necessary to the hiring decision. <sup>10</sup>

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

The District retains the right to discharge any employee whose criminal background investigation reveals a conviction for committing or attempting to commit any of the offenses outlined in Section 5/21-23a of The School Code or who falsifies, or omits facts from, his or her employment application or other employment documents.

## Physical Examinations

New employees must furnish evidence of physical fitness to perform assigned duties and freedom from communicable disease, including tuberculosis. <sup>12</sup> All physical fitness examinations and tests for tuberculosis must be performed by a physician licensed in Illinois, or any other state, to practice medicine and surgery in any of its branches, or an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a physician assistant who has been delegated the authority by his or her supervising physician to perform health examinations. The employee must have the physical

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**Important:** The ADAAA makes significant changes to the ADA's definition of disability that broadens the scope of coverage and overturns a series of U.S. Supreme Court decisions that made it difficult to prove that an impairment was a disability. 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 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. 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). Consult the board attorney regarding these amendment's impact on the district's hiring processes.

<sup>8</sup> The policy's requirements on criminal records checks are mandated by 105 ILCS 5/10-21.9. See administrative procedure 5:30-AP2, *Investigations*, for the process and positions requiring criminal background investigation.

<sup>9</sup> *Id.*

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

<sup>11</sup> Immigration Reform and Control Act, 8 U.S.C. §1324a *et seq.* Consult with the board attorney regarding the district's rights and responsibilities under all Illinois laws if the district uses any electronic employment verification system, including *E-Verify* and/or the Basic Pilot Program (820 ILCS 55/, amended by P.A. 96-623). P.A. 96-623 urges employers who voluntarily use *E-Verify* (formerly known as the Basic Pilot/Employment Eligibility Verification Program) to consult the Ill. Dept. of Labor's website for current information on the accuracy of *E-Verify* and to review and understand their legal responsibilities relating to the use of any electronic employment verification systems. See footnote 2 in 5:150-AP, *Personnel Records*, for a more detailed discussion of *E-Verify* issues.

<sup>12</sup> Pre-employment medical inquiries must be limited to whether the applicant is able to perform job-related functions; required medical examinations of applicants is forbidden (American with Disabilities Act [ADA], 42 U.S.C. §12112(d)(2), as amended by the ADAAA, Pub. L. 110-325); see also footnote 7 for an explanation regarding the ADAAA. Districts may condition an employment offer on taking and passing medical inquiries or physical exams, provided that all entering employees in the same classification receive the same conditional offer. Boards must require new employees to furnish evidence of a physical examination and a tuberculin skin test and, if appropriate, an X-ray (105 ILCS 5/24-5).

Note that while examination by a spiritual leader/practitioner is sufficient for purposes of leaves, the statute does not permit an examination by a spiritual leader/practitioner for initial employment exams. This difference may present a constitutional issue; contact the board attorney for an opinion if an applicant wants to use an examination by a spiritual leader/practitioner.

examination and tuberculin test performed no more than 90 days before submitting evidence of it to the Board.

Any employee may be required to have an additional examination by a physician who is licensed in Illinois to practice medicine and surgery in all its branches, or an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a physician assistant who has been delegated the authority by his or her supervising physician to perform health examinations, if the examination is job-related and consistent with business necessity. <sup>13</sup> The Board will pay the expenses of any such examination.

#### Orientation Program

The District's staff will provide an orientation program for new employees to acquaint them with the District's policies and procedures, the school's rules and regulations, and the responsibilities of their position.

LEGAL REF.: Americans with Disabilities Act, 42 U.S.C. §12112, 29 C.F.R. Part 1630.  
Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.  
105 ILCS 5/10-16.7, 5/10-20.7, 5/10-21.4, 5/10-21.9, 5/21-23a, 5/10-22.34, 5/10-22.34b, 5/22-6.5, and 5/24-1 et seq.  
820 ILCS 55/  
Duldulao v. St. Mary of Nazareth Hospital, 483 N.E.2d 956 (Ill.App.1, 1985), *aff'd in part and remanded* 505 N.E.2d 314 (Ill., 1987).  
Kaiser v. Dixon, 468 N.E.2d 822 (Ill.App.2, 1984).  
Molitor v. Chicago Title & Trust Co., 59 N.E.2d 695 (Ill.App.1, 1945).

CROSS REF.: 3:50 (Administrative Personnel Other Than the Superintendent), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:40 (Communicable and Chronic Infectious Disease), 5:280 (Educational Support Personnel - Duties and Qualifications)

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<sup>13</sup> The State law (105 ILCS 5/24-5) allowing boards to require physicals of current employees "from time to time," has been superseded by federal law (ADA, 42 U.S.C. §12112(d)(4), as amended by the ADAAA, Pub. L. 110-325). The ADA allows medical inquiries of current employees only when they are job-related and consistent with business necessity or part of a voluntary employee wellness program (Id.). Districts may deny jobs to individuals with disabilities who pose a direct threat to the health or safety of others in the workplace, provided that a reasonable accommodation would not either eliminate the risk or reduce it to an acceptable level (42 U.S.C. §12113; 29 C.F.R. Part 1630.2(r). See footnote 7 for an explanation regarding the ADAAA.

See the above footnote for a discussion of examinations by spiritual leaders/practitioners.

## **General Personnel**

### **Hiring Process and Criteria**

The Superintendent is responsible for recruiting personnel, in compliance with Board of Education policy, and making hiring recommendations to the Board of Education. Educational support personnel applicants are initially screened by the Building Principal or supervisor. The District shall hire the best qualified personnel consistent with budget and staffing requirements, and shall comply with Board of Education policy on equal employment opportunities and minority recruitment. The Superintendent may select personnel on a short-term basis for a specific project or emergency condition before the Board of Education's approval.

All applicants must complete a District application form in order to be considered for employment.

### **Job Descriptions**

The Superintendent shall develop and maintain a current, comprehensive job description for each position, other than the Superintendency.

### **Investigations**

Each applicant must provide a written authorization for a criminal background investigation if such an investigation is required by State law. The Board President will keep a conviction record confidential and share it only with the Superintendent, Regional Superintendent, State Superintendent of Schools, State Teacher Certification Board, or any other person necessary to the hiring decision.

Each newly hired employee must complete an Immigration and Naturalization Service Form as required by federal law.

The District retains the right to discharge any employee whose criminal background investigation reveals a conviction for committing or attempting to commit any of the offenses outlined in § 10-21.9 of The School Code or who falsifies, or omits facts from, his or her employment application or other employment documents.

### **Physical Examinations**

New employees must furnish evidence of physical fitness to perform assigned duties and freedom from communicable disease, including tuberculosis. All physical fitness examinations and tests for tuberculosis must be performed by a physician licensed in Illinois, or any other state, to practice medicine and surgery in any of its branches. The physical examination and the tuberculin tests must have been taken by the employee no more than 90 days before the employee's submitting evidence of same to the Board of Education.

Any employee may be required to have an additional examination by a physician who is licensed in Illinois to practice medicine and surgery in all its branches if the examination is job-related and consistent with business necessity. The Board of Education will pay the expenses of any such examination.

Orientation Program

The District's staff will provide an orientation program for new employees to acquaint them with the District's policies and procedures, the school's rules and regulations, and the responsibilities of their position.

LEGAL REF.: Americans With Disabilities Act, 42 U.S.C. § 12112, 29 C.F.R. Part 1630.  
Immigration Reform and Control Act, 8 U.S.C. § 1324a et seq.  
105 ILCS 5/10-20.7, 5/10-21.4, 5/10-21.9, 5/10-22.34, 5/10-22.34b, 5/22-6.5,  
and 5/24-1 et seq.  
Duldulao v. St. Mary of Nazareth Hospital, 483 N.E.2d 956 (1st Dist. Ill. 1985), *aff'd in part and remanded* 505 N.E.2d 314 (Ill. 1987).  
Kaiser v. Dixon, 468 N.E.2d 822 (2<sup>nd</sup> Dist. Ill. 1984).  
Molitor v. Chicago Title & Trust Co., 59 N.E.2d 695 (1st Dist. Ill. 1945).

CROSS REF.: 3:50 (Administrative Personnel Other than the Superintendent), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:40 (Communicable and Chronic Infectious Disease)

ADOPTED: May 20, 2002