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Sargent Shriver National Center on Poverty Law

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Via Email and USPS Mail

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Chicago Board of Education
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Joseph Moriarty
General Counsel
Chicago Public Schools
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Re: CPS's Policies and Practices to Protect the Rights of Domestic and Sexual Violence Survivors

Dear President Clark and Mr. Moriarty:

We write to urge Chicago Public Schools ("CPS") to bring its policies and practices into compliance with the Victims' Economic Security and Safety Act ("VESSA"), 820 ILCS 180/1, *et seq.*, a state law protecting survivors of domestic and sexual violence. Violating this law may subject CPS to liability and a range of penalties including damages and attorneys' fees. More importantly, it threatens the health and safety of CPS employees who are survivors of domestic or sexual violence or whose family or household members are domestic or sexual violence survivors.

As reflected in the title of the law, VESSA grew out of the need to protect survivors and their families from economic insecurity, especially loss of employment. Further, VESSA recognized the need for legal protections when employees must take sudden action, with very little advance notice. Reasons for VESSA leave include when survivors are experiencing domestic or sexual violence, and to address pressing safety, legal, or health-related issues related to the violence. VESSA requires employers to accommodate such employees; to ensure their policies and practices do not discriminate against or otherwise violate the rights of survivors; and to maintain strict confidentiality to protect such employees.

CPS's policy governing VESSA leave (Policy Manual Section 513.8, hereinafter "VESSA Policy" or "Policy") falls short of compliance with the law. As set forth below, CPS's VESSA Policy places burdensome and unlawful requirements on employees seeking leave and fails to maintain adequate processes to handle VESSA-related accommodation requests. CPS must promptly revise its policy and adequately train its personnel to comply with the law.

I. The Policy Places Unlawful Requirements on Employees Seeking VESSA Leave.

CPS's VESSA Policy improperly requires an employee to submit a "VESSA Leave Request Form" to request leave, and submit certain documentation before the request for leave is granted, even threatening to delay or deny leave if such documentation is not provided in advance. VESSA Policy, § III.B-C. This conflicts with VESSA, which permits an employee to notify employers with 48 hours' advance notice of the employee's intention to take leave, "unless providing such notice is not practicable." 820 ILCS 180/20(b). Further, while an employer may require documentation for the leave, such documentation may be provided "within a reasonable period *after* the employer *requests* certification" and "*upon obtaining*" such documents. 820 ILCS 180/20(c)(1)(2) (emphasis added). By threatening to delay or deny VESSA leave based on legally unfounded documentation requirements, the Policy further violates the law's prohibition on interfering with an employee seeking to exercise rights under VESSA. 820 ILCS 180/20(f). VESSA does not authorize an employer to deny leave because the employee did not provide documents *prior* to taking leave. *Id.*

VESSA notice and certification requirements are based on the lived experiences of survivors. The law recognizes that domestic and sexual violence may require survivors to take quick action. The law specifically anticipates that advance notice may not always be practicable. 820 ILCS 180/20(b). In the case of an unscheduled absence, employers are prohibited from taking action against an employee as long as the employee, upon request of the employer, provides certification documentation within a reasonable period of time *after the absence*. *Id.* The law does not require employees to provide documentation when giving notice; therefore, it does not authorize employers to require employees to provide all documentation prior to taking leave. The Policy's stricter requirements and threat to delay or deny leave violate VESSA.

II. The Policy's Documentation Requirements Do Not Comply with the Act.

First, the Policy misleadingly directs employees to submit forms of documentation that are not required by VESSA. Under the law, if an employer requests certification that the employee or employee's family or household member is a victim of domestic or sexual violence and that VESSA leave is needed, an employee need only submit *at most* two things: (1) a sworn statement, and (2) "upon obtaining" such documentation, some form of documentation corroborating the need. 820 ILCS 180/20(c). If the documentation listed in VESSA is not in the employee's possession, then submission cannot be required. And, the documentation must be submitted only after it is in the employee's possession. Again, the law reflects the lived experiences of survivors.

For many survivors, it may be dangerous to obtain documentation such as a police report or a court order or obtain other documentation. It may also take time to obtain such documentation. Take, for example, an unfortunate, but not atypical scenario: As an employee is getting ready for work, her spouse or partner prevents her from leaving and verbally and physically attacks her. She does not call the police or seek medical attention. After three days at home recovering from the physical and mental abuse, she is able to hide her black eye under makeup and her depression has lifted enough to return to work. She requests VESSA leave upon her return. Her statement that she requests VESSA leave due to domestic violence is sufficient to

grant the leave request. To require more information about the violence is unnecessary and could put an employee at risk of further harm.

In contrast, the Policy first requires employees to complete a “VESSA Leave Request Form and related documents” and makes no mention of a sworn statement. VESSA Policy, § III.B. This distinction is important. There may be instances, for example, in which an employee is unable to obtain and return the VESSA Leave Request Form without compromising safety concerns. To comply with the law, the Policy must clearly permit employees to submit either the VESSA Leave Request Form or simply a sworn statement attesting to the status of the victim and the need for leave.

Next, the Policy misleadingly suggests that an employee must submit multiple forms of documentation to corroborate the need for leave when only one of the forms is required. The Policy states that “an employee must submit the *following documentation* to the Talent Office” before listing the alternative forms of documentation an employee can provide to certify their need. VESSA Policy, § III.C. This introductory sentence implies that *all four* types of documentation listed are required—despite the “or” at the end of the list—leading to possible confusion and inconsistency in how the Policy is enforced. In fact, we have heard that CPS personnel have demanded multiple forms of VESSA documentation, in violation of the law. To counteract these misconceptions, CPS must revise its policies and train its personnel to clarify that an employee need only submit one of those listed documents—and that, as discussed above, failure to provide such documentation in advance does not warrant denying or delaying leave.

III. The Policy Lacks an Adequate Process to Provide Reasonable Accommodations under VESSA.

CPS currently requires employees seeking a reasonable accommodation under VESSA to use a request form specific to the Americans with Disability Act (“ADA”). VESSA Policy, § VI.B. VESSA does not authorize employers to ask for the same information that is required for ADA accommodations. Requiring employees to complete a form specific to a separate, federal law may confuse both employees seeking leave and CPS personnel handling the leave. Worse, requiring employees to complete a form that seeks detailed and confidential medical information, which is unnecessary and irrelevant under VESSA, may deter employees from seeking to exercise their rights under this state law. CPS must revise its VESSA policy to ensure that employees can request and be granted reasonable accommodations as required by the law.

We further recommend that the Policy highlight that VESSA allows many types of accommodations. 820 ILCS 180/30(b)(3). The title, purpose, and overview of the Policy only mention VESSA leave, but the law expressly notes that accommodations may include measures such as an adjustment to job structure, workplace facility, or work requirement. *Id.*

Unfortunately, these failures of process appear to reflect a practice of failing to provide prompt accommodations. VESSA specifically states that accommodations must be made in a timely fashion. 820 ILCS 180/30(b)(1). We have heard that CPS has taken more than a year to grant requests for accommodations despite exigent circumstances. Again, because of the need to react quickly to unexpected and dangerous circumstances, CPS must amend this practice, as well

as clarify and simplify its policies and documentation for requests for accommodations.

IV. The Policy's Definitions and Reasons for Leave are Incomplete.

Since its enactment, VESSA has provided rights to employees who either are victims of domestic or sexual violence themselves, or who have a family or household member who is a victim of domestic or sexual violence. Over time, the General Assembly has broadened the law's definition of a covered family or household member, yet the newly adopted Policy includes an outdated definition. The Policy's definition only includes a "spouse, parent, son, daughter, and persons jointly residing in the same household," VESSA Policy, § IV.A, while VESSA's current definition adds "other person related by blood or by present or prior marriage [and] other person who shares a relationship through a son or daughter," Public Act 96-635, § 10(12) (*codified as* 820 ILCS 180/10(12) (2009)). This inaccurate definition must be updated to comply with the law.

The Policy also does not include all the reasons an employee may request leave under VESSA. Employees may request VESSA leave not only for the reasons enumerated in the Policy, but also because they or a family or household member is "experiencing an incident of domestic or sexual violence." The Policy fails to include this additional reason and must be revised.

V. VESSA Prohibits Discrimination and Retaliation.

VESSA also includes nondiscrimination provisions that help sustain employment; yet, this important section is simply ignored by CPS's Policy. Employees must be notified of their full rights under VESSA, including the prohibition of discrimination and retaliation. The law explicitly states that employers "shall not fail to hire, refuse to hire, discharge, constructively discharge, or harass any individual, otherwise discriminate against any individual ... or retaliate against an individual in any form or manner" because of that individual's actual or perceived status as a survivor, or that individual's actions taken or accommodations requested related to domestic or sexual violence. 820 ILCS 180/30(a)(1). This prohibition also applies when the workplace is disrupted or threatened by a person whom the individual states has committed or threatened to commit domestic or sexual violence against the individual or the individual's family or household member. 820 ILCS 180/30(a)(1), (2). The Policy must include clear notification and guidance on these prohibited acts.

VI. CPS Must Ensure Personnel Handling VESSA Claims are Adequately Trained on All Requirements, Including Confidentiality and Prohibitions on Discrimination and Retaliation.

To provide appropriate protections and avoid interfering with the rights of employees experiencing domestic or sexual violence issues, CPS must ensure that all personnel are sufficiently trained on the purpose and requirements of VESSA, as well as the need to maintain strict confidentiality and the prohibition of discrimination and retaliation against employees. VESSA requires that information pertaining to an employee's attempts to take VESSA leave is kept in "strictest confidence," with disclosure permitted only upon written request or consent by

the employee or when required by applicable federal or state law. 820 ILCS 180/20(d), (e)(2)(D).

We have heard that CPS personnel have required employees to submit documentation multiple times, to various departments and staff members. Strict confidentiality is critical because it helps prevent perpetrators of the violence from locating the survivor, identifying where the survivor has sought help, or learning that the survivor is even attempting to seek help. It is also important if the perpetrator of the violence is also a CPS employee, or otherwise involved with CPS. CPS must immediately establish protocols and processes to better maintain confidentiality, and must train its employees on the appropriate methods to handle VESSA claims.

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In summary, we ask that CPS promptly take the following actions:

1. Revise its VESSA Policy to comply with the law, including by:
 - a. Clarifying the notice and documentation requirements, including acknowledging that advance notice or documentation is not required;
 - b. Providing a clear process for requesting and granting reasonable accommodations in a timely manner; and
 - c. Clarifying the reasons for VESSA leave, including the types of violence covered under VESSA, and updating the definition of “family or household member” in accordance with the law.
2. Establish adequate procedures, including appropriate forms, for requesting and granting reasonable accommodations under VESSA;
3. Add language on VESSA’s prohibition on discrimination and retaliation; and
4. Adequately train CPS personnel to handle VESSA matters, maintain strict confidentiality, and prohibit discrimination and retaliation.

Please respond to Wendy Pollack (wendypollack@povertylaw.org) and Rachel Murphy (rmurphy@aclu-il.org) by May 16, 2019 to confirm CPS will revise its policies and practices as described to ensure compliance with VESSA. We look forward to your response.

Sincerely,



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Women’s Law & Policy Initiative Director
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Law