

8th Annual Trustee Leadership Conference

Illinois Board of Higher Education | October 26, 2023



Welcome to the 8th Annual Trustee Leadership Conference.

We Will Begin Shortly







Ja'Neane Minor
Chief of Staff
Illinois Board of Higher Education




Brook Stewart
Assistant Director of Diversity & Outreach
Illinois Board of Higher Education

House Keeping

- Please turn on your camera (exceptions breaks, lunch)
- Must be in attendance for the entire conference to receive a certificate of completion
- Take time as needed for self care
- Chat with Brook Stewart or myself if you have any questions throughout the conference



Today's Agenda



9:00 am	Welcome and Introductory Remarks
9:05 am	Getting to Know You-Zoom Poll
9:10 am	Implementation of the Higher Education Strategic Plan for A Thriving Illinois <i>Updates</i>
9:30 am	Session I: Equity Plan Framework: Where We are, Where We are going
10:45 am	Break Out/Share Out
11:15 am	Session II: Economic Development for a Thriving Illinois
NOON	Peer Exchange (Speed Dating Style)
12:30 pm	Lunch Break
1:00 pm	Session III: Guideposts and Guardrails for Illinois Public University Trustees
2:00 pm	Break
2:15 pm	Session IV: Good Governance: Good Leadership - We Need Both!
3:15 pm	Concluding Remarks and Reflections
3:30 pm	Adjourn



During breaks, feel free to turn off your camera but please stay logged in.

Getting to Know You Zoom Poll



Updates from the Higher Education Strategic Implementation Plan



José Garcia

Senior Associate Director of Strategic Communications
Illinois Board of Higher Education





IBHE

A THRIVING ILLINOIS

Higher Education Paths to Equity,
Sustainability, and Growth

2021

Presentation to the Public University Trustees
October 26, 2023

A Thriving Illinois



A thriving Illinois has an inclusive economy and broad prosperity with equitable paths to opportunity for all, especially those facing the greatest barriers.



Strategies for a Thriving Illinois



Close the equity gaps for students who have been left behind.

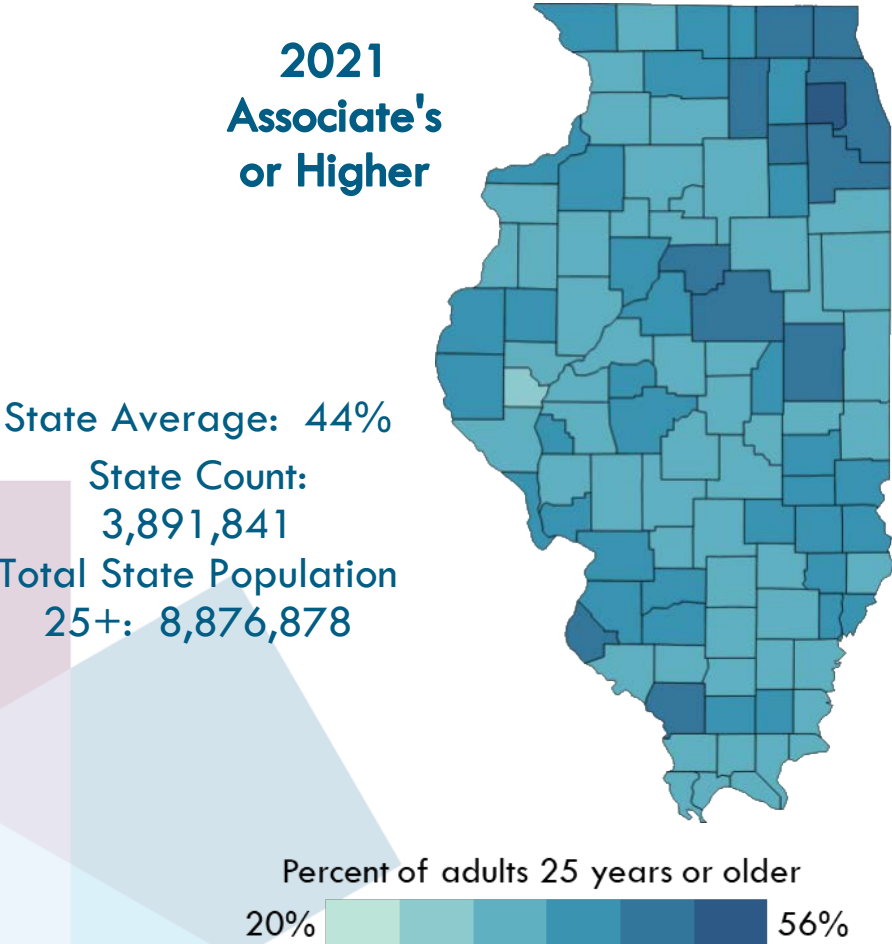


Build a stronger financial future for individuals and institutions.



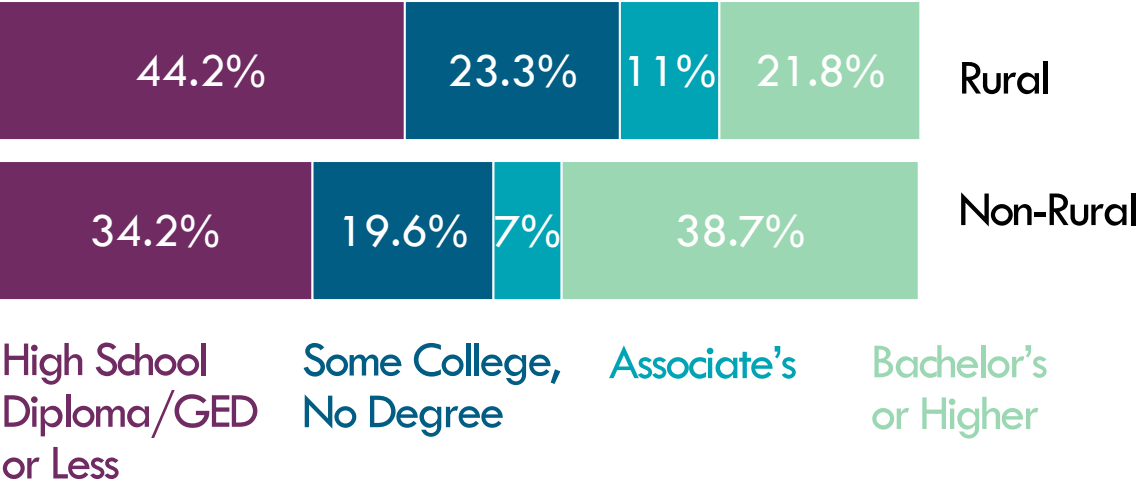
Increase talent and innovation to drive economic growth.

Disparities in Postsecondary Attainment



Source: 2021 American Community Survey 5-Year Estimates

EDUCATIONAL ATTAINMENT IN ILLINOIS (AGE 25+) BY RURALITY



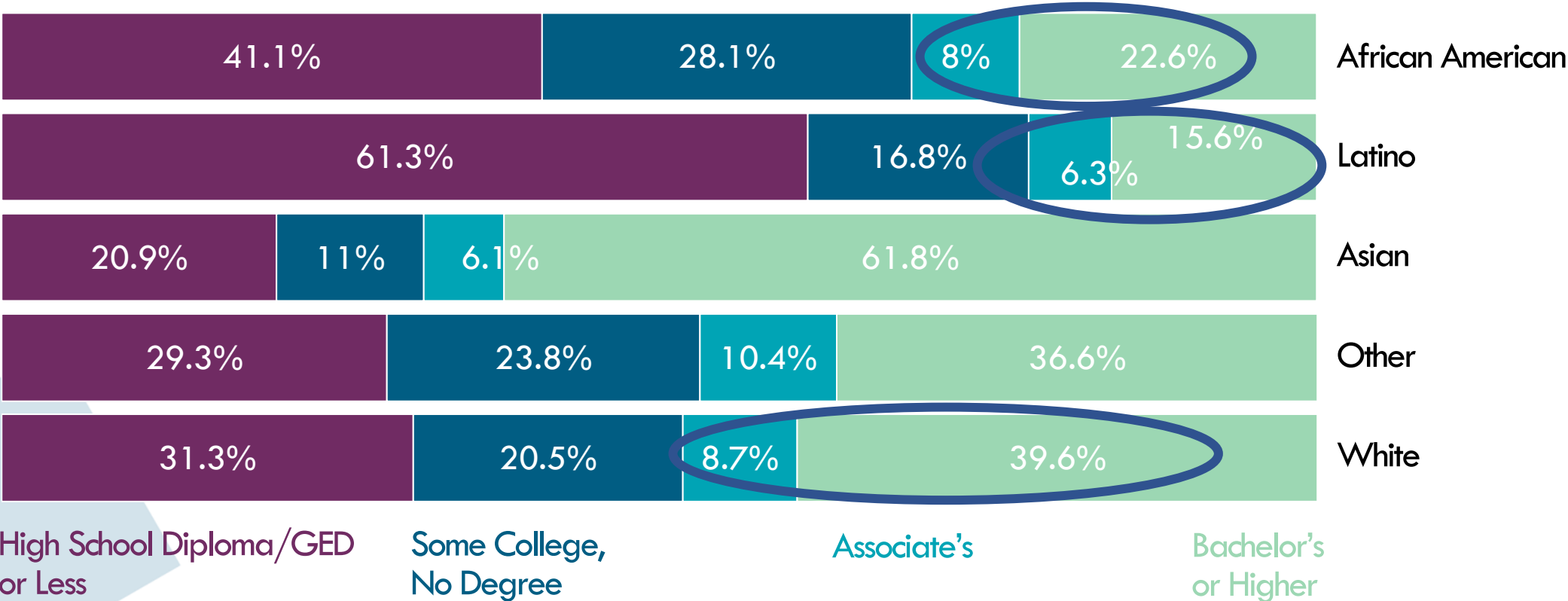
See all of our interactive [Equity Maps](#)

Source: 2020 American Community Survey 5-Year Estimates

Disparities in Postsecondary Attainment



EDUCATIONAL ATTAINMENT IN ILLINOIS
(AGE 25+) BY RACE/ETHNICITY

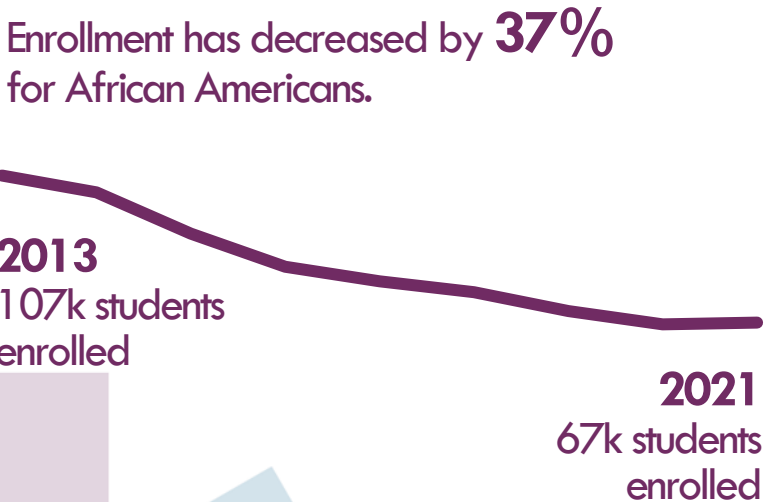


Source: 2020 American Community Survey 5-Year Estimates

Equity Gaps Facing African American Students

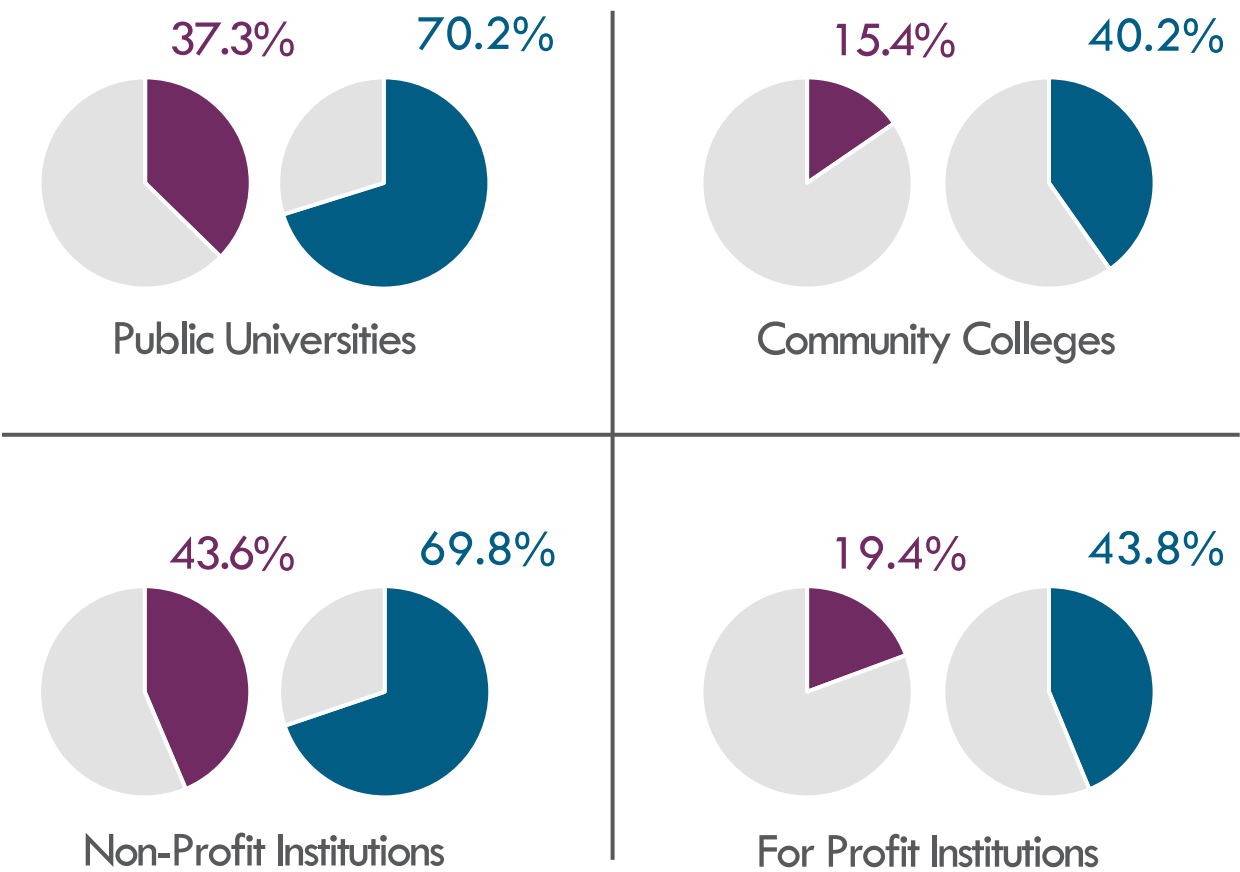


ENROLLMENT CHANGE OVER TIME



African American
White

2021 GRADUATION RATES



Equity Gaps Facing Latinx Students

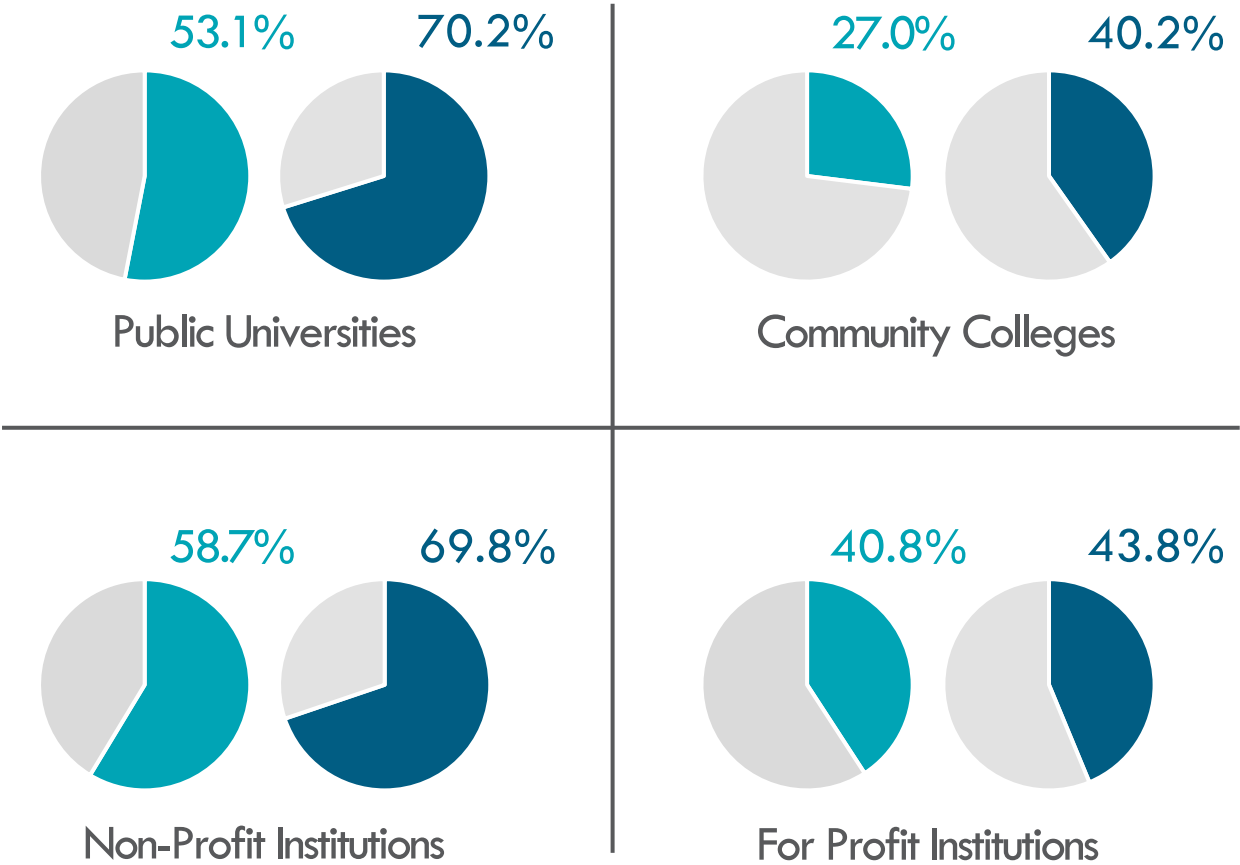


ENROLLMENT CHANGE OVER TIME

Enrollment has increased by **3%** for Latino students.



2021 GRADUATION RATES

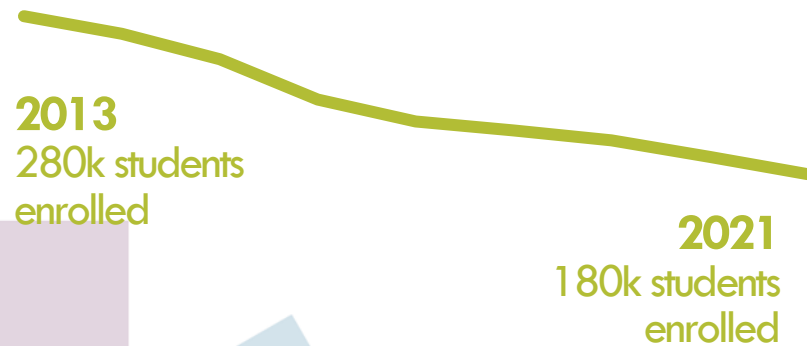


Equity Gaps Facing Low-Income Students



ENROLLMENT CHANGE OVER TIME

Enrollment has decreased by **36%**
for low-income students

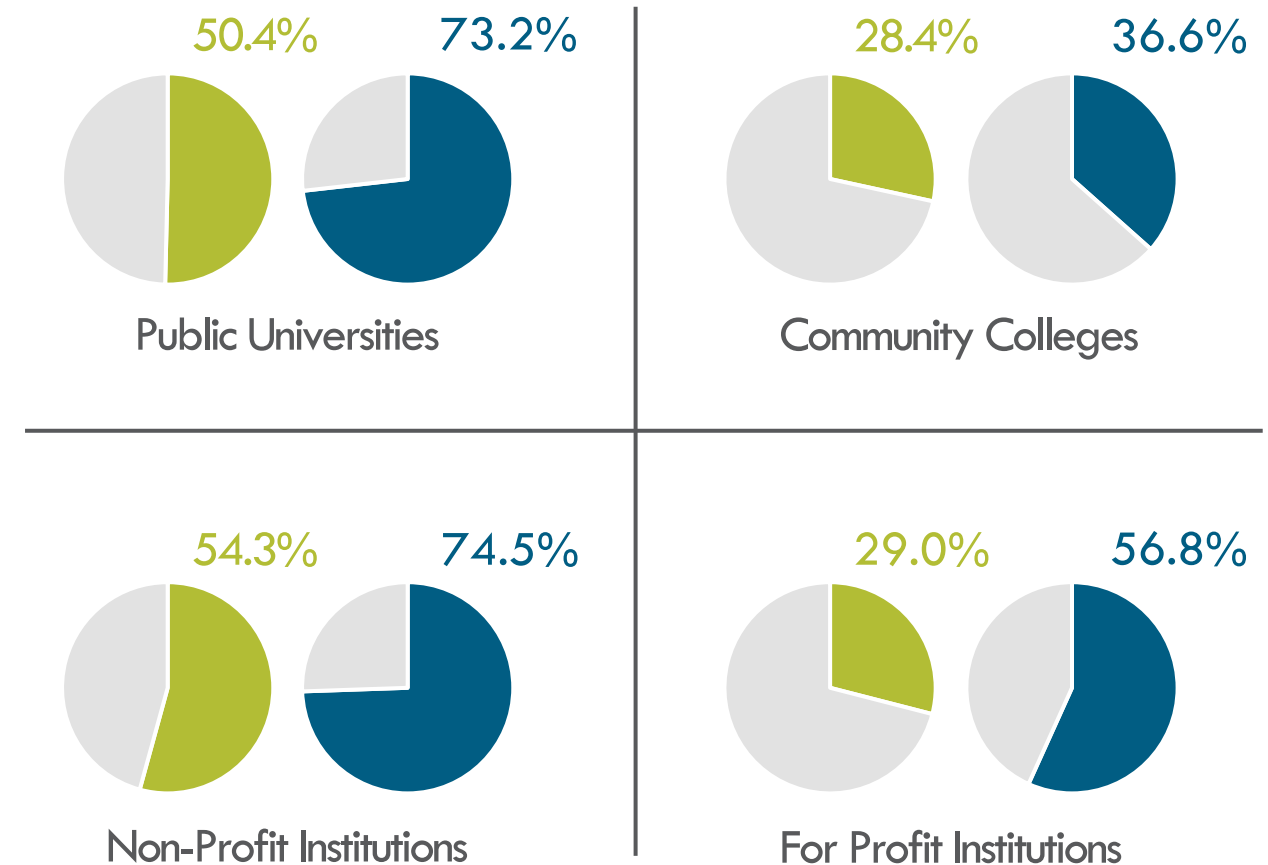


2013
280k students
enrolled

2021
180k students
enrolled

Pell
Non-Pell

2021 GRADUATION RATES



Examples of Strategies Underway



Close the equity gaps
for students who have
been left behind.

Equity Strategy 1: Support learning renewal and student supports



Federal and state funds for those most impacted by the pandemic



Illinois Tutoring Initiative:
\$25 million through FY 24

Governor's Emergency Education Relief Fund (GEER): \$80 million through September 2023

End Student Housing Insecurity:
\$2.0M to address underlying causes of student housing insecurity and homelessness



Close the equity gaps for students who have been left behind

Equity Strategy 1: Support learning renewal and student supports



Collaboration and Communities of Practice



Benefits Navigators



HOUSE Liaisons



GEER Coordinators



Equity Strategy 2: Establish and implement institution-level equity plans and practices to close gaps



- Enacted in [P.A. 102-1046](#), June 7, 2022.
- Required of all public institutions of higher education. Encouraged for private institutions.
- Equity Plans and Practices to close gaps in enrollment, retention, completion, and student loan repayment rates.
- Focus on Black, Latinx, AAPI, Native American, rural, adult, women, & people with disabilities.
- IBHE, with ICCB, to establish guidelines, provide support, study, report effectiveness and outcomes. Advisory Committee just launched.
- Annual reporting to the General Assembly and Governor.



Equity Strategy 3: Implement equitable talent management to increase and retain faculty, staff, administrators of color



IBHE's *Diversifying Faculty in Illinois* program supports students of color working on graduate degrees.



Examples of Strategies Underway



Build a stronger financial future for individuals and institutions.

Sustainability Strategy 1: Invest in public higher education through an equitable, adequate, and stable funding system



ILLINOIS COMMISSION ON EQUITABLE PUBLIC UNIVERSITY FUNDING

Charge

Make recommendations on “specific data-driven criteria and approaches to the General Assembly to **adequately, equitably, and stably fund public universities** in this State and to evaluate existing funding methods.”

Must fulfill principles of Higher Ed Strategic Plan

Be informed by Chicago State University’s Equity Working Group

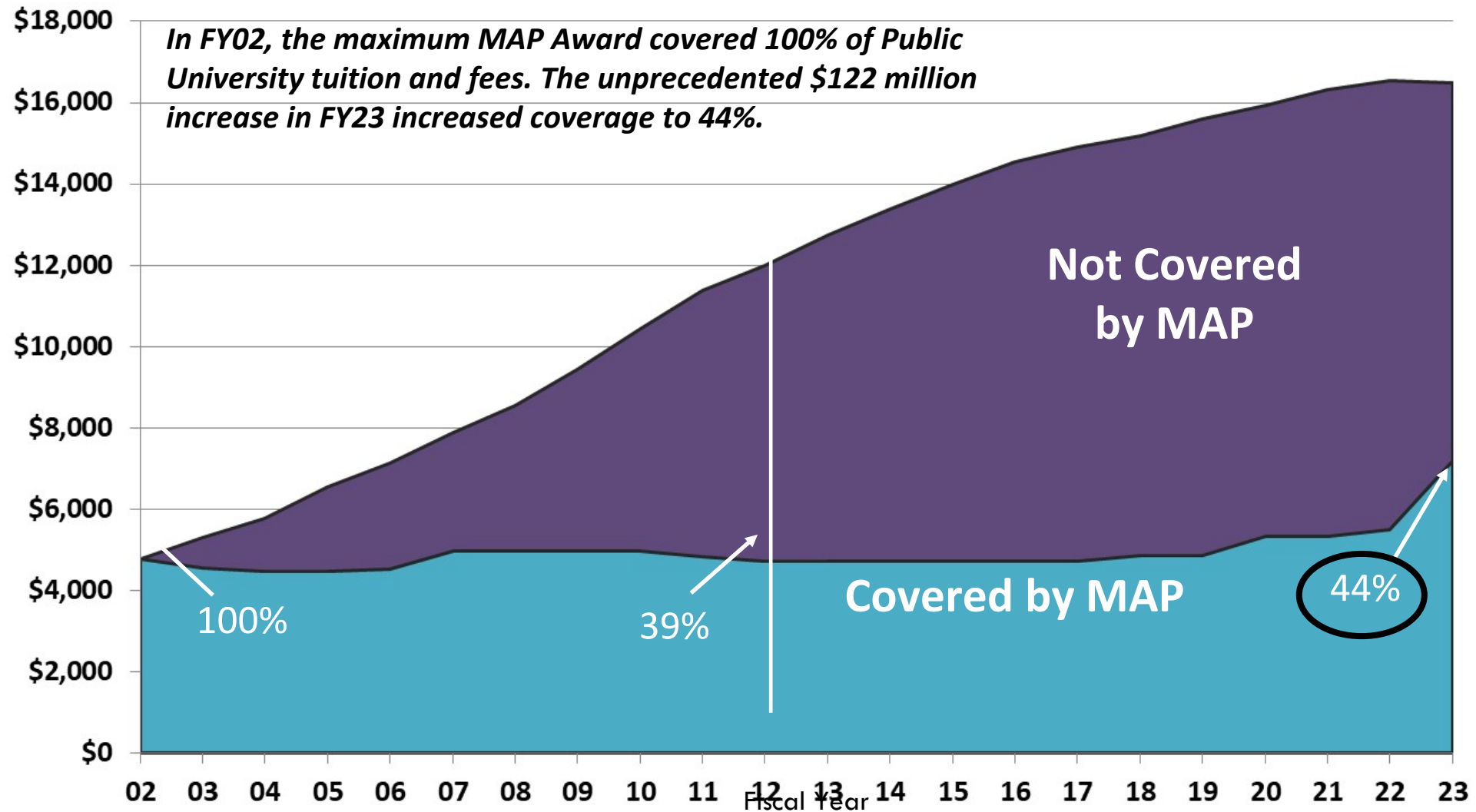
Commission Co-Chairs

Senate Majority Leader Kimberly Lightford
Representative Carol Ammons
Pranav Kothari, Chair, IBHE
Martin Torres, Deputy Governor for Education,
Governor’s Office

Timeline and Operations

Report deadline being extended
IBHE provides Administrative Support

Sustainability Strategy 2: Invest an additional \$50M each year to reach \$1 billion in MAP funding over 10 years

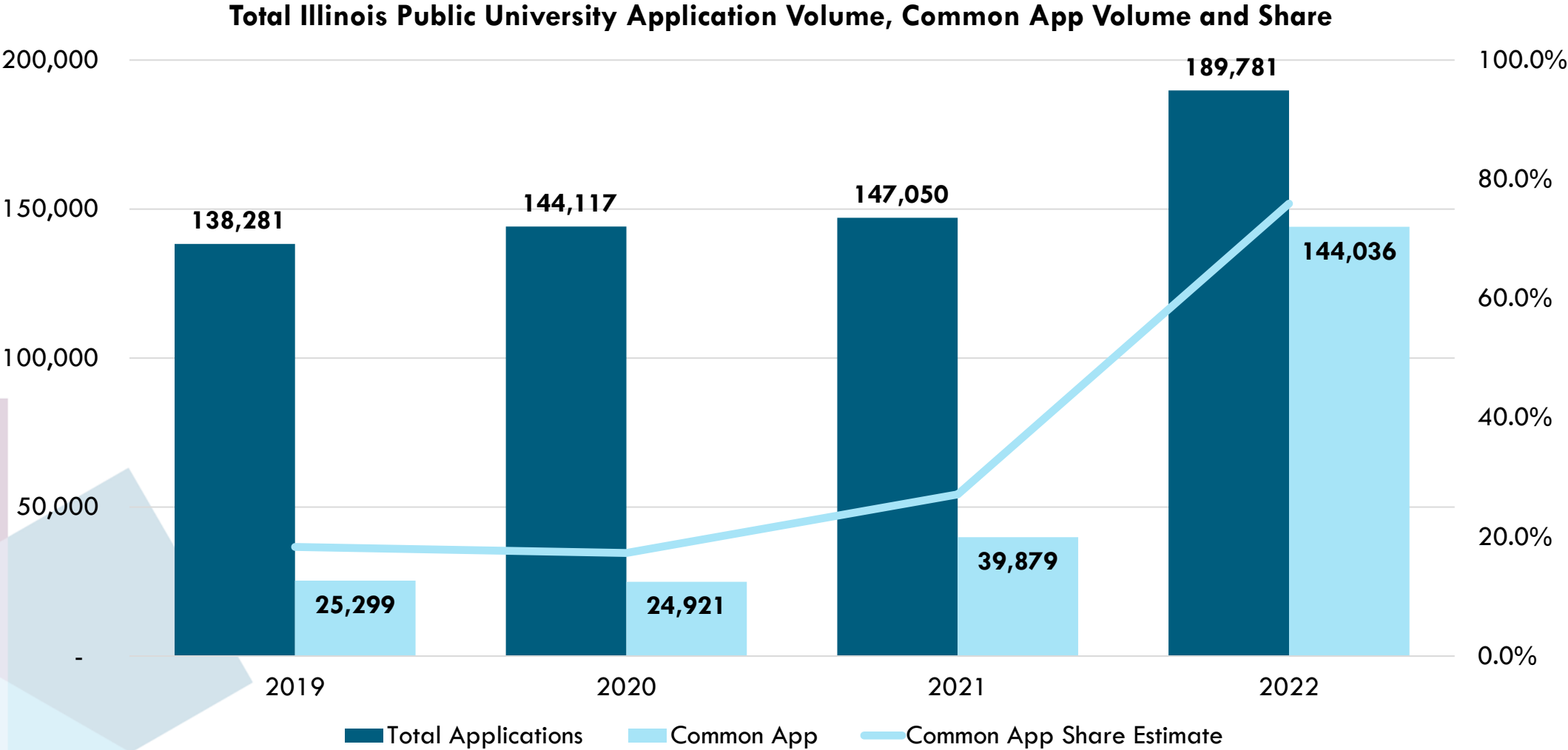


Examples of Strategies Underway



Increase talent and innovation to drive economic growth.

Growth Strategy 4: Encourage high school graduates to enroll in Illinois and keep talent here



Source: IPEDS Admissions Survey 2014-2022 & Common App Data Reports

Growth Strategy 5: Establish a consortium of public universities and community colleges to better serve the incumbent early childhood workforce



- **Streamline degree** completion for workforce
- Students can take **coursework at multiple consortium institutions**
- **Community colleges degrees transfer in their entirety**
- **Navigators** provide personalized assistance for application and financial aid and connection to Coach
- **Coaches and Mentors** support students to persist and complete their studies
- Student **outreach campaign** to be launched
- **Scholarships for students and funding for institutions**
- Embodied in [110 ILCS 28/](#)

www.ecace.org

Higher Education is the Path to a Thriving Illinois



The challenge of the next decade is to focus on creating broad, sustainable, and equitable paths to a prosperous future for every learner, leader, and community that we engage.



Questions?



Equity Strategy 2: Establish and implement institution-level equity plans and practices to close gaps



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Session I: Equity Plan Framework for a Thriving Illinois

– Where we are, Where we are going



Jennifer Foster
Deputy Executive Director
Illinois Community College Board



Lisa Castillo Richmond
Executive Director



Dr. Claudia Mercado
Sr. Director of College &
University Partnership



Dr. Lorenzo Baber
Director of OCCRL, University
of Illinois

The Partnership for College Completion



Speakers' Bios



Equity Plans to Address Longstanding Disparities in IL Higher Education

**Presentation to University Trustees
October 26, 2023**

Partnership for College Completion



Lisa Castillo Richmond

Executive Director



Claudia Mercado

**Senior Director of College and
University Partnerships**



Partnership for College Completion



Mission

The Partnership for College Completion champions policies, practices and systems that increase college completion and eliminate degree completion disparities for low-income, first generation, and students of color in Illinois – particularly Black and Latinx students.

Vision

PCC envisions a state where equitable opportunities to access and complete a college education lead to greater degree attainment, racial equity and socioeconomic mobility for Illinoisans.

Our Work

PCC advances solutions that address historic inequities in our higher education system.



Public Policy

We advocate for bold equity-centered policies that improve college access and affordability and address structural barriers to persistence and completion.



College and University Partnerships

We partner with Illinois colleges and universities to provide support as they develop and deploy equity-centered strategies on campus.



Research and Data

We use data and research to advance both transformational equity change on college and universities campuses and through state policy efforts in Illinois.



The Illinois Equity in Attainment Initiative

- An initiative that brings together a diverse group of 25 Illinois colleges and universities; launched in late 2018
- Public commitment by institutions to eliminate racial & socioeconomic inequities
- Led by senior leadership team, including president
- Focus on institutionalizing equity efforts
- Sharing disaggregated data over time
- Working within a community of practice
- Evolving supports from PCC



ILLINOIS EQUITY
IN ATTAINMENT



ILEA Core Beliefs

Colleges are responsible for graduating

all of their degree-seeking students

All college students can graduate

with the right information, tools, and supports

Racial and socioeconomic completion inequities are unacceptable

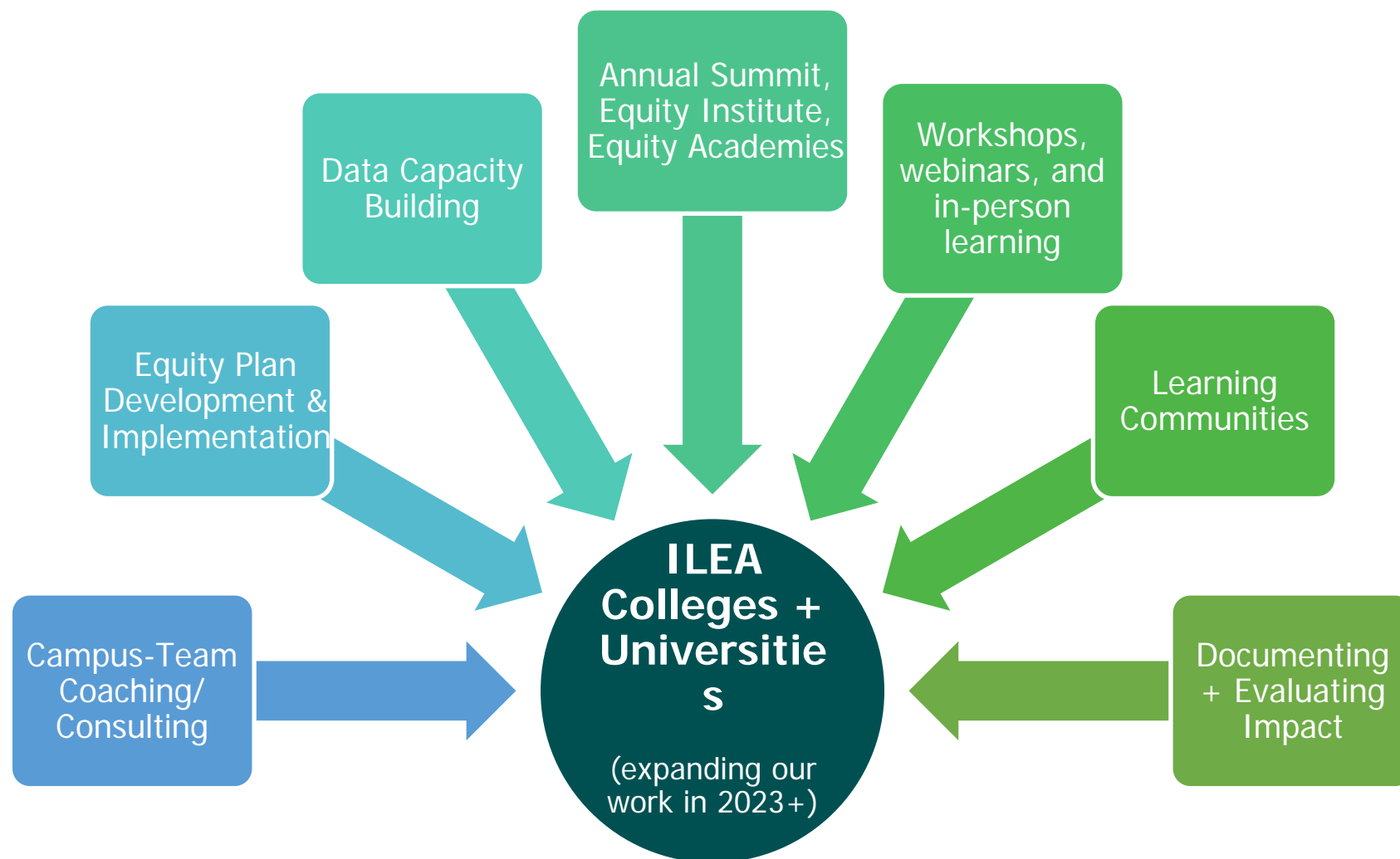
and should be eliminated with urgency

Solutions and resources exist to address disparities

in higher education outcomes

The actions that colleges take or fail to take can determine a student's ultimate trajectory in college

PCC Supports for ILEA Institutions



ILEA Equity Plan & Program Model



Starting Place for Equity Planning

- Vision and sense of urgency
- College-wide engagement & critical mass
- Student engagement & student voice
- Sustaining momentum and reporting outcomes
- Routine communication on multiple initiatives and outcomes
- Institutional Research at the center of this work
 - Strategic importance of disaggregated data and the centrality of IR in the conversation
 - Moving from IR to IE – applied research to shift policy and practice and target supports, remove barriers
 - Guides the conversation, not a compliance function
 - Being open to seeing new insights in the data

After 1+ year of organizing, planning, and level setting around equity, 22 ILEA colleges and universities published equity plans in 202 that aim to **eliminate disparities in degree completion by race and Pell-status**



ILEA Equity Plan



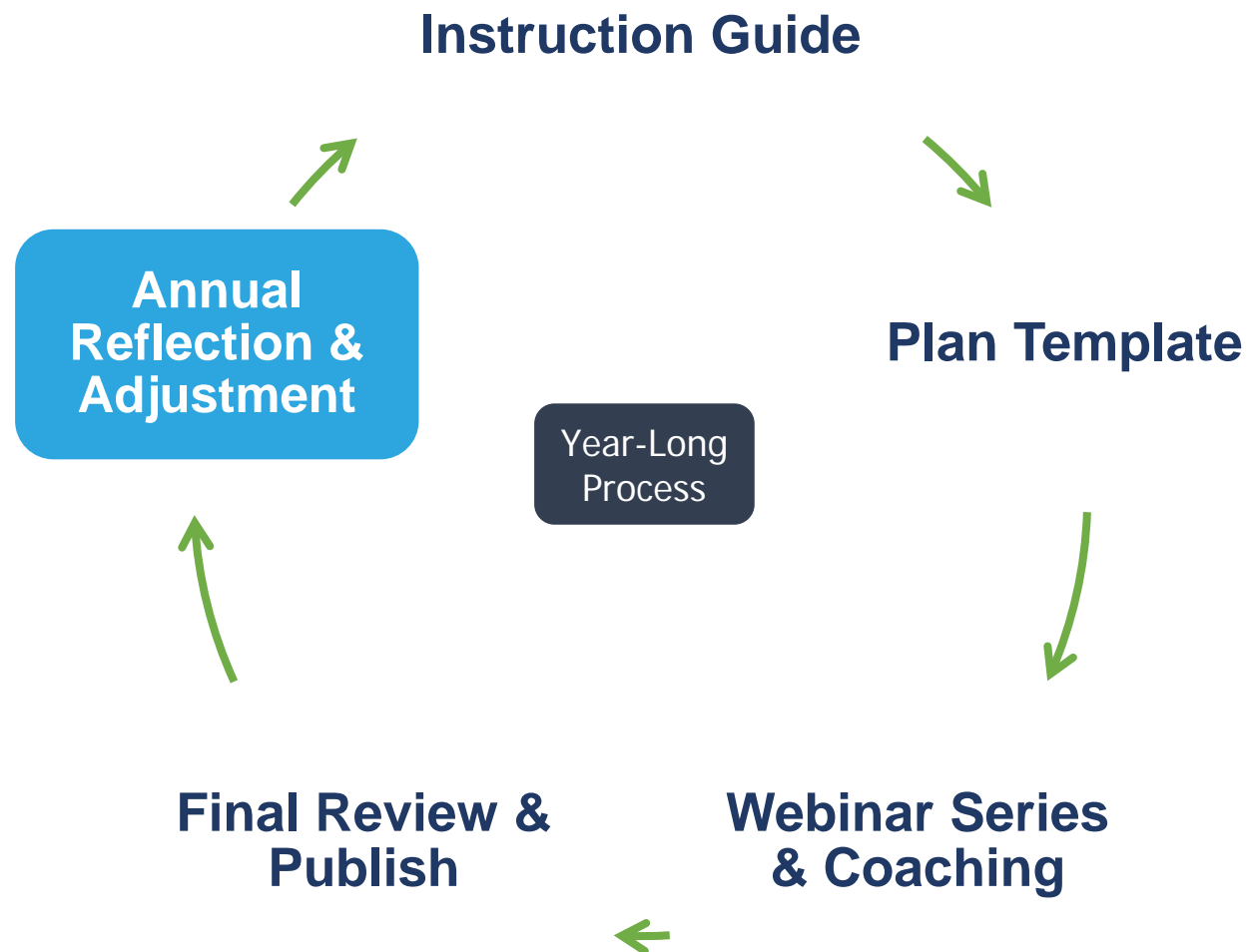
Equity Plan Contents

- 1 Endorsement at Highest Levels
- 2 Who We Are, Clarity of Purpose
- 3 Where We are Today
- 4 Future Vision & Goals
- 5 Institutional Strategies
- 6 Evaluation Plan
- 7 Budget Implications

- National Scan
- Clear & Concise
- Local Customization
- 1 Among Many Plans
- Public Facing



ILEA Equity Plan Development Process



Learning in Community

Equity Speaks Group 1 Q&A

Questions for Panelists

- ▶ What is the primary equity challenge your institution's equity plan is addressing?
- ▶ How is your institution engaging faculty in closing equity gaps?
- ▶ What are the funding sources that support your equity plan work?
- ▶ How does your institution plan to measure success (formally or informally)?
- ▶ What are some key lessons that your team learned while developing your equity plan?
- ▶ What is one obstacle that your team encountered while developing your equity plan? How did you address it?

41:22

2020 ILEA Virtual Fall Summit



Annual Evaluation & Reflection

At the conclusion of each academic year, IHEs submit a reflection assessing progress made during the academic year and what adjustments will be made to the plan for the upcoming year.

- An assessment of the impact of each strategy within the Equity Plan (strategy & institutional level)
- A detailed description of next steps for each strategy (new, adapted, scaled, or discontinued based on data & team analysis)





What PCC is Learning?

Equity Plan Strategies

The “What”

- **Student Access and Onboarding:** Student enrollment, orientation and first-year experiences, student pathways, efficacy of advisement
- **Credit Accumulation:** Reaching 15/30 credits within the first term/year
- **Hiring and Professional Development:** Staff and faculty training on diversity, inclusion, equity, and integrating equity into daily work
- **Student Supports and Resources:** Retaining students, ensuring students gain momentum year to year, and complete credentials, time to degree
- **Transition Opportunities:** Setting students up for transfer or employment

Early Momentum: 2 Years of Implementation

The “What”

- **Bypassing developmental education (placement & co-req models of reform) & embedded tutoring** for developmental math courses yielding academic gains for Latinx and Black students
- **(Re)opening cultural centers** for use by campus community
- **Faculty professional development** for developmental education and in equity-focused teaching & strategy
- **Targeted HR policies** to assess cultural competency among prospective candidates and recruit/hire diverse candidates
- **Success frameworks** created for faculty & staff integrating DEI principles
- **Revamped New Student Orientation** to be more culturally-responsive

Early Momentum: 2 Years of Implementation

The “What”

- **Implementing a guided pathways model** course sequences and linking adult students with career opportunities
- **Redesigned advising model** integrates supports holistically across areas
- **Outreach to students** to understand reasons for stop out or D/W courses
- **New course times, modalities, sequences, schedules** to optimize success
- **Gateway course completion, credit completion, credit thresholds**

Scaling programs to hundreds or thousands of students

- **Budgeting for equity impact**

Implementation Challenges

The “How”

- **Scaling** promising practices
- **Intended impact** not achieved – effectiveness & adequacy
- **Time, effort, choreography required** – to disaggregate and interpret data, to evaluate/revamp systems & processes, to increase student touchpoints
- **Enrollment** declines among Black students & Latinx students
- **Integrating embedded tutoring** in math co-requisite courses
- **Coordination needed across teams** because disparities must be addressed by multiple people/departments/offices
- **Equity plan is a guide** and not an instruction manual
- **Regular convening & conversation** is a necessary component

Leadership is Critical

- The president is critical to the success of equity priorities
- The president needs a strong, effective, aligned leadership team
- The trustees are partners to the president to provide support & leadership
- The scale and momentum in the organization is within the faculty & staff
- **Context:** Resource-constrained and priority-full environment
- Race must be explicitly discussed

Research has found that the support, collaboration, and visible action of senior administrative leaders are among the core elements required for transformational change in higher education. However, it is insufficient on its own. (Eckel and Kezar, 2002)

The Role of Trustees in Equity Accountability

As equity leadership is shared, the notion of accountability expands and the number of people who take ownership for leading accountability increase. Boards also must consider their roles in equity efforts and also hold themselves accountable for expanding their knowledge, conceptualization, and oversight of campus equity goals.

- Create an equity subcommittee that explores equity measures and regularly reviews campus equity work
- Use progress on institutional equity as one component of president/chancellors' performance evaluation
- Prioritize presentations utilizing disaggregated data to monitor institutional progress within board agendas
- Support leadership in allocating resources to encourage required capacity-building
- Participate in equity training offered through organizations such as PCC
- Develop diversity goals and targets in hiring at all levels of the institution to reflect the student body (administration, faculty, staff, Board/trustees when possible)

(Kezar et al., 2021; Rall, 2020)

Recommendations for Campus Leaders & Trustees

- Broad campus-level investment to develop, implement, adjust and celebrate
- Big public goals – accountability for reaching them
- Engagement throughout of leadership
- Equity statements as shorthand
- Real, long-term commitment
- Becoming equity-minded practitioners
- Scale is the goal, not programs
- The role of data within the institution
- Process of inquiry, learning organizations
- Leveraging communities of practice for continuous learning, sharing, and disseminating findings





Questions?

Lisa@partnershipfcc.org

Claudia@partnershipfcc.org

Equity Breakout Groups

1. How could institutions ensure buy-in for drafting and implementing equity plans?
2. What strategies/initiatives would be beneficial to improve equity at your institution?
3. What is underway, or what efforts are underway that are most promising to close equity gaps at your institution?



Session II: Economic Development for a Thriving Illinois



Ginger Ostro
Executive Director of
Illinois Board of Higher Education



Speakers' Bios

Lunch Break

Please be back by 12:45 sharp



BREAKOUT GROUPS: Peer Discussion/Reflections



Session III: Guideposts and Guardrails for Illinois Public University Trustees



Scott Rice
Deputy University Counsel
University of Illinois System



Rhonda Perry
Campus Legal Counsel
University of Illinois Springfield

ILLINOIS PUBLIC UNIVERSITY TRUSTEES: GUIDEPOSTS AND GUIDANCE FOR COMPLIANCE AND SUCCESSFUL SERVICE

Illinois Board of Higher Education
October 26, 2023



Session Overview

- I. Introduction, Purpose and Objectives**
- II. Powers and Fiduciary Responsibilities**
- III. Transparency**
- IV. Ethics, Conflicts and Related Considerations**
- V. Labor and Employment**
- VI. Financial Oversight and Accountability**

I. Introduction, Purpose and Objectives



UNIVERSITY
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Trustee Training – *Requirement*

Voting board members of public universities must complete a minimum of 4 hours of professional development leadership training within 2 years of beginning service and every 2 years thereafter. [Board of Higher Education Act, [110 ILCS 205/13](#)]

- Training should include, among other things:
 - public university and labor law
 - contract law
 - ethics
 - sexual violence on campus
 - financial oversight and accountability
 - audits
 - fiduciary responsibilities
- Training may be provided by the Illinois Board of Higher Education (IBHE) or qualified provider approved by IBHE.

***Compliance* with Requirement**

- Universities must maintain on their websites the names of Trustees who have completed training.
- Chair of each Board of Trustees must certify annually to IBHE the number of hours of training that each voting member received during the preceding fiscal year.
- If a member has not completed required training, IBHE must notify the Governor and four legislative leaders, and respective Board is to suspend the member, who then has 45 days to complete training.
- Failure of the board member to complete the training within the 45 day probationary period “constitutes a resignation from and creates a vacancy in the governing board....” [110 ILCS 205/13(d)].

Objectives

- **General overview of concepts**
- **Not exhaustive**
- **Resource document**
- **Consult university's legal counsel, ethics officer or other appropriate administrator**

Attorney-Client Privilege

“The attorney-client privilege protects communications made in confidence by a client and a client’s employees to an attorney, acting as an attorney, for the purpose of obtaining legal advice.” Upjohn Co. v. United States, [449 U.S. 383](#) (1981)

Who “owns” the attorney-client privilege – who is the client?

- Rules of Professional Conduct: in-house attorneys “represent the organization acting through its duly authorized constituencies”
- In other words, **the university, acting through its board of trustees, is the “client,”** not any one individual
- Privilege applies equally to in-house attorneys and outside attorneys retained by the university to advise/represent it
- Privilege limited to high-level decision-makers (the so-called “control group” test)

Attorney-Client Privilege (cont'd)

Practice Tips

- Exercise care in handling attorney-client privileged communications
- Simply adding a “cc” to a university (or outside) attorney to an email *does not itself* confer the attorney-client privilege
- Trustees should avoid sharing/distributing any attorney-client privileged information to others as it likely would be deemed a waiver of the privilege
- Forwarding *non*-privileged material to a university attorney does *not* confer privilege

II. Powers and Fiduciary Responsibilities

Creation of Universities and Board Authority

Illinois *public* universities and their respective Boards of Trustees are created by state statutes.

These “enabling” statutes:

- Delineate powers and duties of Trustees
- Set forth provisions concerning Trustee eligibility and selection (including student trustees)
- Describe conflict management expectations
- Numerous other provisions

Enabling Statutes (not exhaustive)

- Chicago State University Law [[110 ILCS 660](#)]
- Eastern Illinois University Law [[110 ILS 665](#)]
- Governors State University Law [[110 ILCS 670](#)]
- Illinois State University Law [[110 ILCS 675](#)]
- Northeastern Illinois University Law [[110 ILCS 680](#)]
- Northern Illinois University Law [[110 ILCS 685](#)]
- Southern Illinois University Management Act [[110 ILCS 520](#)]
 - Southern Illinois University Objects Act [[110 ILCS 510](#)]
- University of Illinois Act [[110 ILCS 305](#)]
 - University of Illinois Trustees Act [[110 ILCS 310](#)]
- Western Illinois University Law [[110 ILCS 690](#)]

Role of Board

“The institution’s board of trustees...governs by making decisions about institutional plans, programs, budgets, policies, risk management and certain employment matters as recommended by the administration. They also have the authority to hire and fire the president or chancellor. Governing boards provide oversight but do not manage day-to-day operations. Day-to-day management rests with the administration.” (*Boards: Who’s Really in Charge? Inside Higher Ed* (November 15, 2021))

Boards can face challenges when defining the boundaries of “oversight” in both routine operations and crisis matters.

- Michigan State Mass Shooting Report (2023): “Our takeaway based on multiple interviews is that the Board of Trustees members wanted to help but became involved in the incident beyond the customary role and expectations of a governance board during an emergency.” (https://msutoday.msu.edu/-/media/assets/msutoday/docs/independent-review-of-feb-13-response-released/msu_after-action_report.pdf – page 10)
- University of Illinois Admissions (2009): “...Board of Trustees failed to discharge its duty as a governing board and, in particular, failed to exercise the care and diligence appropriate to protect against admissions-related abuses.” <http://archives.provost.illinois.edu/reaccreditation/Admissions%20Report.pdf> – page 5)

In addition to general roles and duties, check your bylaws and external institutional standards or similar documents in highly specialized areas such as athletics or membership organizations.

Fiduciary Duties

As a Trustee, you owe a *fiduciary* duty to the University that you serve.

- Highest duty recognized by law
- A fiduciary must act in good faith with a high standard of care, trust, confidence, and candor *for the benefit and best interests of another*
- Judicial decisions typically recognize three aspects of fiduciary duty for board members: Duty of Care; Duty of Loyalty; Duty of Confidentiality

Duty of Care

- Attend meetings
- Be informed and prepared to participate
- Use sound judgment
- Courts review board decisions under the “business judgment” rule, which presumes *in favor of* the board and asks whether board members:
 - i) acted in good faith;
 - ii) with the care that an ordinarily prudent person would exercise under similar circumstances
- Reliance on administrators’ expertise and advice is *acceptable and expected* given through experienced & capable individuals hired to carryout the operations of the University

Duty of Loyalty

- Board members must put the University's interests first.
- Especially important regarding self interest, potential conflicts of interest, etc.
- University enabling statutes and other State laws (e.g. Procurement Code) prohibit any member of university's governing board to be **directly or indirectly** interested in any contract to be made by the university for any purposes whatsoever.
- ***When in doubt, disclose, recuse and abstain to avoid even the “appearance of impropriety”***

Conflicts of Interest

A conflict of interest (COI) arises when a factual situation impairs or may impair a Trustee's ability to discharge his/her duty of loyalty to the university. Several sources for COI principles:

- University-specific Statute

“[N]or shall any member of said board be directly or indirectly interested in any contract made by said board for any purpose whatever.” [U of I Trustees Act, [110 ILCS 310/3](#)]

- Other Statutes, Regulations or Expectations

- Procurement Code
- Public Officer Prohibited Activities Act
- Ethics Act
- IBHE

- Judicial Decisions, Executive Orders, Attorney General Opinions

- University Policies

Duty of Confidentiality

- Board members should not disclose/discuss non-public matters outside board setting
- Can be challenging given your public facing role
- There may be disclosure or additional confidentiality requirements that should be managed through appropriate personnel (e.g. procurement, FOIA, audits)

III. Transparency

Illinois Freedom of Information Act

“FOIA”

- Access to public records is a fundamental obligation of government to promote transparency. [[5 ILCS 140/1](#)]
- “Public records” are any form of record – hard copy or electronic – that pertain to the transaction of public business “having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.” [[5 ILCS 140/2\(c\)](#)]
- Presumption is in favor of production and burden is on public body to prove exemption applies by clear and convincing evidence. [[5 ILCS 140/1.2](#)]

FOIA – Exemptions

FOIA has 36 separate narrowly construed exemptions. Some of the most relevant include:

- “Private information” (e.g., SSN, driver's license number, employee ID number, home or personal telephone numbers, and personal email addresses)
- Information prohibited from disclosure by federal or State law or rules and regulations implementing same
- Preliminary drafts, notes, memoranda, etc. in which opinions are expressed or policies or actions are formulated
- Trade secrets and commercial or financial information
- Proposals and bids for contract or grant
- Minutes of meetings closed to public

FOIA – Governmental Function

Special rule for records in possession of a party with whom the public body has contracted to perform a governmental function on behalf of the public body: if record directly relates to the governmental function it “shall be considered a public record of the public body....” [[5 ILCS 140/7\(2\)](#)]

Illinois courts have found personal emails, texts, etc. transmitted on personal devices may be subject to FOIA if they “relate to the transaction of public business” [[City of Champaign v. Madigan, 2013 IL App \(4th\) 120552 \(2013\)](#)]

FOIA: Tips

- Broad scope/reach of FOIA
- “Document” is broadly defined
- Role of PAC and ease of challenge (vs. pre-2010)
- **Before** creating a written communication, ask yourself:
 - Is an email appropriate and prudent?
 - Is this something that I should put in writing (possibly forever)?
 - What device/account am I using?
- Consult with your university’s designated FOIA Officer
- Federal FOIA is different structure – consult with your Legal Counsel or Grants Office

Illinois Open Meetings Act

“OMA”

- Intent of OMA is to “ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.” [[5 ILCS 120/1](#)]
- The OMA applies to a “meeting” of a public body: a “gathering” of a “majority of a quorum” of the members “for the purpose of discussing public business.” [[5 ILCS 120/1.02](#)]
- Special rule for 5-person body: Act triggered by quorum
- Does not include purely social events, BUT...

OMA – Summary of Provisions

- Presumption of public discussion of university business absent specific exception for closed (executive) session
- 48 hours' advance notice of regular meetings required; agenda is key; no “walk on” agenda items ([*Rice v. Adams County*](#)); special rules for special meeting (24 hours) or emergency meeting (as soon as practical); notice to be posted in physical location of meeting and website
- Verbatim record of executive session required
- No final action in executive session
- Trustees must complete online OMA training within 90 days of appointment

OMA (cont'd)

A quorum must be physically present for a meeting

- Per [5 ILCS 120/2.01](#), certain public bodies (including those having statewide jurisdiction) may hold meetings via videoconference between its office and other public location(s). All locations must be noticed and open to the public.

If a quorum is physically present and the body allows for remote participation, a member can attend by audio or videoconference, but only if the member is prevented from physically attending because of:

- personal illness or disability;
- employment purposes or the business of the public body;
- a family or other emergency; or
- unexpected childcare obligations

OMA – Closed Session

OMA allows for public bodies to hold a closed session. Commonly-used exceptions:

- Appointment, employment, compensation, discipline, performance, or dismissal of specific university employees
- Pending, probable or imminent litigation
- Collective negotiating matters (only if ongoing)
- Student disciplinary cases
- Purchase or lease of real property for use by the university
- Setting the price for the sale or lease of property owned by the public body
- Discussion of minutes of meetings lawfully closed under the Act

OMA – Public Comment

- Mandated for all public bodies, including universities [[5 ILCS 120/2.06\(g\)](#)]
- Public bodies may adopt reasonable rules concerning, such as:
 - Amount of time allocated for that purpose
 - Number of speakers
 - Requiring would-be speakers to ask permission to speak is judicially disfavored as “prior restraint” but defensible
 - May require that proposed topic relate to matters within the Board’s jurisdiction
 - Deadline for request should be *after* meeting agenda published
 - Avoid “viewpoint discrimination” in considering requests

OMA – Practice Tips

- Rely on your board secretary and legal counsel, who are very familiar with OMA provisions and compliance
- For Executive Sessions:
 - “The exceptions ... are to be strictly construed, extending only to subjects clearly within their scope.” [[5 ILCS 120/2\(b\)](#)]
 - Construe exceptions narrowly and stay on topic
 - Invoke *only* those exceptions you’ll use, and use *each of* the exceptions that you invoke
 - Board should empower its legal counsel to interrupt if discussion begins to wanders off topic
- Remember role of PAC in interpreting and enforcing OMA
- Intentional non-compliance is a Class C misdemeanor

IV. Ethics, Conflicts and Related Considerations

State Officials and Employees Ethics Act

“SOEEA” or “Ethics Act” [[5 ILCS 430](#)]

- Executive Ethics Commission (“EEC”) promotes ethics in public service & ensures that the business is conducted with efficiency, transparency, fairness, and integrity
- Ethics Act defines “State agency” to include the boards of the nine public universities [[5 ILCS 430 /1-5](#)]
- Section [5-10](#) requires university “employees” to complete Ethics training within 30 days after commencement of office/employment and annually thereafter
- Employees who do not complete the training as directed may be subject to disciplinary action and administrative fines up to \$5,000 by the EEC

Elected or appointed trustees of a board of a state agency are included in definition of “employee”

Ethics Act – Statement of Economic Interest

- Certain individuals, including Trustees, are required to annually file a Statement of Economic Interest with the Office of the Secretary of State
- Under [Illinois Executive Order 15-09](#), certain individuals, including Trustees, also must submit a Supplemental Statement of Economic Interest (SSEI) form online with the Executive Ethics Commission

Ethics Act – Revolving Door

“Trustees may not within a period of one year immediately after termination of membership on the Board knowingly accept employment or receive compensation or fees for services from a person or entity having State contracts with a cumulative value of \$25,000 during the year immediately preceding termination of Board membership.” [State Officials and Employees Ethics Act, [5 ILCS 430/5-45](#) emphasis added]

- Violation is a Class A misdemeanor
- EEC may levy fine of up to 3 times the total annual compensation that would have been obtained in the position

Ethics Act – State Gift Ban

- Article 10 of the Ethics Act requires employees of university or any state agency, as well as their immediate family members living with them, not to accept or solicit gifts from prohibited sources
- Gifts defined as anything of value -- items with monetary value, entertainment, hospitality, gratuities, discounts, loans, or forbearance
- Prohibited Sources:
 - Current vendors (including spouses and immediate family members living with them)
 - Any individual or entity seeking to conduct business with university or any other state agency
 - Those seeking official action or who have interests that may be substantially affected by the performance or non-performance of the official duties of a university employee or the university

Ethics Act – Gift Ban (cont'd)

- **Exceptions** relevant to universities:
 - Travel expenses for meetings to discuss State or University business
 - Food, refreshments, lodging, transportation, other benefits resulting from outside business or employment activities
 - Educational materials and missions (must be approved in advance by the Executive Director of the EEC or university Ethics Officer. Check with your university's Ethics Officer regarding that process.)
 - [E.O.15-09](#) eliminated the “*de minimis*” exception for executive state agencies (effective Jan. 2015)

For a full list, consult your Ethics Officer or training materials

Ethics Act – Gift Ban (cont'd)

Employees who unintentionally accept a gift from a prohibited source that does not fall within an exception should:

- Return the gift to the prohibited source;
- Make a monetary contribution to a 501(c)3 charitable organization equal to the market value of the gift and keep the gift; OR
- Donate the gift itself to a 501(c)3 charitable organization
- Maintain documentation (e.g. donation receipt, proof of payment)

When in doubt, ask your Ethics Officer!

Prohibited Political Activity

- State employees are **prohibited** from engaging in certain political activities while on State time or State property, or using State property or resources. [[5 ILCS 430/5-15](#)]
- Types of prohibited political activity include:
 - Planning or attending political events
 - Campaigning or working on a political campaign
 - Preparing or distributing political campaign literature
 - Making or soliciting political contributions
 - Attending or organizing political events
 - Preparing or circulating petitions on behalf of political candidate OR for/against any referendum
 - Soliciting votes on behalf of political candidate

Prohibited Political Activity (cont'd)

University E-mail

- Do not use your university email account or other university resources to send or receive political email.
- If you receive a political email in your university email account, you should not forward it to anyone. You may wish to consider asking the sender not to send such emails to your university email address.
- If you have questions regarding any political activity/emails sent to your university email account, contact your university's Ethics Officer.

Harassment and Discrimination Prevention

- Each “employee” must complete annual harassment and discrimination prevention training; if filling vacancy, must do so w/in 30 days [[5 ILCS 430/5-10.5\(a-5\)](#)]
- Board members receive the same training as (other) university employees
- To report an incident:
 - Your university’s reporting mechanisms
 - Office of Access & Equity/Equal Opportunity
 - Ethics Office
 - Office of Executive Inspector General
 - Illinois Department of Human Rights

Sexual Violence on Campus

- Sexual Violence/Sexual Assault is a form of Sexual Harassment, which is a form of Discrimination
 - Some of the laws and regulations your universities are considering:
 - [Title VII](#) of the Civil Rights Act of 1964 (employment)
 - [Title IX](#) of the Education Amendments Act. (education)
 - Violence Against Women Act ([VAWA](#))
 - Illinois Human Rights Act [[775 ILCS 5](#)]
 - Illinois Preventing Sexual Violence in Higher Education Act [[110 ILCS 155](#)]
- Be aware of policies
- Report behavior you believe may violate the policies
- Resource: <https://www.illinoisattorneygeneral.gov/Safer-Communities/Responding-to-Sexual-Assault/Sexual-Assault-on-Campus/>

V. Labor and Employment

Labor and Employment

Consult with your university's labor and employment team regarding key topics, such as:

- Collective Bargaining
 - Exclusive Representation
 - Mandatory subjects of bargaining
 - Duty to Bargain in Good Faith
- Grievances, unfair labor practices (ULPs) and strikes
- Unique higher education principles such as tenure, tenure revocation, “academic freedom” protections etc.

Note: Illinois higher education public sector institutions are covered by the Illinois Educational Labor Relations Act (“[IELRA](#)”) (1984), not National Labor Relations Act. Entities such as the Illinois Educational Labor Relations Board and the State Universities Civil Service System and IBHE help shape policy.

Executive Leadership Contractual Regulations

President and Chancellor Employment Agreements:

- University enabling statutes require Board to approve employment contracts of the president or all chancellors in accordance with OMA
- Must include proposed financial compensation structure, including performance-based or incentive bonus
- Not exceed 4 years, with determinate start/end dates
- Not include any automatic rollover clause
- Severance cannot exceed one year salary and benefits

President and Chancellor Annual Performance Reviews:

- Must be considered when the Board contemplates a bonus, raise, incentive-based compensation, or severance agreement
- Must be published on university website

Executive Leadership Contractual Restrictions (cont'd)

Government Severance Pay Act [[5 ILCS 415](#)]

- Contracts with public university officer, agent, employee that includes severance provision limits severance to:
 - An amount that does not exceed 20 weeks of compensation
 - Severance pay not permitted if officer, agent, employee fired for misconduct
- Misconduct includes:
 - Deliberate violation or disregard for “reasonable standards of behavior”
 - Carelessness/negligence that shows intentional/substantial disregard of duties
 - Chronic absenteeism
 - Willful/deliberate violation of standard or regulation which would cause an employer to be sanctioned or have certifications suspended
- Pay of president/chancellor transitioning to another department may not contractually exceed the annual compensation of highest paid employee in the department
- Does not apply to employment agreements for intercollegiate athletics if funded by non-appropriated funds

VI. Financial Oversight and Accountability

Oversight and Accountability Regulations

Dozens of different regulations that may apply, depending on situation.

Enabling Legislation: Many elements of the **Fiduciary Duties** may be codified.

Illinois Procurement Code and Rules

State Finance Act: Both general and operational expectations (e.g. contracts and renewals of \$250K or more in a fiscal year must be approved by president, chief fiscal officer and chief legal counsel of the university (or their approved delegates)) [[30 ILCS 105/9.02](#)]

State Property Control Act: Once goods, equipment, or real property is purchased, it becomes State property, and with certain limited exceptions, may only be sold or disposed of by a university in accordance with the Act and related administrative rules [[30 ILCS 605](#)]

Consult with Legal Counsel, Comptroller/Chief Financial Officer, Contracting Offices etc.!

Audit Function Summary

- Internal & external audit functions ensure effective stewardship & regulatory compliance
- Internal audit role
 - Part of the organization
 - Support management and Board of Trustees
 - Comprehensive scope – governance, risk management, and internal control processes
 - Historical and prospective focus
- External audit role
 - External to the organization
 - Higher level opinion on financial statements, State and Federal regulatory compliance
 - Usually only historical focus
- Board oversight responsibilities (via Audit Committee or its equivalent)
 - Integrity of university's financial statements
 - Performance of internal audit function
 - University's compliance with legal requirements

Consult your Internal Auditor, Controller and others.

FOIA exemption for Internal audit activities but NOT External.

OMA exception for discussion of internal control weaknesses and fraud issues.

Contracting

- The Board of Trustees is contracting entity
- To be binding and enforceable, university contracts must be signed by authorized officer such as the Comptroller
- Internal governing documents and policies may describe Trustee responsibilities
 - Delegated signature authority
 - Board approval process and thresholds
 - Interaction with CPO/SPO
 - Risk management requirements
 - Reporting obligations

Illinois Procurement Code

[30 ILCS 500](#)

Public Policy: “It is the purpose of this Code and is declared to be the policy of the State that the principles of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts by or for any State agency.”

Broad Applicability: Code applies to all Illinois public universities and “all types of State agreements, regardless of what they may be called, for the procurement, use, or disposal of supplies, services, professional or artistic services, or construction or for leases of real property where the State is the lessee, or capital improvements . . .”

Procurement Methods

- Competitive Sealed Bids (award to lowest responsible and responsive bidder)
- Requests for Proposals
- Small Purchases (under \$100K – competitive source selection not required)
- Sole Source (only one economically feasible source for the item)
- Emergency Purchases (threat to public health/safety; protect State property)
- Joint Purchases
- Public Private Partnerships (“P3”)

Procurement Oversight

Oversight Bodies

- Chief Procurement Office for Higher Education – promulgates rules and forms
- Procurement Policy Board – five-member board with rule/policy function, contract review function, procurement communication and clearinghouse function
- Executive Ethics Commission and Office of Executive Inspector General
- Commission on Equity and Inclusion
 - Business Enterprise Program (BEP) Council
- Capital Development Board
- IBHE – No express oversight authority but sets clear tone of integrity, transparency and fiscal responsibility

Procurement Code Exemptions

Exemptions: Many Procurement Code requirements do not apply to:

- Intergovernmental agreements
- Collective bargaining agreements, non-union employee hiring, and agreements to hire individuals for certain positions (e.g., athletics directors, coaches, presidents, and chancellors)
- Real estate purchases (publication required if more than \$25,000)
- Contracts necessary to prepare for anticipated litigation, enforcement actions or investigations (must be pre-approved by chief legal counsel)
- Concession agreements – use of university property for revenue generating activities such as space rental agreements and intellectual property licenses do not need to follow the Code's competitive bidding requirements; BUT good business practices and transparency may suggest a competitive process be followed for certain concessions
- Grant/Gift flexibility – Grant, gift, or bequest providing majority of funding AND requiring use of particular good or service or a particular vendor [[30 ILCS 500/20-95](#)]

Procurement Code Exemptions (cont'd)

Exemptions Specific to Higher Education [[30 ILCS 500/1-13](#)]

- Memberships in professional, academic, research, or athletic organizations
- Expenditures for publications for use by a university library or academic department
- Expenditures for events or activities paid for exclusively by revenues generated by the event or activity or by gifts or donations for the event or activity
- Expenditures necessary to provide athletic, artistic or musical events
- Expenditures for placement of students in externships, practicums, field experiences, and for medical residencies and rotations
- Expenditures necessary to perform sponsored research and other sponsored activities under grants and contracts funded by the sponsor or by sources other than State appropriations
- Contracts for medical supplies, and for medical services necessary for the delivery of care and treatment at any university-operated health care center or dispensary that provides care, treatment, and medications for students, faculty and staff
- Contracts with a foreign entity for research or educational activities, provided that the entity either does not maintain an office in the U.S. or is the sole source of the service

Procurement Conflicts of Interest

Statutorily Defined Prohibited Vendor Conflicts of Interest [[30 ILCS 500/50-13](#)]

Any bid, proposal, offer of acceptance, or proposed contract must be reviewed for conflicts of interest pursuant (Procurement Code Section 50-13). If a potential conflict exists, no contract will be executed unless the CPO-HE requests and is granted an exemption by the Executive Ethics Commission.

- Vendor is appointee or employee of the state whose compensation for state employment is in excess of 60% of Governor's salary or vendor is spouse or minor child of such person.
- Appointee or state employee or their spouse or minor child with direct financial interest in vendor entity entitled to receive more than 7.5% of the total distributable income of the vendor, **or** an amount in excess of the salary of the Governor.
- Unlawful for any firm, partnership, association, or corporation, in which any person listed above, together with his or her spouse or minor children, is entitled to receive more than 15%, in the aggregate, of the total distributable income of the entity, **or** an amount in excess of 2 times the salary of the Governor, to have or acquire any State contract or direct pecuniary interest therein.

Procurement Communications

Procurement Communications Reporting

State employees with authority to participate personally and substantially in the decision to award a contract must report procurement communications with a vendor or prospective vendor that a reasonable person would believe was made for the purpose of influencing a decision relating to a procurement matter under consideration or to be considered in the near future. Such communications should be reported promptly to the Procurement Policy Board.

Examples of <u>Reportable</u> Communications (not exhaustive)	Examples of <u>Exempt</u> Communications (not exhaustive)
<ul style="list-style-type: none">• Establishing or defining a procurement need or method of selection• Drafting or preparing specification or solicitation documents• Evaluating bid/responses	<ul style="list-style-type: none">• Unsolicited communications from potential vendors that are not further disseminated or used by the receiving employees in a procurement decision• Made in a public forum and/or during a meeting subject to the Open Meetings Act• Regarding the administration and implementation of an existing contract

Business Enterprise Program for Minorities, Females and Persons with Disabilities Act [[30 ILCS 575](#)]

“[I]t is the public policy of the State to promote and encourage the continuing economic development of minority-owned and women-owned and operated businesses and that minority-owned and women-owned and operated businesses participate in the State's procurement process as both prime and subcontractors.”

Key Requirements of the Act

- BEP utilization plans must be included in vendor responses to solicitations and must be reviewed by university purchasing staff for compliance with the Act and accompanying administrative rules
- If vendor fails to meet utilization plan goals, university cannot renew contract unless university determines good faith efforts made toward meeting goals *and* the CPO-HE concurs
- Universities must report their BEP goals and achievement to the BEP Council

Aspirational Goals Per Statute as a Percentage of All State Contracts in a Fiscal Year

- Work with your executive leadership to better understand goals and institutional good faith effort practices
- Encourage vendors to get certified!

Note: Aspirational goals are legally acceptable. Mandatory quotas or “sheltered markets” for BEP purchasing are not constitutionally acceptable unless narrowly tailored to remedy specific identifiable past discriminatory conduct by the public body (typically must be supported by a “disparity study” that has qualitative and quantitative evidence of past discrimination)

ILLINOIS PUBLIC UNIVERSITY TRUSTEES

Illinois Board of Higher Education

October 26, 2023

Questions?

Thank you!

Break

Please be back by 2:10 pm

Session V: Fireside Chat

Good Governance, Good Leadership - We Need Both!



Pranav Kothari

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Chair, Illinois Board of Higher Education



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Board Member (Former), Chicago Board of Education



Speakers' Bios

Thank you!

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