

The Basics of School Law

A Guide for School
Directors



Washington State School Directors' Association

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Introduction

School districts face numerous legal issues daily. The types of legal issues that impact school districts range from employer/employee issues to student rights. Understanding what those issues are helps school board members fulfill their role. To increase board members' understanding of those issues, this guide introduces them to some of the legal topics they may encounter in their board service.

This guide is not meant to answer every question on the topics it addresses. Rather, it is meant to give a general overview of the topics so that board members are aware of them and can identify when they should reach out to legal counsel.

Relationship with Attorney

Generally, each district will have an established, ongoing relationship with one or more attorneys. Individual board members do not ordinarily deal directly with the district's attorney; rather, the superintendent usually does. Regardless, the attorney represents the board (as a whole), not the superintendent or any individual employee of the district. So, if there is a conflict between the board and the superintendent, the attorney will work with the board, not the superintendent. Moreover, the attorney doesn't represent individual board members. Once again, the attorney represents the board as the governing body of the district.

There are three sources of laws that govern school districts: statutes, regulations, and court decisions.

Statutes

Statutes are laws passed by the legislature. There are both federal and state statutes. Federal statutes are codified in the United States Code (U.S.C.). State statutes are codified in the Revised Code of Washington (RCW). The state statutes that specifically apply to school districts are found in Title 28A RCW.

Regulations

Often statutes authorize governmental agencies to adopt regulations to implement the statutes. Regulations adopted by federal agencies are collected in the Code of Federal Regulations (CFR). Regulations adopted by state agencies are collected in the

Washington Administrative Code (WAC).

At the federal level, the U.S. Department of Education adopts regulations that directly apply to schools. For example, the regulations implementing the Family Educational Rights and Privacy Act (commonly referred to as FERPA) are adopted by the Department of Education and are found in 34 CFR Part 99.

At the state level, the Office of the Superintendent of Public Instruction (OSPI), the State Board of Education, and the Professional Educator Standards Board adopt regulations that directly apply to schools.

OSPI's regulations are found in Title 392 WAC. The State Board of Education's regulations are found in Title 180 WAC. And the Professional Educator Standards Board's regulations are found in Title 181 WAC.

Court Decisions

In the United States, there are two court systems: state and federal. Both systems have trial courts (where lawsuits are initiated), courts of appeal, and supreme courts.

In the state court system, the trial courts are called superior courts and are organized at the county level. Appeals of superior court decisions are heard by the Washington State Court of Appeal, of which there are three divisions. And the Washington State Supreme Court hears appeals of the Court of Appeal's decisions.

Suits involving federal law are initiated in federal district courts, the trial courts of the federal system. There is at least one federal district court in each state. (Washington has two.) If a federal district court's

decision is appealed, it is appealed to the appropriate U.S. Circuit Court of Appeals. There are thirteen circuits that cover different geographical areas. Washington is within the Ninth Circuit. An appeal from a Circuit Court of Appeal's decision may be heard by the United State Supreme Court.

Courts—whether state or federal—interpret and apply the law. And their decisions are treated as law within their jurisdictions.

School Board Meetings

Open Public Meetings Act

The Open Public Meetings Act (OPMA) requires that most school board meetings be open to the public. (Ch. 42.30 RCW) The intent of the law could hardly be made any clearer:

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

(RCW 42.30.010)

Meetings under the OPMA

Under the OPMA, meetings of the school board must be open to the public. A meeting is defined as a meeting at which action is taken. And action means the transaction of the official business of the school board, which includes, but is not limited to, receiving public testimony, deliberating, discussing, considering, reviewing, evaluating, and taking final action. So, any meeting at which a majority of the school board is present and takes action is subject to the requirements of the OPMA.

A majority of the board may travel together or gather for purposes other than a regular or special meeting as long as they do not discuss any official business nor take any action on official matters. (RCW 42.30.070).

This allows board members to travel together to the WSSDA Annual Conference, county or regional director meetings, or other such gatherings.

What does the law say about handling disturbances?

If a meeting is interrupted by a member of the public or by a group, the board may order those causing the disturbance to leave the meeting. If removing those causing the disturbance doesn't restore order to the meeting, the board may do one of the following:

- Order that everyone—except members of the media who were not part of the disturbance—clear the meeting room; or
- Adjourn the meeting and reconvene at another location selected by a majority vote of the board—allowing members of the media who were not part of the disturbance to join.

Under either of those circumstances, the board can take action only on matters appearing on the agenda.

Executive sessions

The OPMA recognizes that certain subjects are better discussed in private if the public interest is to be served or if the rights of individuals are to be guarded. The OPMA identifies seventeen reasons that allow the board to enter in executive session for private discussion. (RCW 42.30.110) However, only nine of these reasons apply to school boards. These include:

- To consider matters affecting national security;
- To consider, in compliance with data security breach disclosure requirements and with legal counsel

available, information regarding the infrastructure and security of computer and telecommunication networks, security and service recovery plan, and security risk assessments and security tests that, if made public, might increase the risk to the confidentiality, integrity, or availability of district security or might increase the risk to information technology infrastructure or assets;

- To consider the selection of a site or the acquisition of real estate if public knowledge of the matter might increase the price;
- To consider the minimum price at which to sell or lease real estate if public knowledge of the matter might depress the price (final action selling or leasing real estate, though, must be taken in public);
- To review negotiations on the performance of a publicly bid contract if public knowledge might increase costs;
- To receive and evaluate complaints or charges against an employee or board member (however, the person complained against may request a public hearing or a meeting open to the public to address the complaint or charge);
- To evaluate the qualifications of an applicant for public employment or review the performance of a public employee (final action, though, must be taken in public, and discussions affecting employees generally must be held in public too);
- To evaluate the qualifications of a candidate for appointment to elective office (interviews and the

final appointment, though, must be held in public; and

- To discuss with legal counsel matters relating to enforcement actions or to discuss with legal counsel litigation or potential litigation if public discussion might result in an adverse legal or financial consequence.

However, it is crucial to remember that final action, on any matter deliberated in executive session, must be taken in public. Before the board goes into executive session, the president must publicly announce the general purpose of the executive session and the time when the session is expected to end.

The board should limit who attends executive sessions. Often it is important for the superintendent to be present to provide information and insight into the issue under discussion, but on other occasions, it may be inappropriate for the superintendent to attend. Any outside professionals and other administrative staff who have specific input to a matter under consideration can be asked to attend an executive session, but the board doesn't want to invite large groups into a session. Staff members should be excused when their participation is no longer needed.

Matters discussed in executive session should be kept confidential. Any breach of the confidentiality of an executive session can have serious repercussions.

Exemptions to the OPMA

According to the statute, some meetings held by the school board are not subject to or are exempt from the

OPMA. Exempt meetings include collective bargaining sessions and quasi-judicial hearings.

Collective bargaining sessions include contract negotiations, grievance meetings, discussions relating to the interpretation or application of a labor agreement, planning, or adopting the strategy or position to be taken during collective bargaining, professional negotiations, mediation meetings, and reviewing proposals made during negotiations.

Quasi-judicial hearings involve named parties as distinguished from matters having a general effect on the public or a group of individuals. This exemption is generally used to protect the privacy of individuals involved in discipline matters, either students or staff.

Meetings that are not subject to the OPMA need not be held in public or with public notice.

Consequences for violating the OPMA

Final actions taken in a meeting violating the OPMA are invalid. In addition, any person who believes the OPMA has been violated may file suit in superior court. And if the court finds that the OPMA was violated, it can impose a \$500 civil penalty against each board member who knowingly violated the OPMA for the first time or impose a \$1,000 civil penalty against each board member who previously had a civil penalty assessed against them. The court can also issue an injunction to stop the OPMA violations or to prevent threatened violations. Finally, the court can determine that the district must pay reasonable attorney's fees and costs to the person who successfully brought the suit. However, if the suit is found to be frivolous, the district

can request recovery of its reasonable expenses and attorney's fees.

There is much more important information to learn about the OPMA. For a more in-depth discussion of a school board's obligations under the OPMA, please see **"Open Public Meetings: A Guide for School Board Members and Superintendents"** published by WSSDA.

Policy Adoption and the Law

Policies

A major function of the board is to adopt policies that govern all facets of school operations. Policies express the local philosophy and direction of district programs and services. They act as a bridge between the district's philosophy and administering the district programs, creating continuity and consistency in the governance and administration of the district. And they establish a standard against which the district's performance is measured.

Once adopted, policies are binding on the district, including the school board. They can be changed, of course, but that must be done according to proper procedures.

Adoption requirements

There are few statutory requirements limiting the way a school board adopts policy. However, a statute to be aware of is RCW 28A.320.015, which requires school districts to provide notice, as specified under the OPMA, and an opportunity for public comment, both written and oral, before the board adopts or amends a policy that is not expressly or by implication authorized by state or federal law, but which will promote the education and daily physical activity of kindergarten through twelfth-grade students in public schools or will promote the effective, efficient, or safe management and operation of the district.

The Washington State School Directors' Association's

Policy Service recommends in Model Policy 1310 a two-step “reading” process for policy adoption. A proposed policy is introduced to the board at an initial meeting, where the policy is discussed. That is the first “reading.” Then, at a subsequent meeting, the board revisits the proposed policy and considers taking final action to adopt or amend the policy. That is the second “reading.” Policy adoption, like any other board action, can take place only at properly held open public meetings. When necessary, If a policy is on the agenda, it can be adopted at the first meeting. To do so, the board waives first reading and proceeds to second reading and adoption. However, boards should reserve this approach for only those instances when it is in the district’s best interest to do so.

Financial Conflict of Interest

According to the Code of Ethics for Municipal Officers (“the Code”) found in chapter 42.20 RCW, board members and the superintendent cannot financially benefit—whether directly or indirectly—from any contract that may be made by, through, or under their supervision.

For example, a board member’s spouse cannot be hired by the district—with some exceptions described below—because the board member would be financially interested by her employment with the district, and the board would approve her contract.

In contrast, a board member’s adult child, who is independent, may be hired by the district because the board member is not financially benefited by their child’s employment contract. That might change, though, if the board member’s child was renting an apartment from the board member. In which case, the board member seems to receive an indirect benefit from their child’s employment with the district.

Exceptions

There are several exceptions to the general rule that a board member or superintendent cannot be financially benefited by a contract. Here are those exceptions:

- A bank or other public financial depository may be selected by a school board despite a connection with a director or superintendent.
- A newspaper may be chosen to publish required

legal notices, despite a connection to a school director or superintendent, if it is chosen by public bid or does not charge rates higher than those prescribed by law or charged to members of the general public.

- A school director may be designated the clerk and/or purchasing agent of his or her school district.
- A second-class school district (2,000 students or fewer) may hire a person otherwise barred from employment by this statute for unskilled day labor at wages not exceeding \$1,000 in any calendar month. For example, a minor child of a director could be hired to do yard work part-time in the summer, so long as the child did not earn more than \$1,000 per month.
- A director or superintendent can do business with a school district if the value of the business does not exceed \$1,500 in any calendar month. The contract must be publicly disclosed, and if the interested party is a school director, he or she may not vote to authorize the contract.
- Persons otherwise excluded from employment under this statute may work as bus drivers in second-class school districts if they are paid on the same plan or under the same collective bargaining agreement as other bus drivers.
- In second-class school districts with fewer than 300 full-time students, a board member may be hired as a substitute teacher or substitute educational aide if the terms of the contract are

commensurate with the pay plan or collective bargaining agreement operating in the district, and the school board has found, consistent with board policy, that there is a shortage of substitute teachers in the district.

- In any school district, the spouse of a director or superintendent may be employed as a substitute teacher, if the terms of the contract are commensurate with the pay plan or collective bargaining agreement applicable to all district employees, and the board has found, consistent with board policy, that there is a shortage of substitute teachers in the district.
- Regardless of the size of the district, if a person is under contract with the school district at the time that their spouse becomes either a director or superintendent of the district, the person may remain employed by the district.
- As an exception to the previous exemption, in second-class districts with less than 200 students at the start of the school year, the spouse of a board member or superintendent is not required to be under contract as a certificated or classified employee before the date on which the board member or superintendent assumes office.

Even if one of the exceptions applies, or if the board member's interest is merely a remote interest, that board member must disclose their interest to the board and have it noted in the minutes. Such a board member cannot vote on the authorization, approval, or ratification of the contract. Similarly, that board member

must not attempt to influence any other board member into approving the contract.

The superintendent should maintain a log of any contract where one of the exceptions applies and should inform the board about those contracts annually and when a new board member takes office.

Penalties

Violation of the Code carries significant penalties. First, any contract made in violation of the Code is void. Second, any board member or superintendent who violates the Code is liable to the district in the amount of \$500. Third, a board member may be removed from office for violating the Code.

There is more important information to learn about conflicts of interest. For a more in-depth review of conflicts of interest, see “Avoiding Conflicts of Interest: A Guide for School Board Members and Superintendents” published by WSSDA.”

Personnel

Personnel matters are among the most common sources of legal challenges confronting school districts. Both state and federal laws regulate personnel actions by school districts. Collective bargaining agreements also influence personnel decisions. Most aspects of public school employment are codified in Title 28A RCW. The various statutory schemes dealing with employment contain specific responsibilities for principals, the superintendent, and the board. In this area, the role of the board is limited. The board’s role is to approve or disapprove hiring decisions, to set policies regarding employee evaluations and ensure that those policies are followed, and to take action to terminate classified employees. As we will see, the law places the responsibility for non-renewal and discharge of certificated employees with the superintendent, not with the board.

General employment authority

The general grant of authority for school boards to employ staff is located in RCW 28A.400.300, which states that the school board shall “[e]mploy for not more than one year, and for sufficient cause discharge all certificated and classified employees.”

In practice, personnel are hired upon the recommendation of the administration and upon approval of the board. Selection for a position should result from a careful screening process, including many interviews, verification of credentials, and background checks.

Classified employees

Classified employees are those employees whose duties do not require a teaching or other professional certificate. Their employment is governed by the general employment statute (RCW 28A.400.300) referred to above. These employees are employed “for not more than one year” and may be discharged during the term of their employment for “sufficient cause.” Classified employees have a property interest in their employment during the term of employment. This means they are entitled to some due process before they’re terminated. In this context, due process means that employees must be given notice of the charges against them, the evidence supporting those charges, and a chance to respond before terminating their employment.

Once an employee has been terminated, there may be a couple of ways that the employee can challenge the termination.

If the employee is covered by a collective bargaining agreement with a grievance procedure, the employee can grieve the termination, claiming that the district didn’t have just cause (the typical standard found in collective bargaining agreements) to terminate their employment. The grievance process usually has multiple steps—the last one being binding arbitration, where an arbitrator determines whether just cause exists.

Regardless of whether the employee is covered by a collective bargaining agreement, the employee could challenge their termination by appealing to superior

court under RCW 28A.645.010. If the employee chooses to do that, the court determines whether the district had sufficient cause to terminate the employee.

Certificated contracts

Certificated staff are employed under a contract for a term of not more than one year. However, a certificated employee is, by law, conclusively presumed to be reemployed for another one-year contract with substantially similar terms unless the employee receives timely notice that their contract is being non-renewed.

Non-renewal of non-provisional certificated contracts

A non-provisional certificated employee is someone who has worked in the district for more than three years or has worked in another school district within the state for at least two years and worked in the district for more than one year.

To non-renew the contract of a non-provisional employee, the district must deliver a notice of probable cause for non-renewal by May 15. The notice of probable cause must specify the reasons why probable cause exists to non-renew the employee’s contract.

The superintendent determines whether there is probable cause to non-renew a certificated employee’s contract. Probable cause for non-renewal may exist for many reasons. It could exist because the district has to reduce staff because of financial hardship, because the employee’s performance has been deemed unsatisfactory after evaluation procedures have been followed, or because the employee engaged in misconduct, etc.

After an employee receives a notice of probable cause for non-renewal, they have ten days to request a hearing to determine whether sufficient cause exists for the non-renewal of their contract. (This is described in greater detail below.) If the employee doesn't request a hearing within ten days, the decision to non-renew their contract becomes final.

Non-renewal of provisional certificated contracts

A provisional certificated employee is someone who hasn't worked for the district for more than three years or who hasn't worked for the district for more than one year and has worked for another district in the state for at least two years.

To non-renew a provisional employee, the district must issue them notice of reasons for non-renewal by May 15. Unlike with non-provisional employees, the superintendent doesn't have to determine that there is probable cause to non-renew a provisional employee's contract. Rather, the superintendent must simply have a non-discriminatory reason for non-renewing the employee's contract.

After the employee receives the notice of reasons for non-renewal, the employee has ten days to request to meet with the superintendent. The purpose of the meeting is to ask the superintendent to reconsider their decision.

If the superintendent does not reinstate the employee, the superintendent must submit a written report to the board recommending the non-renewal of the employee's contract, which the board is to consider at its next regular meeting. Prior to that meeting,

the employee may submit to the board written documentation in support of reinstatement. After considering the superintendent's recommendation and the employee's material, the board makes a final decision and notifies the employee in writing of its decision. The board's decision cannot be appealed.

Discharge of certificated employees

Certificated employees—whether provisional or non-provisional—may be discharged for sufficient cause at any time during the term of the employment contract. By discharging an employee, the district terminates their contract mid-term.

To discharge an employee, the superintendent must decide whether there is probable cause for discharge. Probable cause for discharge may exist when an employee has engaged in misconduct. Once the superintendent has determined that probable cause exists, the district then delivers a notice of probable cause for discharge to the employee. This notice must specify why there is probable cause for the employee's discharge.

The employee has ten days from receiving the notice of probable cause to request a hearing to determine whether sufficient cause exists for discharge. (This is described in greater detail below.) If the employee doesn't request a hearing within ten days, their discharge becomes final.

Sufficient Cause Hearing

If an employee requests a hearing within ten days of receiving a notice of probable cause, then the

employee and the district select a hearing officer to decide whether there is sufficient cause for the employee's non-renewal or discharge. The district pays the fees and costs of the hearing officer.

At the hearing, the district bears the burden of proving that sufficient cause exists. If the hearing officer determines that sufficient cause doesn't exist, the employee is reinstated, and the district must pay the employee's attorney's fees. Except in very rare circumstances, the district has no ability to appeal the hearing officer's decision.

If the hearing officer determines that sufficient cause exists, the employee may appeal the decision to superior court—and possibly up to the Washington State Supreme Court. If, at any point during the appeal process, a court determines that sufficient cause doesn't exist, the employee will be reinstated.

The board is not included at any stage of the hearing process.

Transfer of an administrator to a subordinate certificated position

A district can transfer an administrator to a subordinate certificated position if the superintendent determines that it would be in the district's best interests to do so. Notice of the transfer must be provided by May 15. After receiving the notice, an administrator has ten days to request an informal meeting with the board. The purpose of the meeting is to ask the board to reconsider the superintendent's decision. After the meeting, the board makes a final decision and notifies the administrator in writing. The board's decision

cannot be appealed.

An administrator includes assistant superintendents, directors, principals, assistant principals, coordinators, or any person in a supervisory or administrative position.

A subordinate certificated position is a position for which the annual compensation is less than the compensation the administrator currently earns.

For principals, there is a special rule. They can be transferred to a subordinate certificated position only within their first three consecutive years as a principal in a school district or within their first year in a school district if they were previously employed as a principal in another district in the state for three or more years.

School Districts and Collective Bargaining

The Washington State legislature has adopted comprehensive labor legislation governing the rights of public employers and employee unions, including school district employees. The Public Employment Relations Commission (PERC) administers that legislation.

Labor law is a field of very wide scope and complexity. Its historical roots go back to colonial times, and it is a subject upon which reasonable people hold sharply conflicting views and deeply felt convictions. No attempt can be made here to describe all of the facets of labor relations, nor all of the complexities of labor law. It must suffice merely to draw an outline and add a caution: no single school board member can act alone with respect to the district's labor relations. To do so will almost surely result in the violation of some legal restriction and can jeopardize labor peace in the district for years to come.

Commonly Used Terms

There are many terms that are specific to labor relations and collective bargaining. Being familiar with some of the commonly used terms will assist board members in navigating labor relations.

1. *Arbitration*: A quasi-judicial method of resolving labor disputes where an arbitrator or panel of arbitrators interpret a contract and resolve the dispute. Many collective bargaining agreements provide for binding arbitration as the method of resolving employee grievances.

2. *Bargaining representative*: Any lawful organization that has as one of its primary purposes the representation of employees in their employment relations with employers.
3. *Bargaining unit*: The group of employees represented by the bargaining representative.
4. *Collective bargaining*: The meeting between the public employer and the bargaining representative meeting, which occurs at reasonable times for the purpose of conferring and negotiating in good faith in an effort to reach agreement with respect to wages, hours, and working conditions. Collective bargaining results in a collective bargaining agreement, which is a contract between the bargaining unit and employer and is binding on the members of the bargaining unit. Collective bargaining may create additional rights for employees and responsibilities for the district beyond what is in the law.
5. *Educational employees*: Certificated employees of a school district, except the district's chief executive officer, chief administrative officers (including principals and assistant principals), confidential employees participating or assisting the employer in labor relations policy, and employees with supervisory authority over other employees.
6. *Grievance*: A complaint by a member of the bargaining unit or the bargaining representative that the collective bargaining agreement, or the employee's rights under the agreement, has been

violated. The grievance is resolved through a procedure in the collective bargaining agreement called the grievance procedure, often culminating in arbitration.

7. *Mediation*: A structured, orderly process of conflict resolution in which the disputants meet with a neutral third party, the mediator, who helps the parties reach an acceptable solution to their problem. The mediator is an impartial person who suggests ways of resolving a dispute but, unlike an arbitrator, cannot impose a settlement on the parties. Mediation often is a substitute for arbitration and litigation.

Organization of Bargaining Units

Employees are free to choose their own bargaining representatives without interference from the employer. There are, however, some legal restrictions on the formation of bargaining units and who can be in them.

For instance, certificated and classified employees may not be in the same bargaining unit. Additionally, all non-supervisory certificated employees—mainly teachers—must be in one bargaining unit. While the superintendent, assistant superintendents, and other administrative staff, including principals and assistant principals, cannot belong to the teachers' bargaining unit.

Unfair Labor Practices (ULPs)

Because of the long history of strife in American labor relations, both federal and state labor laws prohibit certain practices by both employers and unions. These

are known as unfair labor practices (ULPs).

Employer ULPs

It is an unfair labor practice for an employer to do any of the following:

- Interfere, restrain, or coerce employees in the exercise of their collective bargaining rights;
- Control, dominate, or interfere with a bargaining representative;
- Discourage or encourage membership in an employee organization; or
- Refuse to engage in collective bargaining.

Union ULPs

It is an unfair labor practice for the union to do any of the following:

- Interfere, restrain, or coerce employees in the exercise of their collective bargaining rights;
- Induce an employer to commit an ULP;
- Discriminate against an employee who has filed a complaint of an ULP; or
- Refuse to engage in collective bargaining.

PERC has the authority to investigate, prevent, and issue remedial orders to stop ULPs. Board members should take special note of employer ULPs, since an individual board member's off-hand inappropriate comment about collective bargaining to an employee can be construed as an ULP.

The Board's Role in Bargaining

The superintendent, a staff member, or a district team (staff and attorney) represents the district in the bargaining process. The board's role is to set the district's bargaining parameters for the negotiations. Throughout the negotiation process, the individual or team bargaining on behalf of the district keeps the board informed of the status of negotiations and any issues that arise. When negotiations are completed, the contract proposal will be presented to the board and union for final approval.

Student Discipline

Student discipline is a complex topic that has an entire chapter in the Washington Administrative Code (chapter 392-400 WAC) devoted to it. This guide will not delve into the intricacies and nuances of the student discipline rules, nor will it touch on the constitutional issues associated with disciplining students. Rather, it will focus on the board's role in the student discipline process.

Purpose of Student Discipline Rules

Before reviewing the board's role in the student discipline process, it is helpful to understand the purpose of these rules, which is to ensure that Washington school districts:

- Provide due process to students;
- Implement culturally responsive discipline policies and procedures that provide opportunity for all students to achieve personal and academic success;
- Engage school personnel, students, parents, families, and the community in decisions related to the development and implementation of discipline policies and procedures;
- Ensure fairness and equity in the administration of discipline;
- Administer discipline in ways that respond to the needs and strengths of students, support students in meeting behavioral expectations, and keep students in the classroom to the maximum extent possible;

- Provide educational services that students need to complete their education without disruption;
- Facilitate collaboration between school personnel, students, and families to ensure successful reentry into the classroom following a suspension or expulsion; and
- Provide a safe and supportive learning environment for all students.

Student Discipline Policies and Procedures

Districts must adopt policies and procedures for supporting students in meeting behavioral expectations and administering discipline in accordance with chapter 392-400 WAC. The policies and procedures must do the following:

- Clearly state the types of behaviors for which discipline, including suspension and expulsion, may be administered;
- Have a real and substantial relationship to the lawful maintenance and operation of the school district—including, but not limited to, the preservation of the health and safety of students and employees and the preservation of an educational process that is conducive to learning;
- Provide for early involvement of parents in efforts to support students in meeting behavioral expectations;
- Provide that school personnel make every reasonable attempt to involve parents and students in the resolution of behavioral violations for which

discipline may be administered;

- Identify other forms of discipline that school personnel should administer before or instead of administering classroom exclusion, suspension, or expulsion to support students in meeting behavioral expectations;
- Identify school personnel with the authority to administer classroom exclusions, suspensions, expulsions, emergency expulsions, and other forms of discipline;
- Establish appeal and review procedures related to the administration of suspensions, expulsions, and emergency expulsions, consistent with the law;
- Establish grievance procedures to address parents' or students' grievances related to the administration of classroom exclusions and other forms of discipline;
- Describe the types of educational services the school district offers to students during a suspension or expulsion and the procedures to be followed for the provision of educational services;
- Provide reengagement meetings and plans;
- Provide a process for students who have been suspended and expelled to petition for readmission; and
- Be consistent with WSSDA's model policy (Policy 3241 & 3241P)

Review and Reconsideration

Students who are suspended, expelled, or emergency expelled have appeal rights. A student who receives in-school suspension or is short-term suspended may appeal to the superintendent, where they can share their side of the story either orally or in writing. And a student who is long-term suspended, expelled, or emergency expelled has a right to an evidentiary hearing before the superintendent, a hearing officer, or a discipline council—whomever the board designates to preside at such hearings.

If the student (or parent) disagrees with the appeal decision, they have the right to request that the board review and reconsider the decision. In reviewing the decision, the board must consider all documentary and physical evidence related to the behavioral violation, any records from the evidentiary hearing, relevant state law, and the district's discipline policy. The board may also request to meet with the student, the principal, witnesses, or school personnel to hear further arguments and gather additional information.

The board must issue a written decision to the student and parent. The decision must identify whether the board affirms, reverses, or modifies the suspension or expulsion; identify the duration and conditions of the suspension or expulsion; and, for long-term suspensions and expulsions, notify the student of the opportunity to participate in a reengagement meeting.

Statutes Addressing the Authority of School Directors

The following statutes relate to the authority of school directors' duties:

RCW 28A.320.015

School boards of directors — Powers — Notice of adoption of policy.

- (1) The board of directors of each school district may exercise the following:
 - (a) The broad discretionary power to determine and adopt written policies, not in conflict with other law that provides for the development and implementation of programs, activities, services, or practices that the board determines will:
 - (i) Promote the education and daily physical activity of kindergarten through twelfth grade students in the public schools; or
 - (ii) Promote the effective, efficient, or safe management and operation of the school district;
 - (b) Such powers as are expressly authorized by law; and
 - (c) Such powers as are necessarily or fairly implied in the powers expressly authorized by law.
- (2) Before adopting a policy under subsection (1)(a) of

this section, the school district board of directors shall comply with the notice requirements of the open public meetings act, chapter 42.30 RCW, and shall, in addition, include in that notice a statement that sets forth or reasonably describes the proposed policy. The board of directors shall provide a reasonable opportunity for public written and oral comment and consideration of the comment by the board of directors.

Chapter 28A.330 RCW

PROVISIONS APPLICABLE TO FIRST-CLASS DISTRICTS

28A.330.010

Board president, vice president or president pro tempore — secretary.

At the first meeting of the members of the board, they shall elect a president and vice president from among their number who shall serve for a term of one year or until their successors are elected. In the event of the temporary absence or disability of both the president and vice president, the board of directors may elect a president pro tempore who shall discharge all the duties of president during such temporary absence or disability.

The superintendent of such school district shall act as secretary to the board in accordance with the provisions of RCW 28A.400.030.

28A.330.020

Certain board elections, manner and vote required — Selection of personnel, manner.

The election of the officers of the board of directors or to fill any vacancy as provided in *RCW 28A.315.530, and the selection of the school district superintendent shall be by oral call of the roll of all the members, and no person shall be declared elected or selected unless he or she receives a majority vote of all the members of the board.

Selection of other certificated and classified personnel shall be made in such manner as the board shall determine.

28A.330.030

Duties of president.

It shall be the duty of the president to preside at all meetings of the board, and to perform such other duties as the board may prescribe.

28A.330.040

Duties of vice president.

It shall be the duty of the vice president to perform all the duties of president in the case of the president's absence or disability.

28A.330.050

Duties of superintendent as secretary of the board.

In addition to the duties as prescribed in RCW 28A.400.030, the school district superintendent, as secretary of the board, may be authorized by the board to act as business manager, purchasing agent, and/or superintendent of buildings and janitors, and charged with the special care of school buildings and other property of the district, and he or she shall perform other duties as the board may direct.

28A.330.060

Superintendent's bond and oath.

Before entering upon the discharge of the superintendent's duties, the superintendent as secretary of the board shall give bond in such sum as the board of directors may fix from time to time, but for not less than five thousand dollars, with good and sufficient sureties, and shall take and subscribe an oath or affirmation before a proper officer, that he or she will support the Constitution of the United States and of the state of Washington and faithfully perform the duties of the office, a copy of which oath or affirmation shall be filed with the educational service district superintendent.

28A.330.070

Office of board — Records available for public inspection.

The board of directors shall maintain an office where all records, vouchers, and other important papers belonging to the board may be preserved. Such records, vouchers, and other important papers at all reasonable times shall be available for public inspection. The regular meetings shall be held within the district boundaries.

28A.330.080

Payment of claims — Signing of warrants.

Moneys of such school districts shall be paid out only upon orders for warrants signed by the president, or a majority of the board of directors and countersigned by the secretary: PROVIDED, That when, in the judgment of the board of directors, the orders for warrants issued by the district monthly shall have reached such numbers that the signing of each warrant by the president personally imposes too great a task on the president, the board of directors, after auditing all payrolls and bills as provided by RCW 28A.330.090, may authorize the issuing of one general certificate to the county treasurer, to be signed by the president, authorizing said treasurer to pay all the warrants specified by date, number, name and amount, and the funds on which said warrants shall be drawn; thereupon the secretary

of said board shall be authorized to draw and sign said orders for warrants. Orders for warrants and warrant registers may be sent in an electronic format and using facsimile signatures as provided under chapter 39.62 RCW.

28A.330.090

Auditing committee and expenditures.

All accounts shall be audited by a committee of board members chosen in such manner as the board so determines to be styled the "auditing committee," and, except as otherwise provided by law, no expenditure greater than three hundred dollars shall be voted by the board except in accordance with a written contract, nor shall any money or appropriation be paid out of the school fund except on a recorded affirmative vote of a majority of all members of the board: PROVIDED, That nothing herein shall be construed to prevent the board from making any repairs or improvements to the property of the district through their shop and repair department as otherwise provided in RCW 28A.335.190.

28A.330.100

Additional powers of board.

Every board of directors of a school district of the first class, in addition to the general powers for

directors enumerated in this title, shall have the power:

- (1) To employ for a term of not exceeding three years a superintendent of schools of the district, and for cause to dismiss him or her, and to fix his or her duties and compensation;
- (2) To employ, and for cause dismiss, one or more assistant superintendents and to define their duties and fix their compensation;
- (3) To employ a business manager, attorneys, architects, inspectors of construction, superintendents of buildings, and a superintendent of supplies, all of whom shall serve at the board's pleasure, and to prescribe their duties and fix their compensation;
- (4) To employ, and for cause dismiss, supervisors of instruction and to define their duties and fix their compensation;
- (5) To prescribe a course of study and a program of exercises which shall be consistent with the course of study prepared by the superintendent of public instruction for the use of the common schools of this state;
- (6) To, in addition to the minimum requirements imposed by this title, establish and maintain such grades and departments, including night, high, kindergarten, vocational training and, except as otherwise provided by law, industrial schools, and schools and departments for the education and training of any class or classes

of youth with disabilities, as in the judgment of the board, best shall promote the interests of education in the district;

- (7) To determine the length of time over and above one hundred eighty days that school shall be maintained: PROVIDED, That for purposes of apportionment, no district shall be credited with more than one hundred and eighty-three days' attendance in any school year; and to fix the time for annual opening and closing of schools and for the daily dismissal of pupils before the regular time for closing schools;
- (8) To maintain a shop and repair department, and to employ, and for cause dismiss, a foreman and the necessary help for the maintenance and conduct thereof;
- (9) To provide free textbooks and supplies for all children attending school;
- (10) To require of the officers or employees of the district to give a bond for the honest performance of their duties in such penal sum as may be fixed by the board with good and sufficient surety, and to cause the premium for all bonds required of all such officers or employees to be paid by the district: PROVIDED, That the board may, by written policy, allow that such bonds may include a deductible proviso not to exceed two percent of the officer's or employee's annual salary;
- (11) To prohibit all secret fraternities and sororities

among the students in any of the schools of the said districts; and

- (12) To appoint a practicing physician, resident of the school district, who shall be known as the school district medical inspector, and whose duty it shall be to decide for the board of directors all questions of sanitation and health affecting the safety and welfare of the public schools of the district who shall serve at the board's pleasure: PROVIDED, That children shall not be required to submit to vaccination against the will of their parents or guardian.

28A.330.110

Insurance reserve — Funds.

School districts of the first class, when in the judgment of the board of directors it be deemed expedient, shall have power to create and maintain an insurance reserve for said districts, to be used to meet losses specified by the board of directors of the school districts.

Funds required for maintenance of such an insurance reserve shall be budgeted and allowed as are other moneys required for the support of the school district.

**PROVISIONS APPLICABLE ONLY TO
SECOND-CLASS DISTRICTS**

28A.330.200

Organization of board — Assumption of superintendent's duties by board member, when.

The term of office of directors of districts of the second class shall begin, and the board shall organize, as provided in *RCW 28A.315.500. At the first meeting of the members of the board they shall elect a chair from among their number who shall serve for a term of one year or until his or her successor is elected. The school district superintendent as defined in RCW 28A.150.080 shall serve as secretary to the board. Whenever a district shall be without the services of such a superintendent and the business of the district necessitates action thereby, the board shall appoint any member thereof to carry out the superintendent's powers and duties for the district.

28A.330.210

Notice to ESD superintendent of change of chairman or superintendent.

Every school district superintendent in districts of the second class shall within ten days after any change in the office of chair or superintendent, notify the educational service

district superintendent of such change.

28A.330.220

Attorney may be employed.

The board of directors of every second-class district in addition to their other powers are authorized to employ an attorney and to prescribe the attorney's duties and fix the attorney's compensation.

28A.330.230

Drawing and issuance of warrants.

Second-class school districts, subject to the approval of the superintendent of public instruction, may draw and issue warrants for the payment of moneys upon approval of a majority of the board of directors, such warrants to be signed by the chair of the board and countersigned by the secretary: PROVIDED, That when, in the judgment of the board of directors, the orders for warrants issued by the district monthly shall have reached such numbers that the signing of each warrant by the chair of the board personally imposes too great a task on the chair, the board of directors, after auditing all payrolls and bills, may authorize the issuing of one general certificate to the county treasurer, to be signed by the chair of the board, authorizing said treasurer to pay all the warrants

28A.330.240

The board of directors of each second-class school district shall adopt a written policy governing procedures for the letting of any employment contract authorized under RCW 42.23.030. This policy shall include provisions to ensure fairness and the appearance of fairness in all matters pertaining to employment contracts so authorize

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