POLICYALERT™

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# POLICY UPDATE: 2009

## Legislative Review For a New School Year

As the bells ring on the start of another school year, it is time once again to examine the recent actions of the Louisiana Legislature as it pertains to School Boards. While the number of Acts passed in 2009 was down somewhat from recent years, this did not diminish the impact on School Boards. With this newsletter, we begin the 2009 *Legislative Update* series, summarizing Acts of interest to School Boards. This newsletter starts with pertinent Acts which become effective no later than September 1, 2009, and the policies which are affected. We will continue with the review of more Acts in an upcoming issue of **POLICY***ALERT.*

### ● *ELECTRONIC COMMUNICATIONS BETWEEN EMPLOYEES AND STUDENTS*

No later than November 15, 2009, School Boards are to adopt and implement policy and procedures governing electronic communications by an employee at a school to a student enrolled at that school. Act 214, which amends La. Rev. Stat. Ann. §17:81, requires that the policy and procedures shall:

1. define *electronic communications,* recognizing the various ways available to make such communications.

2. require that all electronic communication by an employee to a student pertaining to the educational services provided to the student shall utilize a method made available by the School Board.

3. prohibit the use of such electronic communications made available by the School Board for a purpose ***not*** related to educational services of the student, except communications with an immediate family member if permitted by the School Board.

## Policies In This Issue:

- Electronic Communications Between Employees and Students
- Employee Conduct
- Employment of Personnel
- Truancy
- Student Discipline
- Suspension of Students
- Expulsion of Students
- Administration of Medication

4. require the employee to report to the School Board any communication made by the employee to a student or received by the employee from a student in a means other than that provided by the School Board. Such reports shall be maintained by the School Board for at least one year.

5. specify that it is the duty of the employee to comply with the policy and procedures and that failure to do so may result in disciplinary actions, including termination, and extreme circumstances may constitute willful neglect of duty.

6. provide a means for the School Board to timely investigate any alleged failure by the employee to comply with the provisions of the policy.

7. provide a method whereby any alleged failure to comply with the policy and procedures that may also be a violation of state or federal law is reported to the proper authorities.

8. provide a method whereby employees and student's parents or legal guardians are fully informed of the policy and procedures of the School Board.

9. provide a method for the parent or legal guardian of a student to request that the child ***not*** be contacted through electronic communications by any school employee unless such communication is directly related to the child's educational services and is sent to and received by more than one student at the school.

Those School Boards that already have policies relative to electronic communications between employees and students are required to evaluate these existing policies for compliance with this new statute.

The Act also stipulates that no School Board or member of a School Board shall be civilly liable for any electronic communication by an employee to a student that is prohibited by this new statute.

With regard to any investigation related to any alleged failure to comply with these policy provisions, most school systems already have an investigations policy which can be used to comply with this statutory requirement.

An obvious key component of the proposed policy *Electronic Communications Between Employees and Students* being recommended is the inclusion of a definition of *electronic communications*. In an effort to be as broad as possible, we have included basic language out of the US Code as well as several state statutes. However, since the new statute requires the Board to include a definition, but did not provide one, the Board should carefully examine the definition used in the proposed policy to determine if it adequately suits the Board's needs.

## ● *EMPLOYEE CONDUCT*
## ● *EMPLOYMENT OF PERSONNEL*

Both of these policies were revised by multiple Acts. First, Act 192 amended La. Rev. Stat. Ann. §17:15, dealing with the criminal history of employees and applicants. Currently, the statute requires employees to report any criminal offense conviction to the Board within forty-eight (48) hours of the conviction. Act 192 added an exception to the criminal offenses to be reported by excluding *traffic offenses*. The Act also added a penalty of $500 or imprisonment for up to 6 months for failing to report the conviction or no contest plea. Although not part of policy, the Act also created the crime of molestation of a juvenile by an educator. The effective date of this particular Act is June 30, 2009.

Act 210 was another Act that amended these two policies. The Act revised or enacted several statutes, all relative to the protection of children. The statutory amendment of interest here is the one made to La. Rev. Stat. Ann. §14:81.4, originally enacted in 2007, pertaining to prohibited sexual conduct between an educator and a student. Previously, sexual conduct by an educator with a student between the ages of 17 and 19 was considered a crime. Now, a crime occurs when the conduct is with a student between the ages of 17 and 21, AND there is an age difference of more than 4 years between the two persons. This new statutory provision becomes effective

on September 1, 2009.

The last Act, which revised only the policy entitled *Employment of Personnel*, results in some significant changes dealing with the disclosure of employment information by an applicant. First, Act 223, which became effective on August 15, 2009, revises La. Rev. Stat. Ann. §17:81.9 to *require*, instead of request, any applicant to sign a statement disclosing certain information from a previous employer. Second, the Act has added to the statute that instances of *abuse* or *neglect* of students committed by the applicant while working for the Louisiana School for the Deaf, the Louisiana School for the Visually Impaired, or the Louisiana Special Education Center shall also be disclosed.

The most significant change made by Act 223, however, is the enactment of the new statute, La. Rev. Stat. Ann. §17:430. This new statute requires each applicant for public school employment to disclose, in addition to the information mentioned above, the following:

1. All actual cases of sexual misconduct with a minor or student by the applicant.

2. All investigations of sexual misconduct by the applicant with a minor or student that occurred within thirty-six (36) months prior to the applicant's resignation, dismissal, or retirement from school employment.

3. All actual or investigated cases of abuse or neglect of a minor or student by the applicant related to their employment at the 3 state schools mentioned in the paragraph above.

In relation to investigated cases, the new statute provides that if the investigation determined that a formal allegation was inconclusive, unjustified, or otherwise without cause for further formal pursuit, the applicant shall not be required to disclose such information.

The Act further clarifies that *sexual misconduct* shall be as defined by the Louisiana Board of Elementary and Secondary Education (BESE) and that *abuse* and *neglect* shall be as defined in the Louisiana Children's Code, Article 603. *Sexual misconduct* is defined by BESE in §502 of Bulletin 741, *Louisiana Handbook for School Administrators*, and has been included in the proposed policy, as well as the definition for *abuse* and *neglect*.

## ● *TRUANCY*

Act 305 makes several statute changes regarding absences and tardiness, with the Legislature's increasing emphasis on making parents or legal guardians more accountable for their child's school attendance. Of particular interest is the amendment to La. Rev. Stat. Ann. §17:233. This amendment clarifies, in the case where a child is the subject of a court ordered custody or visitation plan, that the parent or legal guardian who is lawfully exercising **actual** physical custody or visitation of the child shall be the person responsible for the child's attendance at school on those days and shall be solely responsible for any absence or tardiness of the child on those days they have physical custody. This particular provision only applies to children who are in kindergarten through grade 8, and has been added to the *Truancy* policy.

While not included in policy, an interesting penalty amendment was added by Act 305 to the criminal statute governing improper supervision of a minor by the parent or legal guardian. Under the new provisions of La. Rev. Stat. Ann. §17:233, besides fines and/or imprisonment, parents or guardians who allow a child to be habitually absent or tardy without a valid excuse could now be subjected to a minimum condition of probation which could include forty hours of school or community service, or a combination of forty hours of school or community service in parenting classes or family counseling sessions or programs approved by the court, or the suspension of any state-issued recreational license.

## ● *STUDENT DISCIPLINE*
## ● *SUSPENSION OF STUDENTS*
## ● *EXPULSION OF STUDENTS*

Already having been revised over thirty times since 1990, La. Rev. Stat. Ann. §17:416 is being revised once again by Act 240, necessitating revisions to these three policies.

Act 240, which became effective on August 15, 2009, spurs the most revisions to the policy entitled *Discipline*. The first change is the result of the Legislature expanding the reasons for which a student may be removed from the classroom by the teacher. Behaviors which are statutory grounds for having a pupil removed from the classroom now include disrespectable or threatening behavior toward the teacher such as using foul or abusive language or gestures directed at or threatening a pupil or teacher, exhibiting other disruptive, dangerous, or unruly behavior, including inappropriate sexual or other harassment, throwing objects, inciting other pupils to misbehave, or destroying property.

Another new provision is that once the student is removed, the principal or his/her designee is required to provide oral or written notification of that fact to the parent or legal guardian, which is to include a description of any disciplinary action taken.

The Act further expands the statute to now provide the School Board discretionary authority to adopt a policy, if it wants to require the parent or legal guardian of a pupil removed from a classroom to attend after school or Saturday intervention sessions with the pupil. If the parent or guardian fails to attend the session required, the School Board may refer the parent/guardian to a juvenile court or one of competent jurisdiction. The Act goes on to set fines and penalties that the court may impose for such referrals. We have not drafted any language regarding mandatory attendance by parents at after school or Saturday intervention sessions because each School Board needs to decide first if this is something it wants to do. For those Boards that do adopt such a requirement, we will gladly develop and include policy language to that affect.

Another amendment to La. Rev. Stat. Ann. §17:416 made by Act 240 actually revises all three policies. It involves assigning work to a pupil when removed from a classroom, suspended, or expelled and granting the student credit for his/her work.

Specifically, the *Discipline* policy has been revised to provide that a student removed from the classroom shall be assigned any school work missed and shall receive either partial or full credit for such work if it is completed satisfactorily and timely as determined by the principal or his/her designee and based on the recommendation of the teacher. The Act further states that the teacher is not required to interrupt class instruction time to prepare any assignment.

For suspensions of ten (10) days or less, the language in the Act is the same as for removal of the student from the classroom. However, for suspensions of more than ten (10) days or expulsions, the provisions vary slightly. If the suspended (for more than 10 days) or expelled student receives educational services at an alternative school site, a certified teacher at the alternative school site shall assign the school work and determine whether the work is completed satisfactorily and timely and give the partial or full credit for the work. Any assigned work at the alternative site shall coincide with the curriculum used at the school where he/she was suspended or expelled.

The new provisions regarding a student who is removed from a classroom, suspended, or expelled having an opportunity to receive credit for *school work missed* creates some interesting questions. It must be assumed that *school work missed* refers to **all** class work, including any tests that may be administered while the student is removed, suspended, or expelled. Who is responsible for ascertaining what school work was missed, the student, the teacher, the parent, the principal? Remember, the statute language involving removal from the classroom stipulates that the teacher may, but shall not be required to interrupt class instruction time to prepare any such assignment.

How is partial or full credit to be determined? Can the School Board stipulate how much credit, whether partial or full, can be given? Is it fair to grant the same amount of credit for work that may be done "timely and satisfactorily" to a student who has been suspended for nine days that a student who has not been suspended would earn?

Also, what constitutes "timely" submission of the work? Does the School Board or principal establish a maximum time limit for submitting completed work that is missed? Can the student be told that he/she has one day for each

day removed, suspended, or expelled to complete the assigned school work? These are all questions or concerns that each School Board needs to discuss to determine guidelines for implementing these new provisions.

## ● *ADMINISTRATION OF MEDICATION*

La. Rev. Stat. Ann. §17:436.1, which deals with administration of medication, was significantly revised by Act 145 to permit the self-administration of medications by students who have asthma or who are at risk of anaphylaxis. *Anaphylaxis* is an acute and severe allergic reaction in humans to various stimuli. It can be life-threatening. The Act's provisions became effective on June 25, 2009.

Before a student may be permitted to self-medicate for asthma or anaphylaxis, the student's parent or legal guardian shall provide the student's school with the following documentation:

1. Written authorization for the student to possess and self-administer the prescribed medications.

2. Written certification from a licensed medical physician or other authorized prescriber that the student has asthma or is at risk of having anaphylaxis, and has received instruction on how to properly self-medicate.

3. A written treatment plan from the student's physician or other authorized prescriber for managing asthma or anaphylactic episodes. This treatment plan shall be signed by the student, the student's parent or legal guardian and the student's medical physician or authorized prescriber. The treatment plan shall outline such criteria as name and dosage of the medication, when the medications should be administered, any special circumstances for administering the medication, and how long the medication has been prescribed.

4. Any other documentation the Board may require.

Permission of the self-administration of such medications shall only be effective for the school year in which permission is granted. In addition, any student granted permission shall be allowed to possess such medication at any time while on school property or while attending a school sponsored activity and store the necessary medications with the school nurse or other designated school official. Of course, any student who uses any permitted medication in any other manner than prescribed shall be subject to disciplinary action.

One last important ingredient in this Act is the provision that the school and its employees shall not be liable for any injury sustained by the student from the self-administration of medications used to treat asthma or anaphylaxis. The parent or legal guardian shall be informed in writing of this provision by the Board and shall sign a statement acknowledging that the school and employees shall incur no liability and that the parent/guardian shall indemnify and hold harmless the school and its employees against any claims that may arise relating to the self-administration of these medications.

While most school systems' policy entitled *Administration of Medication* already addressed the subject of self-medication by students, we have added these new statutory requirements to the policy.

## NEXT ISSUE

While this issue contains a few more revised policies than we have typically been sending in a single *Legislative Update*, as the information points out, the urgency of getting you these policies was obvious. But our work is never done, for as we complete our review of 2009 Acts of the Legislature, more Acts have been identified leading to additional revisions in Board policy that we will be sending to you soon.

We hope all went well with the opening of school. If you have a topic you would like for us to research and discuss in a future issue of **POLICY***ALERT*, send us your suggestions. We'll be glad to take a look!