

POLICYALERT



September, 2008

Forethought Consulting, Inc.

Legislative Update - 2008 Ready or Not, Here They Come

As we mentioned in our July newsletter, the Louisiana Legislature sent several Acts to the governor's desk which impact School Board operations, many of which took effect with the beginning of this school year. In this issue of our annual *Legislative Update*, we address the first wave of those policies requiring revision to comply with legislative action of 2008. All of the policies discussed are due to Acts that took effect no later than August 15, 2008.

This is by no means all of the revised policies based on state legislation. We are still examining Acts for their implications on school board operations, and consequently, on school board policy. Hopefully, our next issue of **POLICYALERT** will complete the review of the policies needing revision.

- MEETINGS
- AGENDA PREPARATION AND DISSEMINATION
- PUBLIC PARTICIPATION IN SCHOOL BOARD MEETINGS

A *unanimous* vote of the members present at a meeting is now required to add an item not on the agenda of School Board meetings and committee meetings, instead of the previous *two-thirds*. In amending La. Rev. Stat. Ann. §42:7, the Legislature also added that the motion to add the item to the agenda must be identified with *reasonable specificity*, which would include the purpose for adding the item to the agenda, and such motion shall be entered into the minutes. Act 131 also contains a reminder that prior to any vote on a motion to consider the additional item(s), the School Board shall have an opportunity for public comment on the motion in accordance with La. Rev. Stat. Ann. §42:5.1. Many of the Boards already have such a public comment provision in their policy.

Policies In This Issue:

- Meetings
- Attendance
- Expulsion
- Employment of Personnel
- Student Assignment
- Student Welfare
- Employee Conduct
- Absences and Excuses
- Public Information Program
- Sick Leave
- Truancy
- Public Concerns and Complaints
- Parent Conferences
- Student Conduct
- Agenda Preparation and Dissemination
- Public Participation in School Board Meetings

This new statutory change took effect August 15, 2008 and is being made to policies on *Meetings, Agenda Preparation and Dissemination*, and *Public Participation in School Board Meetings*.

● EXPULSION

Students expelled for offenses involving firearms, knives, weapons, or drugs now have a slightly higher hurdle to clear in order to return to school. Previously, to be admitted to school or to be readmitted to school prior to completion of the minimum period of expulsion, the student had to submit written documentation that the student has enrolled in and/or is participating in a rehabilitation or counseling program related to the reasons for the expulsion. Now, the *parent or legal guardian* is also required to participate and provide the required documentation as a result of Act 145.

The Act amends La. Rev. Stat. Ann. §17:416 and became effective August 15, 2008. This new statutory provision has been incorporated into the policy *Expulsion*.

● STUDENT WELFARE

Simply stated, as a result of Act 359, school employees cannot be *alone* with a student. More specifically, interactions between a student and a school employee are prohibited in any classroom, office, meeting room, or other similarly enclosed area on school property, unless another school employee, the student's parent, or an authorized adult is present, or the student and school employee are *clearly visible* by persons outside the enclosed area through an open door or a window.

Exceptions include:

1. Interactions between a student and guidance counselor.
2. Interactions between a student and school employee during administration of a test when the student's *Individualized Education Program* (IEP) provides for accommodations when taking tests that preclude the presence of other individuals.

3. Interaction between a student and school employee engaged in the performance of noncomplex health procedures.
4. Interaction between a student and school nurse.
5. Any other interaction as determined by the Board of Elementary and Secondary Education (BESE).

In amending La. Rev. Stat. Ann. §17:7, BESE is charged with adopting guidelines for the implementation, oversight, and enforcement on the prevention of such interactions by the start of the 2008-2009 school year, but in actuality will probably not have anything official until the end of the calendar year. Nevertheless, since the Act became effective on June 16, 2008, we have revised the policy *Student Welfare* to incorporate the basic statutory provisions, but may have to revise it further when BESE publishes its guidelines later in the year.

● STUDENT CONDUCT

In creating La. Rev. Stat. Ann. §17:416.20, the Legislature has added to the process (initiated with La. Rev. Stat. Ann. §17:416.8) that Boards must follow to make students aware of the various aspects of student discipline. The School Board must now require each school to conduct an *orientation session* for students during the first five (5) days of school each year, or the first five (5) days of the student's attendance if he/she misses the orientation session (which means that attendance at the orientation session will need to be kept). Many School Boards are conducting these orientation sessions in the classroom, and only having a schoolwide assembly when necessary. The orientation session covers discipline policies and rules, contents of the *Student Code of Conduct* as applicable, and must clearly communicate to students the provisions in the new *Teacher Bill of Rights* (Act 155).

The orientation shall be conducted by the principal or his/her designee, with the instruction contents being age and grade appropriate and take into consideration whether the student is part of the regular or special education program.

The provisions of Act 365 took effect on June 21, 2008 and have been incorporated into the policy *Student Conduct*.

● SICK LEAVE

School employees are now statutorily entitled to the same extended sick leave benefits as teachers and bus drivers. In creating La. Rev. Stat. Ann. §17:1206.2, by Act 457, the Legislature kept most of the provisions the same as currently written for teachers and bus drivers, except that the initial six-year period for school employees begins on the effective date of the Act, August 15, 2008, or the date of hire if employed after August 15, 2008.

Besides a few technical amendments made in the revised policy, we have included under the section on *Extended Sick Leave*, one additional proposed paragraph dealing with carrying over extended sick leave from one school year to the next. If such a situation occurs, the new policy language requires that a new application and physician's statement must be submitted prior to the new school year. This added language is not statutory, but is being suggested to enhance the administration of Extended Sick Leave.

In addition to revisions based on Act 457, several other recommended changes have been included in the *Sick Leave* policy. We have had several inquiries about when might School Boards require doctor's excuses from employees other than the one statutory provision of being absent for six (6) or more consecutive days. As a result, we have added language to permit the School Board to request/require doctor's excuses at other times in order to verify the existence of a medical disability.

In another proposed addition, language addressing submission of doctor's excuses requires that it be on official letterhead which clearly indicates the physician's name, address, and phone number, with additional information as needed. Some school systems have been experiencing problems with the types and specifics of information employees are submitting to verify the taking of sick leave, and this addition is a precautionary measure aimed at improving verification of submitted documentation.

Lastly, a new section on paying unused sick leave to those eligible to participate in the *Deferred Retirement Option Program* (DROP) has also been added to the policy.

● STUDENT ASSIGNMENT

Parents of twins, triplets, etc. are now permitted to request that their children be placed initially in the same or different classrooms if these children are in the same grade at the same school. Such a request is only applicable to children in *grades kindergarten through second grade*. The request must be submitted within the first fourteen (14) days of the school year or the first fourteen (14) days of the student's attendance. The request shall be granted pending further review.

The Act provides that after the student's first grading period, the Superintendent or designee shall review the student's initial placement. In consultation with the school's principal, the child's(ren's) teacher(s), and the parent, if warranted, the placement may be changed in accordance with applicable Board policy.

The revision made to the policy *Student Assignment* is the result of Act 507, which enacted La. Rev. Stat. Ann. §17:221.4, and became effective on June 25, 2008.

● EMPLOYEE CONDUCT ● EMPLOYMENT OF PERSONNEL

The information the School Board receives from the State Police, in regards to the criminal history background checks performed on applicants or employees, has been expanded to now include all adult criminal activity. Information on *arrests*, as well as convictions, or pleas of nolo contendere, for *any criminal offense* will now be sent to the Board. Previously, information was only ascertained for specific offenses for a limited time frame, and arrests were not included. The prohibition of hiring someone convicted or who has pled guilty to the crimes listed in La. Rev. Stat. Ann. §15:587.1(C) still remains in effect, however.

Another provision changed by Act 649, in amending both La. Rev. Stat. Ann. §§15:587.1 and 17:15, now requires a teacher or any other school employee upon

final conviction or guilty plea to *any criminal offense* to report this fact to the School Board within forty-eight (48) hours of the conviction or plea.

The policies on *Employee Conduct* and *Employment of Personnel* have been revised to reflect these statutory amendments, which took effect August 15, 2008.

- PARENT CONFERENCES
- ATTENDANCE
- STUDENT ABSENCES AND EXCUSES
- TRUANCY

Habitual absent or tardy is now defined as the fifth occurrence of an unexcused absence or unexcused tardy in a *school semester*, instead of a month as the previous statutory provision stated. Act 745, which became effective August 15, 2008, revises La. Rev. Stat. Ann. §17:233.

In an apparent attempt at toughening the state's stance on student attendance, the Act further requires:

1. Parent or legal guardian to enforce attendance of student.
2. That the principal or designee notify the parent or legal guardian in writing upon a student's *third unexcused absence* or *unexcused tardy*. This provision is applicable to **all** students, grades K-12.
3. After notification, which the parents/legal guardian must acknowledge by signing the notification and returning to school officials, a *conference* shall be held with the parent/legal guardian by the principal or his/her designee.
4. Penalties have been reinforced by the Act so that in grades 1-8, the parent/legal guardian of a student considered habitually absent or tardy may be fined up to \$50 or not less than twenty-five (25) hours of community service on the first offense, and fined \$250 or imprisoned not more than thirty (30) days for any subsequent offense. For grades 9-12, the penalty, which

was already in state law, is a fine of \$250 or imprisonment for up to thirty (30) days.

The Act defines *tardy*, for truancy purposes, to include leaving or checking out of school unexcused before regular dismissal time, but does **not** include *reporting late to class when transferring from one class to another during the school day*. While not specifically stated in the Act, *tardy* would also include reporting late to school in the morning.

There are several provisions in the Act that need closer scrutiny. First, is the required *conference* with the parent/legal guardian supposed to be a "face-to-face" meeting? Webster's Dictionary defines conference as "*a meeting of two or more persons for discussing matters of common concern.*" Discussion with school officials, attorneys, and others seems to suggest that a face-to-face meeting between the parents and principal/designee is *implied* by the new statute. And a reading of the Legislative Digest, which is a summary of the effects of an Act, appears to indicate that a face-to-face meeting was the *intent* of the Legislature.

The required conference with the parent/legal guardian for some school systems may be rather burdensome, and could be viewed as an *unfunded mandate*. One school system told us that in its largest high school "approximately 25% of the student population had either 3 unexcused absences, 3 unexcused tardies to school, or 3 unexcused check outs before the dismissal bell in the first semester last school year," which equates into approximately 400 projected conferences had this new statute been in effect.

Another aspect of the Act being questioned is the required signature of the parent/legal guardian on the notification signifying receipt. What happens if the parents refuse to sign the notification? It has been recommended, and we fully agree, that School Board's send the notification by *certified or registered mail, return receipt requested*, so that the green signature card that is returned to the School Board becomes the documentation for receipt of the notification. Again, this would be an added cost to the School Board, but documentation is always a very important and vital concern in any legal procedure.

Now, what happens if the parent/legal guardian receives the notification, but refuses to attend the conference? Then a discussion with your parish's District Attorney may be prudent to clarify the process, and to ascertain exactly what documentation the DA will require for prosecution, in order to impose the penalties and/or fines called for in the Act.

In looking at other implications of the Act's provisions, clarification seems also to be in order at this point to examine the difference between tardy as it pertains to *truancy*, as addressed in Act 745, and tardy for *discipline* purposes.

As we interpret the provisions of Act 745, the overall purpose is to address *truancy* or habitual absences or tardies, but for the purposes of notification and application of fines as included in the Act, the definition of *tardy* excludes reporting late to class when transferring from one class to another during the school day. However, reporting late to class during the school day is still a viable *disciplinary offense*. And, habitually reporting late to class when transferring from one class to another during the school day may indeed be classified by the Board as *truancy*, but it just simply is not applicable as it pertains to the provisions of Act 745.

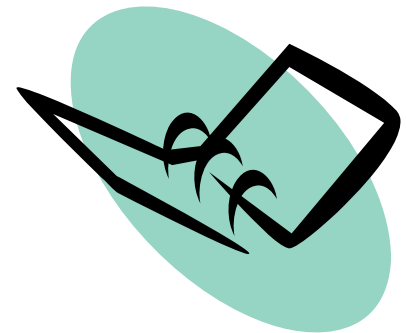
Four (4) different policies have been revised based on Act 745, *Parent Conferences, Attendance, Student Absences and Excuses*, and *Truancy*.

- PUBLIC INFORMATION PROGRAM
- PUBLIC CONCERNS AND COMPLAINTS

Two completely different statutory items resulted from Act 907. The first part of the Act amended La. Rev. Stat. Ann. §17:24.4 to give authority to BESE to establish a procedure to permit the State Superintendent to grant a waiver for promotion of a student with an exceptionality who fails to meet the required achievement level necessary for promotion to the next grade. For the student to be promoted, the local Superintendent may request the waiver, and the State Superintendent could approve it, provided the student meets certain criteria established by BESE regarding attendance, grades and conduct. There was no policy revision necessary based on this part of the Act.

The second part of the Act created a new statute, La. Rev. Stat. Ann. §17:172. It requires each school to provide the parent or legal guardian of each student, at the beginning of each school year, with written information outlining the process and procedures to be followed in order to make a complaint or to request information from a school or the School Board. At the very least, the information is supposed to include name, address, phone number, and e-mail address of the appropriate person(s) to contact at each step of the process. Obviously, the information will need to identify contact persons not only in the schools, but in the various departments of the School Board as well, because of the different kinds of complaints or requests for information the School Board might get, and probably do already. Such information shall be disseminated at the beginning of each school year, beginning with the 2008-2009 school year. This Act took effect on July 11, 2008.

Policies *Public Information Program* and *Public Concerns and Complaints* were revised to include the notification requirement of such information. Since the Act only addressed providing this information to *parents of students*, we have also included in the policy a statement suggesting the general public contact the School Board for assistance when requesting information or to make a complaint.



NEXT ISSUE

While this issue contains way more revised policies than we typically send 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 2008 Acts of the Legislature, we have identified more Acts which may lead to additional revisions in Board policy.

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 **POLICYALERT**, send us your suggestions. We'll be glad to take a look!

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