

POLICYALERT



November, 2010

Forethought Consulting, Inc.

POLICY UPDATE: 2010

Legislative Review - Almost Finished

Just as Boards are finishing up review and approval of the first two batches of policy changes based on 2010 legislation, Forethought Consulting, Inc. has bad news and good news. The *bad* news is that this newsletter discusses 15 more policies which have been addressed to reflect additional legislation. The *good* news is that except for one more policy, which will be addressed in a special newsletter in early December, this newsletter and associated policies will wrap up the *2010 Legislative Update* series. There are major changes to policy, such as those which affect the authority and retention of the Superintendent, as well as minor changes, such as changing the distance of drug free zones around schools. All in all, in terms of policy changes for School Boards, it has been one of the busiest sessions we can remember.

- *SCHOOL BOARD ETHICS*
- *SCHOOL SUPERINTENDENT*
- *SCHOOL SUPERINTENDENT LEGAL STATUS*
- *EMPLOYMENT OF SUPERINTENDENT*

In the continuing efforts of the legislature to “clarify” the roles and authorities of Board members and the local School Superintendent, and to further curtail the involvement of School Board members in personnel

Policies In This Issue:

- School Board Ethics
- School Superintendent
- School Superintendent Legal Status
- Employment of Superintendent
- Board Member Continuing Education
- Investments
- Sale of Buildings and Land
- Bids and Quotations
- Buildings and Grounds Security
- Alcohol, Tobacco, Drug, and Substance Abuse Education Program
- Student Alcohol and Drug Use
- Employment of Personnel
- Personnel Transfer
- Student Assignment
- Student Biometric Information

matters, the legislature passed Act 720. In amending La. Rev. Stat. Ann. §17:54, the Act specifically addresses the votes necessary for the hiring and removal of a school system's Superintendent. To alleviate any perceived ambiguity, the *election* of a Superintendent by a School Board shall require a favorable vote of a *majority of the entire membership of the School Board*.

While provisions for nonrenewal of a Superintendent's contract at its expiration were already addressed in the statutes, and remain unchanged, the required vote necessary to remove the Superintendent *during* the term of his/her contract was significantly increased. *Removal* of a Superintendent prior to the expiration of his/her contract now requires a concurring vote of at least *two-thirds (2/3) of the membership of the entire School Board*.

The other statute revised by Act 720 is La. Rev. Stat. Ann. §17:81, dealing with the general powers of the Board and its members. The Act provides that as the instructional leader of the school district and chief executive officer, the Superintendent shall have primary responsibility for personnel actions taken in the school district. In addition, the Act expands the restrictions placed on the authority of Board members acting in an individual capacity. Members shall not interfere with any personnel action including hiring, demotion, or transfer of any school employee, and it also prohibits members from interfering with any employee making any decision concerning benefits, work assignments, or membership in any organization.

The above statutory changes take effect on January 1, 2011, and have prompted revisions to policies entitled *School Board Ethics*, *School Superintendent*, *School Superintendent Legal Status*, and *Employment of Superintendent*.

● BOARD MEMBER CONTINUING EDUCATION

Beginning with those School Board members taking office effective January 1, 2011, the statutorily required training and instruction Board members must receive annually has been altered. Acts 552 and 705 both amend La. Rev. Stat. Ann. §17:53, with the majority of changes coming from Act 705. School Board members are now required to receive **six (6)**, instead of four (4), hours of training and instruction annually. In addition, a new designation of *Distinguished School Board Member* has been established.

To receive the designation, a Board member is required to receive sixteen (16) hours of training during his/her first year of service, and an additional six (6) hours of training annually for the subsequent three years of his/her term.

The Act further provides that the Superintendent of the school district shall issue a press release detailing the training received by Board members, particularly those who have been designated as Distinguished School Board Members.

Act 552 has expanded the eligible training School Board members may receive to include training at any conference presented by the National School Boards Association or the Council of the Great City Schools, provided that verification is obtained that the member was in attendance at the training.

The policy entitled *Board Member Continuing Education* has been revised to include the new provisions.

● INVESTMENTS

The list of permitted obligations in which a political subdivision such as a School Board may invest its money keeps expanding, this time due to the passage of Act 642. Added to the investments permitted in La. Rev. Stat. Ann. §33:2955 are bonds, debentures, notes, or other indebtedness by a state in the United States other than Louisiana, or any political subdivision in another state. There are certain restrictions on these investments, however. They are:

1. The indebtedness has a certain high rating of recognized financial rating services;
2. The indebtedness has a final maturity of no more than three (3) years, except in certain circumstances; and
3. Prior to the purchase and during subsequent ownership of the indebtedness, the purchasing political subdivision shall retain the services of a Securities and Exchange Commission-registered investment advisor.

The provisions regarding this additional investment option became effective on August 15, 2010, and have been added to the policy *Investments*.

- SALE OF BUILDINGS AND LAND
- DISPOSAL OF SCHOOL PROPERTY

Previously when a School Board wanted to sell unused school land or buildings the minimum acceptable bid had to be equal to the appraised value of the property, and state law prohibited selling it for less than the appraised value. With the passage of Act 526, the process for selling real estate has been lengthened, but now allows for the eventual disposal of the property. The Act provides that on the first attempt to sell the property, the *minimum bid* which may be accepted must be at least 85% of the appraised value. If the School Board does not receive any bids at least equal to the minimum bid allowed, then the School Board may attempt another sale. On the second attempt, the minimum bid that the School Board may accept has to be at least 80% of the appraised value of the property. If there are again no bids which meet the required minimum, on the third try there is to be no minimum bid amount and the School Board may sell the property to the highest bidder.

The Act amends La. Rev. Stat. Ann. §41:892 and these changes became effective on June 24, 2010. The changes have been incorporated into the policy *Sale of Buildings and Land*, or into policy *Disposal of School Property*, as appropriate for each Board.

- BIDS AND QUOTATIONS

A policy which seems to have annual legislative revisions, *Bids and Quotations*, has been revised by the enactment of several Acts. In creating La. Rev. Stat. Ann. §38:2227, Act 945, effective as of July 2, 2010, prohibits from bidding on public projects those contractors who have been convicted of, or pled nolo contendere (no contest) to, certain state or equivalent federal crimes.

Conviction of certain crimes, such as public bribery, extortion, money laundering, and corrupt influencing shall result in the prospective bidder being *permanently* barred from bidding on projects. Other crimes committed will bar a bidder for a period of five (5) years. These crimes include theft, bank fraud, forgery, or malfeasance in office, to name a few. The five-year ban is to apply only if the crime was committed during the solicitation or execution of a contract or bid awarded in accordance with statutes dealing with public contracts.

The Act further provides that as a part of the bidding process, each bidder or bidding entity shall attest that the bidder, or the individual partner, incorporator, director, manager, officer, organizer, or member who has at least a 10% ownership in the bidding entity, has not been convicted of, or pled guilty or nolo contendere to, any of the listed crimes or equivalent federal crimes.

Act 864 is another Act that created a new statute addressing public bids, and became effective on August 1, 2010. Enacting La. Rev. Stat. Ann. §38:2212.9, the Act provides that any public entity may now reject the lowest bid from, or not award the contract to, a business in which any individual with at least 5% ownership has been convicted of, or pled guilty or nolo contendere to, any state felony crime or equivalent federal felony crime committed in the solicitation or execution of a contract or bid awarded under state laws governing public contracts; professional, personal, consulting, and social services procurement; or the Louisiana Procurement Code.

As part of the new statute, if a public entity does reject the lowest bid, the company whose bid is rejected shall be responsible to the public entity for the costs of rebidding, the increased costs of awarding to the second lowest bidder, or forfeiture of the bid bond, whichever is higher.

Both of the above acts have been addressed in revision of the policy *Bids and Quotations*.

While not resulting in any policy changes, two other Acts involving public bids included significant provisions. Act 970, in creating La. Rev. Stat. Ann. §9:2716, declares null and void any contract between a political subdivision, such as a School Board, and a person or entity, which was entered into as a result of fraud, bribery, corruption, or other criminal acts for which a final conviction has been rendered. Any person whose conviction causes the voiding of a contract shall be responsible for the payment of all costs, attorney fees, and damages incurred in the rebidding of the contract. The other Act, Act 625, amended La. Rev. Stat. Ann. §38:2214 to remove the statutory requirement that a public entity include the time and place for bids in its resolution providing for the contract or purchase and the advertisement for bids. It is still a statutory requirement, however, that the time and place for taking bids be included in the actual advertisement.

- **BUILDINGS AND GROUNDS SECURITY**
- **ALCOHOL, TOBACCO, DRUG, AND SUBSTANCE ABUSE EDUCATION PROGRAM**
- **STUDENT ALCOHOL AND DRUG USE**

Act 506, amending La. Rev. Stat. Ann. §17:405, is responsible for the change to three policies - *Buildings and Grounds Security*; *Alcohol, Tobacco, Drug, and Substance Abuse Education Program*; and *Student Alcohol and Drug Use*. Effective August 15, 2010, the area around schools designated as Drug Free Zones has been extended to 2,000 feet, up from the 1,000 feet previously included.

- **RECRUITMENT OF PERSONNEL**
- **EMPLOYMENT OF PERSONNEL**

The report provided to School Boards regarding the criminal history of applicants and employees has been expanded to include information which may have been expunged from the records. The expunged information shall not be considered a public record, so the School Board shall maintain its confidentiality.

This new provision has been included in either policy *Recruitment of Personnel* or *Employment of Personnel*, depending on which of these policies includes the section addressing Criminal History. The change is a result of Acts 355 and 781 which amend La. Rev. Stat. Ann. §15:587.1 and became effective on August 15, 2010.

- **PERSONNEL TRANSFER**

With the passage of Act 404 the legislature created a new law that requires BESE to adopt regulations that address the physical abuse of public school employees by students. Included in the regulations are the following:

1. Require School Boards to (a) keep an accurate record of abuse incidents reported by employees and (b) provide appropriate equipment to protect teachers and other school employees from abuse.
2. Provide support services to teachers and other school employees which afford them the opportunity to discuss stress caused by abuse.
3. Give a teacher or other school employee who has been

the victim of abuse the opportunity to transfer to another position, if available, for which he/she is certified in which he/she will not have contact with the student(s) involved.

We are not exactly sure what “..providing *appropriate equipment* to protect teachers and other employees from abuse” entails.

These new statutory provisions amend La. Rev. Stat. Ann. §17:7, and became effective on August 15, 2010. The policy entitled *Personnel Transfer* has been revised to include the pertinent transfer provisions of the statute.

- **STUDENT ASSIGNMENT**

Act 171 amends the statutory provisions addressing custody by mandate, which allows the parent or natural tutor of a minor child to authorize another person of legal age to care for the minor child. The Act, which amends La. Rev. Stat. Ann. §§9:951, 9:952, and 9:954, adds *grandparents who have been awarded custody* to the list of those who may confer provisional custody to another person.

For those systems which recognize provisional custody by mandate, the policy *Student Assignment* has been revised to include this new provision. The Act became effective on August 15, 2010.

- **STUDENT BIOMETRIC INFORMATION**

The collection of student biometric information by school systems may have significant application toward student identification in schools. Act 498 apparently was created to address and govern this evolving technological concept. The Act’s provisions, which became effective on June 24, 2010, set forth guidelines and requirements for the collection, storage, and use of biometric information of students.

The new statute created by the Act, La. Rev. Stat. Ann. §17:100.8, defines biometric information as the *noninvasive electronic measurement and evaluation of any physical characteristics that are attributable to a single person, including fingerprint, eye, hand, vocal, facial, and any other physical characteristics used for the purpose of electronically identifying that person with a high degree*

of certainty. The Act restricts the usage of any biometric information collected from a student only for the purpose of *identification* or *fraud prevention*.

The Act further requires School Boards that collect student biometric information to develop and adopt policies governing the collection and use of such information. Included in the policy shall be provisions that:

1. Explain what type of biometric information will be collected and how it will be collected, securely stored, and properly encrypted.
2. Require written permission from the student's parent or legal guardian through the use of a written form.
3. Ensure that a student's biometric information shall not be disclosed to third parties without the written consent of the parent or guardian, unless the disclosure

is required by law.

4. Ensure that the use of any biometric information is discontinued when (a) the student graduates or withdraws from school, or (b) written request to discontinue usage is received from the parent or legal guardian.
5. Require that all biometric information collected from a student is destroyed within thirty (30) days after use of such information is discontinued.

A new policy has been drafted entitled *Student Biometric Information*, for consideration by any School Board that is collecting, or wants to start collecting, student biometric information. This is a basic policy which may need to be customized for each Board based on the type of biometric information collected.

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NEXT ISSUE

As mentioned in the opening, Forethought Consulting, Inc. is reviewing one remaining Act regarding testing. Act 534 authorizes persons to report testing irregularities or improprieties in the administration of standardized tests directly to the Louisiana Department of Education. These provisions, as well as changes/revisions made by the Louisiana Board of Elementary and Secondary Education to its *Test Security* regulations will be reviewed for necessary changes to local test security policies. The policy will be sent with a special newsletter in early December.



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HAPPY THANKSGIVING!

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FORETHOUGHT CONSULTING, INC. provides a broad array of management assistance to school boards, specializing in board operations, board policy, regulation, and procedure development, policy manual development, revision, and maintenance, including *CAPS* (Computer Assisted Policy Service). **FORETHOUGHT CONSULTING, INC.** also assists school systems with mediation, board member training, insurance and risk management research and development, and other related services.

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