

**ORANGE COUNTY
BOARD OF EDUCATION**

AGENDA ITEM ABSTRACT

Meeting Date: September 24, 2012

AGENDA ITEM No. 12-09-(2)-08

ACTION ITEM (Y/N) Y

SUBJECT: Board Policy Subcommittee Recommendations

INFO. CONTACT: Dr. Marcie Holland/Patrick Rhodes **PHONE:** 919-732-8126

- ATTACHMENTS:**
1. Policy #7301 Reporting Information to the Principal and External Agencies (New)
 2. Policy #7220 Employee Complaints and Grievances – Revised
 3. Policy #7940 Classified Personnel: Dismissal - Revised

PURPOSE: The purpose of this item is to provide the Board an opportunity to hear a report of the Board's Policy Subcommittee and to approve on 2nd Reading two revised policies and one new policy.

BACKGROUND: On February 20, 2012, The Board of Education established a policy subcommittee. The members of the subcommittee, Donna Coffey, Brenda Stephens and Debbie Piscitelli, are supported by administrative staff from Human Resources, Finance, Operations and Curriculum and Instruction. The subcommittee will use the North Carolina School Boards' Association's PLS Updates as a guiding reference for policy revisions. As a member of the Association, this service is provided to our school district as part of membership.

Board of Education Policy #2410 states "It is through the development and adoption of written policies that the Board shall exercise its leadership in the operation of the school system; it is through the study and evaluation of reports concerning the execution of its written policies that the Board shall exercise its control over school operations."

The Board Policy Subcommittee met on August 28, 2012, and reviewed a list of policies. Four personnel related policies (Series 7000) were reviewed and discussed by the subcommittee members, Attorney Blumberg and staff.

The subcommittee directed staff to bring forward the following policies: Policy #7301 Reporting Information to the Principal and External Agencies (New), Policy #7220 Employee Complaints and Grievances – Revised, Policy #7940 Classified Personnel: Dismissal – Revised.

FINANCIAL IMPACT: None

RECOMMENDATION: The Superintendent recommends the Board approve revised Policy #7940 Classified Personnel: Dismissal, Policy #7220 Employee Complaints and Grievances and new Policy #7301 Reporting Information to the Principal and External Agencies for 2nd Reading Approval.

REPORTING INFORMATION *Date Reviewed/Approved:*
TO THE PRINCIPAL AND
EXTERNAL AGENCIES

Policy Number: 7301

Rescinds Policy Number:

Issued:

It is the policy of the Board in serious matters relating to the safety and welfare of the students and employees that certain actions and information be reported to external agencies as required by law or regulation.

PRINCIPAL

All school personnel, including substitute teachers, student teachers, and volunteers, must immediately report to the principal or designee any act of violence in school, on school property, or at school-sponsored events. Acts that should be reported are all those known or believed to be violent. This includes, but is not limited to, all acts reportable by the principal to law enforcement under this policy.

SUPERINTENDENT OF PUBLIC INSTRUCTION

Any administrator, including the superintendent, assistant superintendent, associate superintendent, personnel administrator, or principal, who knows or has substantial reason to believe that a certified employee has engaged in illegal or immoral behavior amounting to physical or sexual abuse of a child, shall report the information to the superintendent of public instruction. Failure to report such information constitutes grounds for certificate revocation or suspension.

For purposes of this requirement, "physical abuse" means the infliction of serious physical injury other than by accidental means or other than self defense. The term "sexual abuse" means the commission of any sexual act upon a student or causing a student to commit a sexual act regardless of the age of the student and regardless of the presence or absence of consent.

LAW ENFORCEMENT

Any principal who has personal knowledge or actual notice from school personnel that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm or other weapon in violation of the law, or possession of a controlled substance in violation of the law, the principal shall immediately report the act to the appropriate local law enforcement agency.

Any reports made to law enforcement under this policy shall also be reported by the principal or the principal's designee to the Superintendent or Superintendent's designee. The report to the Superintendent or designee shall be in writing or by electronic mail and shall occur by the end of the day in which the incident occurred when reasonably possible, but not later than the end of the following workday. In turn, the Superintendent shall provide the information to the Board of Education.

The principal or his/her designee must notify the parent/guardian of students who are alleged to be the victim of any reported offenses. Notice may be provided by any reasonable means including face to face conference, mail, fax, email, or telephone. Notice should be given immediately to the victim's parent/guardian, but in no case no later than three (3) working days after the principal or his/her designee receives actual knowledge of the criminal offense.

For purposes of this requirement, "school property" shall include any school building, bus, public school campus, grounds, recreation area, or athletic field in the charge of the principal. Designated crimes that occur on school property shall be reported without regard to whether they occur before, during, or after normal operating hours.

The report must be made without regard to the age of the victim or the perpetrator. Student offenders and victims should be identified by age, grade, sex, race, and educational status (i.e., regular or exceptional).

The principal shall designate persons who shall report the acts to law enforcement in his/her absence.

If the principal reports a crime committed by a child with a disability, the principal must ensure that copies of the child's special education and disciplinary records are transmitted to the appropriate authorities for consideration, to the extent that transmission is permitted by the Family Educational Rights and Privacy Act (FERPA). Where necessary to comply with FERPA, the principal shall obtain the written consent of the parent or student (if the student is at least eighteen (18) years of age) before transmitting the records. If consent is refused, the records will not be transmitted unless pursuant to a subpoena, court order or as otherwise authorized under FERPA and with proper notice to the parent as may be required by that law

Nothing in this section shall be interpreted to interfere with the due process rights of school employees or the privacy rights of students.

DEPARTMENT OF SOCIAL SERVICES

Any principal who has cause to suspect that a child is abused, neglected, dependent, or has died as a result of suspected maltreatment shall report the situation to the Orange County Director of Social Services. Any employee who has cause to suspect that a child is abused, neglected, dependent, or has died as a result of suspected maltreatment shall report the situation to the principal or designee. In the absence of the principal or designee, the employee shall report the situation directly to the Director of Social Services.

DEPARTMENT OF HEALTH

Principals shall report suspected cases of reportable communicable diseases or conditions to the Orange County Health Director for investigation. Without releasing information that would identify the employee, the principal shall also report suspected cases of reportable communicable diseases or conditions to the superintendent. Any employee who has reason to believe that a fellow employee has a reportable communicable disease and is not following safe practices shall report the situation to his/her principal or supervisor. Supervisory personnel shall report such unsafe conduct to the health director. In the absence of the principal or supervisor, the employee must report the situation to the health director. Confidentiality of such reports is protected by law, and school officials cannot be liable for making such reports.

The superintendent may develop procedures necessary for the implementation of this policy.

Legal References: G.S. 115C-400, -288, -307; G.S. 7B-301; G.S. 130A-136; 16 NCAC 6C.0312; 20 U.S.C. 1415(k)(9); 34 CFR 300.529(b)

EMPLOYEE COMPLAINTS AND GRIEVANCES

Date Reviewed/Approved: 12/03/2007 Policy Number: 7220

Rescinds Policy Number: GAE

Issued: 02/07/1983, 04/19/2004

The initial approach to settling any issue is open communication. An employee should first seek to resolve any complaint with his/her immediate supervisor through informal discussion. If such discussion does not resolve the matter informally, and the employee believes that his/her complaint rises to the level of a grievance as defined below, then the employee may initiate a formal grievance as described in this policy in an effort to seek an equitable solution.

A. GRIEVANCE

A grievance is defined as a formal written complaint by an employee that a final administrative decision of a school official violates a specified federal law, state law, State Board of Education policy, state rule, or local board policy. This grievance policy shall apply to any decision subject to appeal under G.S. 115C-45(c) or any other statute that provides employees a right to appeal to the board of education, except that dismissals, demotions or suspensions without pay of non-certified employees initiated by the superintendent or designee shall be reviewed initially at Level Two of the policy and except that complaints of alleged sexual harassment shall be made pursuant to the board's Sexual Harassment policy. Recommended decisions are not grievable.

Any employee who believes he or she has been aggrieved by a decision not covered by the definition of grievance in this policy may appeal the decision to the superintendent and thereafter have the right to petition the board for a hearing. The board shall notify the employee of its decision whether to grant a hearing.

B. DAY

Day is defined as a scheduled workday except where provided otherwise. Day of receipt or other event does not count as one of the working days.

TIME LIMITATION

No grievance shall be heard unless it has been filed in writing within thirty (30) calendar days after the act or condition giving rise to the grievance and states with particularity the basis for the grievance and the remedy sought. In order to be considered, the formal written grievance must be filed on the appropriate form at Level One as described below.

LEVEL ONE

The grievant may initiate a formal grievance by obtaining a grievance form from the Human Resources office, filling out the form and providing a copy to his or her supervisor. The grievant shall specify on the form the facts supporting the grievance; the specific law, policy, or regulation alleged to have been violated; and the relief requested. A meeting will take place within ten (10) days after receipt of the grievance by the supervisor. The supervisor shall make every reasonable effort to provide a written response to the employee's grievance within ten (10) days the meeting.

LEVEL TWO

- A. If the employee is not satisfied with the decision rendered at Level One, the employee may appeal to the superintendent or designee. The employee shall file a written appeal on the designated form specifying with particularity the reason(s) for the appeal. The employee shall file the appeal with the superintendent or designee within five (5) days of receiving the supervisor's written response to his/her grievance.

- B. The superintendent or designee shall make every effort to schedule a meeting with the employee for the purpose of resolving the grievance within fifteen (15) days from the receipt of the appeal form. If the superintendent or designee determines that additional time is needed to develop the factual record, the grievance may be put on hold for thirty (30) days (or longer if by mutual written agreement) to allow time for investigation.

Either party may call witnesses at the grievance meeting to help resolve the matter.

The superintendent or designee shall make every reasonable effort to send written notice of the decision to the grievant and the supervisor involved with five (5) days of the meeting.

LEVEL THREE

- A. If any employee is not satisfied with the decision rendered at Level Two, the employee has the right to file an appeal with the board of education within five (5) days of receiving the superintendent's decision. Upon receipt of this appeal, the board chair may appoint a committee of not fewer than two (2) members of the board to hear and decide the grievance.
- B. The committee shall make every reasonable effort to meet and consider the appeal within twenty (20) days after the chair refers the grievance to the committee. Reasonable notice of the appeal hearing will be given to the parties. The committee shall review the grievance on the record unless it determines that additional information may be presented. No new evidence, written or verbal, may be presented without the prior knowledge and consent of both parties or upon a majority vote of the hearing committee. Each party may make a brief oral presentation to the committee to summarize his or her position. The appeal hearing may be recorded and shall be held in closed session.
- C. The board committee may affirm, reverse or modify the decision of the superintendent. The superintendent's Level Two decision will be reversed only if the decision was:
1. in violation of constitution provision;
 2. in excess of statutory authority or jurisdiction of the school system;
 3. made upon unlawful procedure;
 4. affected by other error of law;
 5. unsupported by substantial evidence in view of the entire record as submitted; or
 6. arbitrary or capricious.

As used in this policy, substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

- D. The decision of the committee shall be final. The committee shall make every reasonable effort to send to the grievant and the superintendent a written statement of its decision within five (5) days of the hearing. A copy of the decision shall also be delivered to the board. This policy establishes a procedure for employees to grieve certain decisions of school officials. The policy does not grant employees the right to appeal

decisions of the board itself. Nonetheless, an employee may petition the board to reconsider one of its own decisions. The request must be made in writing to the board chair within thirty (30) days of the board's decision and must state the reasons why the board should reconsider its decision. The board may exercise its discretion to grant the petition. The board will review the decision on the record unless it determines that additional information may be presented. This grievance procedure shall not be available to contest dismissal, demotion, suspension or nonrenewal of a teacher or instructional administrator initiated under G.S. 115C-325. If the grievance is filed and then a disciplinary action is begun under G.S. 115C-325 on the same or related issue, no further action shall be taken with the grievance procedure while the disciplinary action is pending.

The steps of the grievance procedure will be followed to the convenience of all parties whenever possible. When meetings are held during work hours, no employee shall suffer loss of pay for time away from his/her duties, nor shall he or she receive extra pay when meetings are held at a time other than working hours. In order to process grievances as expediently as possible, every effort should be made to handle each step in the specified time period.

If the grievant fails to comply with the time periods or other procedures outlined in this policy, the grievant waives any further right of appeal and the grievance will be considered resolved. If the school system fails to comply with the time periods or other procedures outlined in this policy, the grievant may advance the grievance to the next level. There shall be no other consequences or remedies for failure of the school system to meet the time periods outlined in this policy.

The grievance may be voluntarily withdrawn at any level. Once a grievance is withdrawn, it cannot be reopened. If at any time during the grievance process the school system grants the grievant the relief sought, the superintendent or designee may terminate the grievance.

No retaliation of any kind shall be taken by the board or by an employee of the Orange County Schools against any party or other employee on account of his or her participation in a grievance proceeding filed pursuant to this policy.

The superintendent will develop a grievance form to document each step of the grievance process.

Legal References: G.S. 115C-45(c), -305, -325

CLASSIFIED PERSONNEL: *Date Reviewed/Approved:* 01/19/2010 *Policy Number:* 7940
DISMISSAL

Rescinds Policy Number:

Issued:

Classified personnel are employees at will. All actions to dismiss a classified employee shall be conducted in accordance with law. The superintendent and/or Board are authorized to dismiss classified employees.

Legal References: G.S. 115C-47, -276, -45(c)