

ORANGE COUNTY
BOARD OF EDUCATION

AGENDA ITEM ABSTRACT

Meeting Date: September 10, 2012

AGENDA ITEM No. 12-09-13

ACTION ITEM: (Y/N) N

SUBJECT: Legal/Legislative Update

INFO. CONTACT: Jonathan Blumberg / G. Patrick Rhodes PHONE: 919-732-8126

ATTACHMENTS: 1. Legal Update – August, 2012

PURPOSE: The purpose of this agenda item is to provide the board up-to-date legal and legislative information.

BACKGROUND: The 2012 session of the N.C. General Assembly enacted a number of laws affecting North Carolina Public Schools. New legislation and/or modification of existing statutes include:

Senate Bill 707: The School Violence Prevention Act – includes numerous provisions related to criminal law, most of them directed at the protection of school personnel from liability of on-line tormenting and cyber-bullying of employees by students. Other changes to the act set requisites for taking out charges against school personnel, limiting probation officer school access during school hours and requiring reporting of assaults on school employees.

Senate Bill 724: An Act to Improve Public Education – changes teacher education programs and student PEP (Personal Education Plan). It also requires schools create transition teams in schools.

House Bill 837: This law makes CPR training a high school graduation requirement starting in 2014-2015.

Other miscellaneous statutory changes include:

- Provides liability insurance for public school personnel
- Establishes a new statewide K-3 reading program
- Creates school performance grades based on test scores

Attorney Blumberg will also present some relevant case law which may affect the school system.

FINANCIAL IMPACT: There is no financial impact.

RECOMMENDATION: The Superintendent recommends the Board of Education receive the attorney's legal/legislative update for information

LEGAL UPDATE

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August 2012

2012 Legislative Update

The 2011-2012 legislative session brought several statutory changes that will impact public school districts in North Carolina. This memo is intended to alert you to some of the most significant changes and new requirements. Those changes requiring new policies or other action by LEA's this year are presented first. Please contact us for assistance with revising your policies or other questions about these new legal requirements.

Legislation Requiring Policy Change or Other Action

1. S.L. 2012-149: The School Violence Prevention Act (SVPA)

The School Violence Prevention Act contains several provisions intended to protect school employees who confront violent situations at school. The first two provisions listed below involve possible creation of new board policies or procedures.

Altercations Between Students

The SVPA contains two provisions intended to protect school employees who step in to break up a fight between students. The first amends Chapter 14 of the General Statutes (Criminal Law) to provide that any school employee "who takes reasonable actions in good faith to end a fight or altercation between students" will not incur criminal or civil liability as a result of those actions. This statute should act as a defense to any charges of assault or excessive force, provided the employee acted reasonably and in good faith.

In addition, the Act creates a new section of Chapter 115C which provides that "[n]o school employee shall be reprimanded or dismissed for acting or failing to act to stop or intervene in an altercation between students if the employee's actions are consistent with local board policies. **Local boards of education shall adopt policies . . . which provide guidelines for an employee's response if the employee has personal knowledge or actual notice of an altercation between students.**" (N.C.G.S.

115C-390.3). In order to implement this provision, boards should develop guidelines on reasonable steps employees may take when facing an altercation between students. These guidelines might logically be added to the board's policy on use of restraint and reasonable force with students. This provision is effective as of the beginning of the 2012-2013 school year.

Probation Officers at School

The SVPA also restricts the ability of probation officers to visit students at school. The only probation officers now permitted to visit students at school during school hours are those working for the Division of Community Corrections as part of the School Partnership Program, and they must receive prior authorization from the school administration for their visit. ("Authorization" is defined to include requests for assistance from SRO's and guidance counselors). The School Partnership Program involves students on supervised probation who are given specialized conditions of probation including attending and completing school without major disciplinary infractions. **Local boards are required to adopt policies or guidelines for coordinating with Department of Community Corrections probation officers to make school visits.** These policies should require that the visits take place in a designated private area away from other students, and that the officer not initiate direct contact with a student while the student is in class or between classes; rather, the student should be contacted and brought to the visiting area by a school employee. (115C-46.2)

Cyber-bullying School Employees

The School Violence Prevention Act also created a new criminal offense: "cyber-bullying of school employee by student." This offense includes any of the following acts if done with the intent to intimidate or torment a school employee:

- Building a fake online profile or web site;
- Posting private, personal or sexual information about the employee;
- Posting a real or doctored image of the employee online;
- Hacking into computer network;
- Making repeated/sustained electronic communications to a school employee.
- Copying or disseminating information/data about the employee;
- Signing the employee up for a pornographic website;
- Signing the employee up for junk e-mail lists.

Any student convicted of cyber-bullying a school employee shall be transferred to another school or, if that is not possible, assigned to a different teacher if the teacher was the victim.

Taking Out Charges Against School Personnel

This new provision requires approval from the district attorney before a magistrate can issue a warrant for arrest or criminal summons against a school employee for an offense that occurred while the school employee was in the process of discharging his or her duties of employment. This does not apply to traffic offenses or offenses occurring in the presence of a law enforcement officer.

Duty to Report Assault on an Employee

Finally, the School Violence Prevention Act creates a duty for certain supervisors to take action when an employee is assaulted by a student. If a supervisor has actual notice that an employee he or she supervises has been assaulted by a student resulting in physical injury, the supervisor must immediately report it to the principal. In this provision, "supervisor" is defined to exclude principals and Superintendents. Teachers already have a legal duty under G.S. 115C-07(a) to report acts of violence in the school to the principal. The Act further provides that principals, superintendents or supervisors should not intimidate or attempt to intimidate the employee from reporting the assault to law enforcement. (G.S. 115C-289.1).

2. PEP's and Transition Teams

S.L. 2012-77, "An Act to Improve Public Education," contains two changes to the Personalized Education Plan (PEP) statute (115C-105.41). First, if a student's report card contains all of the information required to be in a PEP (including focused intervention and performance benchmarks), then a separate PEP is not required.

Second, "[l]ocal boards of education shall adopt and implement plans for the creation of transition teams and transition plans for students at risk, as defined by the State Board of Education, to assist them in making a successful transition between the elementary school and middle school years and between the middle school and high school years." Previously, LEA's were "encouraged" to adopt policies to assist in the transition from middle to high school, such as ninth grade academies and mentoring programs. Now, boards are required to create formal plans for the transition of "at risk" students from elementary to middle and from middle to high, which plans must include "transition teams." DPI has published guides on transition planning that may be helpful as you implement this new requirement (<http://www.ncpublicschools.org/docs/curriculum/home/transitions.pdf>).

3. Liability Insurance for Public School Personnel

The SBE will provide no-cost liability insurance to educators and other school employees for acts in the course of carrying out their professional duties, effective July 1, 2012. Each LEA is required to send a letter to all employees a by August 29, 2012, alerting them to the existence of this coverage, including information on policy details, reporting claims, contact information, and instructions for obtaining a copy of the policy. See www.professionalliabilitync.com for more information about policy coverage. Please contact us if you have not yet sent a letter to your employees and would like a sample.

4. Annual Leave Bonus

Any person who was a full-time employee of a local board of education as of July 1, 2012, or was under contract as of July 1 to be employed in a full-time position for the 2012-2013 school year, and

who is eligible to earn annual leave, will receive a one-time bonus of five days of leave. The leave must be used by June 30, 2013, and will not be paid out upon termination (but will be paid upon retirement). Part-time permanent employees will receive a pro-rata amount of leave.

5. Annual Leave for Employees of Year-Round Schools

Effective with the 2012-2013 school year, the General Assembly has authorized boards of education to adopt policies allowing instructional personnel and teacher assistants employed at year-round schools for 11 or 12 months to take annual leave on days when students are in attendance. If a board decides to allow this, it should adopt a policy requiring prior approval of the principal and containing any additional guidelines the board wishes to provide for granting approval. Substitutes must be paid for with local funds. (2012-2013 Appropriations Act, S.L. 2012-142).

6. School System Contracts

Effective September 1, 2012, **any school system contract, including employment contracts or salary commitments, that will be paid in whole or in part with State funds, must contain language making the obligation subject to the availability of appropriated funds.** We recommend inserting the following language into school system contracts: "It is understood and agreed between the parties that the school system's payment obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made." (G.S. 143C-6-8). (2012-2013 Appropriations Act, S.L. 2012-142).

7. Addressing the Unique Needs of Children in Military Families

A new legal obligation of principals has been added to the list of contained in G.S. 115C-288: "**The principal shall develop a means for identifying and serving the unique needs of students who have immediate family members in the active or reserve components of the Armed Forces of the United States.**"

The duty of local boards to make an annual report to the State Board containing data on students with immediate family members in the military has been eliminated; however, **local boards are required to make a one-time report to the State Board by November 30, 2012**, containing the same data (previously enumerated in G.S. 115C-47(60), now repealed).

Other Legislative Changes

1. **Changes to Calendar Law:** The school calendar law has been revised to require 185 days **or** 1,025 hours of instruction (previously 185 **and** 1,025), effective with the 2013-2014 school year. The State Board is no longer permitted to issue waivers allowing districts to use up to five days for teacher workdays. The mandatory opening and closing dates have been changed to the Monday closest to August 26 and the Friday closest to June 11, respectively. Waivers of

opening and closing dates will be available only for districts who have historically missed more than 8 days for severe weather/emergency conditions. The provision allowing waivers for "educational purposes" has been eliminated. Cooperative Innovative High Schools (early college/ middle colleges) are exempted from the opening date and closing date requirements. (Senate Modifications to the 2012 Appropriations Act, S.L. 2012-145).

2. **The Education Employees Association Equal Access Act:** This Act prohibits LEA's and schools from granting any education employee association access to employee mailboxes, email distribution, or employee orientations unless it allows all education employee associations the equal access. Furthermore, schools and LEA's may not endorse or give any preferential treatment to one employee association over others, and may not refer to days or breaks in a school calendar by the name of an employee association. (S.L. 2012-179).
3. **The North Carolina Read to Achieve Program:** A new statewide K-3 reading program will go into effect for the 2013-2014 school year. The program will include developmental screening tests for kindergarteners (starting 2014-2015), statewide diagnostic reading assessments, and mandatory remedial summer reading programs. The legislation also attempts to end "social promotion" by mandating retention of students who fail the EOG at the end of third grade. Retention may be avoided by successful completion of a summer reading camp, use of a reading portfolio, or for ESL students or EC students whose IEP's indicate the use of alternative assessments and reading interventions. Good-cause exemptions may also be requested by a teacher and granted by the Superintendent – this is a new exception to the general authority of principals over promotion decisions. The statute also includes several new requirements for written notification and progress reports to parents of K-3 students. Look for more guidance from DPI as this new program is rolled out over the next twelve months. (2012-2013 Appropriations Act, S.L. 2012-142, Section 7A.1).
4. **School Performance Grades:** The Excellent Public Schools Act also institutes a new accountability grading system for school report cards. Schools will receive a numerical score of 0-100 as well as a letter grade, based on test scores, "college and workplace readiness measures," and graduation rates. Districts are required to "prominently display" the grades on the website, and parents must be notified in writing of any school receiving a D or F. (S.L. 2012-142, Section 7A.3).
5. **CPR Training in High School:** CPR training will be a high school graduation requirement starting in 2014-2015, as part of the Essential Standards in Healthful Living. (S.L. 2012-197)
6. **Changes to Teacher Education:** The State Board, in consultation with UNC System and community college system (for lateral entry programs), shall improve education of elementary school teachers by improving coursework in teaching reading and math, assessing their knowledge of scientifically-based reading and math instruction, providing technology-based

professional development in formative and summative assessments, and teaching them to integrate arts education across the curriculum.