

# TABLE OF CONTENTS

## SECTION 1—BOARD GOVERNANCE and OPERATIONS

LEGAL STATUS OF THE BOARD OF DIRECTORS _____	1.1
BOARD ORGANIZATION _____	1.2
DUTIES OF THE PRESIDENT _____	1.3
DUTIES OF THE VICE-PRESIDENT _____	1.4
DUTIES OF THE SECRETARY _____	1.5
BOARD MEMBER VOTING _____	1.6
POWERS AND DUTIES OF THE BOARD _____	1.7
GOVERNANCE BY POLICY _____	1.8
POLICY FORMULATION _____	1.9
ASSOCIATION MEMBERSHIPS _____	1.10
BOARD TRAINING _____	1.11
COMMITTEES _____	1.12
SUPERINTENDENT/ BOARD RELATIONSHIP _____	1.13
MEETING AGENDA _____	1.14
TORT IMMUNITY _____	1.15
DUTIES OF BOARD DISBURSING OFFICER _____	1.16
NEPOTISM _____	1.17
DISTRICT AUDITS _____	1.18

# **BOARD GOVERNANCE AND OPERATIONS**

## **1.1—LEGAL STATUS OF THE BOARD OF DIRECTORS**

By the authority of Article 14 of the Arkansas Constitution, the General Assembly has provided that locally elected school boards will be responsible for the lawful operation and maintenance of its local schools.

While the Board has a broad range of powers and duties, its individual members only have authority when exercising their responsibilities in a legally convened meeting acting as a whole. The sole exception is when an individual member has been delegated authority to represent the Board for a specific, defined purpose. In matters such as personnel discipline, expulsions, and student suspensions initiated by the superintendent, the Board serves as a finder of fact, not unlike a jury. For this reason, the board should not be involved in or, to the extent practicable, informed of the facts or allegations of such matters prior to a board hearing or those disciplinary matters in which the Board could become involved.

It is the policy of the Bismarck School Board that its actions will be taken with due regard for its legal responsibilities and in the belief that its actions shall be in the best interests of its students and the District as a whole.

Legal Reference:       A.C.A. § 6-13-620

Date Adopted: 5-19-03

Last Revised: 7-21-08

## 1.2—BOARD ORGANIZATION

The Board shall elect a president, vice president, and secretary at the first regular meeting following the later of the certification of the results of the annual September school election or if there is a runoff election, at the first regular meeting following the certification of the results of a run-off election runoff election. Officers shall serve one-year terms and perform those duties as prescribed by policy of the Board. The board shall also elect one of its members to be the primary board disbursing officer and may designate one or more additional board members as alternate board disbursing officers.

If there is an unforeseen circumstance, such as a Board officer's serious health condition, call to active military duty, or other compelling circumstance, the Board may elect another member to replace the absent member until the following year's normal election of officers. In the case of the newly elected officer having held another Board officer position, that position shall also be filled by election of the Board. This provision does **not** permit such an election for any other reason than the unforeseen absence of a previously elected officer of the Board.

Legal Reference:       A.C.A. § 6-13-618

Date Adopted: 5-19-03

Last Revised: 7/15/13

### **1.3—DUTIES OF THE PRESIDENT**

The duties of the president of the Board of Education shall include, but shall not be limited to:

1. Presiding at all meetings of the Board;
2. Calling special meetings of the Board;
3. Working with the Superintendent to develop Board meeting agendas;
4. Signing all official documents that require the signature of the chief officer of the Board of Education;
5. Appointing all committees of the Board and serving as ex-officio member of such committees; and
6. Performing such other duties as may be prescribed by law or action of the Board.

The president shall have the same right as other members to offer resolutions, make or second motions, discuss questions, and to vote.

Legal Reference:       A.C.A. § 6-13-619 (a) (1)

Date Adopted: 5-19-03

Last Revised:

## **1.4—DUTIES OF THE VICE-PRESIDENT**

The duties of the Vice President of the Board shall include:

1. Serving as presiding officer at all school board meetings from which the president is absent; and
2. Performing such other duties as may be prescribed by action of the Board.

Date Adopted: 5-19-03

Last Revised:

## 1.5—DUTIES OF THE SECRETARY

The duties of the Secretary of the Board shall include:

1. Being responsible to see that a full and accurate record of the proceedings of the Board are permanently kept and shall;
  - a. Record in the minutes, the members present, by name, at the meeting including the time of any member's late arrival to, or early departure from, a meeting;
  - b. Record the outcome of all votes taken including the time at which the vote is taken.
2. Serving as presiding officer in the absence of the President and the Vice President;
3. Being responsible for official correspondence of the Board;
4. Signing all official documents that require the signature of the Secretary of the Board of Education;
5. Calling special meetings of the Board; and
6. Performing such other duties as may be prescribed by the Board.

Legal Reference: A.C.A. § 6-13-619 (a)(1)(b)

Date Adopted: 5-19-03

Last Revised: 7/15/13

## 1.6—BOARD MEMBER VOTING

### **Establishment of a Quorum**

A quorum of the Board is a majority of the membership of the Board. No vote or other board action may be taken unless there is a quorum present. A Board member must be physically present at a meeting to be counted toward establishing a quorum or to be eligible to vote. A majority of the quorum voting affirmatively is necessary for the passage of any motion.

### **Voting and failure to vote**

All Board members, including the President, shall vote on each motion, following a second and discussion of that motion.

Failure of any Board member to vote, while physically present in the meeting room, shall be counted as a “no” vote, i.e., a vote against the motion.

Only those votes taken by the Board in open session are legally binding. No motion made or vote taken in executive session is legally binding, although a non-binding, unofficial and non-recorded vote may be taken in executive session to establish consensus or further discussion.

### **Abstentions from Voting**

In order for a Board member to abstain from voting, he must declare a conflict and remove himself from the meeting room during the vote. A Board member who removes himself/herself from a meeting during a vote due to a conflict of interest shall not be considered present at the meeting for the purpose of establishing a quorum until the member returns to the meeting after the vote.

Legal Reference: A.C.A. § 6-13-619 (c)  
A.C.A. § 25-19-106(c)(4)

Date Adopted: 5-19-03  
Last Revised: 7/15/13



## **1.7—POWERS AND DUTIES OF THE BOARD**

The Bismarck Board of Education, operating in accordance with State and Federal laws, assumes its responsibilities for the operation of Bismarck Public Schools. The board shall concern itself primarily with the broad questions of policy as it exercises its legislative and judicial duties. The administrative functions of the District are delegated to the Superintendent who shall be responsible for the effective administration and supervision of the District.

Some of the duties of the Board include:

1. Developing and adopting policies to effect the vision of the District;
2. Understanding and abiding by the proper role of the Board of Directors;
3. Electing and employing a Superintendent and giving him/her the support needed to be able to effectively implement the Board's policies;
4. Conducting formal and informal evaluations of the Superintendent as deemed necessary and appropriate;
5. Employing, upon recommendation of the administrative staff and by written contract, the staff necessary for the proper conduct of the schools;
6. Seeing that all subjects for study prescribed by the State Board or by law for all grades of schools are taught;
7. Preparing and publishing the district's budget for the ensuing year;
8. Being responsible for the maintenance of the District's buildings, grounds, and property;
9. Setting an annual salary schedule;
10. Being fiscally responsible to the district's patrons and maintaining the millage rate necessary to support the district's budget;
11. Involving the members of the community in the district's decisions to the fullest extent practicable; and
12. Striving to assure that all students are challenged and are given an equal educational opportunity.

Legal References:      A.C.A. § 6-13-620, 622

Date Adopted: 5-19-03

Last Revised:

## **1.8—GOVERNANCE BY POLICY**

The district shall operate within the legal frameworks of the State and Federal Constitutions, and appropriate statutes, regulations, and court decisions. The legal frameworks governing the district shall be augmented by policies adopted by the board of directors which shall serve to further define the operations of the district.

When necessitated by unforeseen circumstances, the Superintendent shall have the power to decide and take appropriate action for an area not covered by the legal frameworks or a policy of the Board. The Superintendent shall inform the members of the Board of such action. The Board shall then consider whether it is necessary to formulate and adopt a policy to cover such circumstances.

The official copy of the policy manual for the District shall be kept in the Superintendent's office. Copies of the manual within the District shall be kept current, but if a discrepancy occurs between manuals, the Superintendent's version shall be regarded as authoritative.

Administrative regulations shall be formulated to implement the intentions of the policies of the Board. Regulations may be highly specific. The Board shall review administrative regulations prior to their implementation.

Date Adopted: 5-19-03

Last Revised: 7-21-08

## **1.9—POLICY FORMULATION**

The Board affirms through its policies and its policy adoption process, its belief that: (1) the schools belong to the people who create them by consent and support them by taxation; (2) the schools are only as strong as an informed citizenry and knowledgeable school staff allow them to be; (3) the support is based on knowledge of, understanding about, and participation in the efforts of its public schools. The following shall be the guidelines for policy adoption for the Bismarck School District.

### **General Policies**

Policies which are not personnel policies may be recommended by the Board or any member of the Board; by the Superintendent, Assistant Superintendent, any other administrator or employee of the District; committee appointed by the Board; or by any member of the public. Policies adopted by the Board shall be within the legal framework of the State and Federal Constitutions, and appropriate statutes, rules, and court decisions.

When reviewing a proposed policy (non-personnel), the Board may elect to adopt, amend, refer back to the person proposing the policy for further consideration, take it under advisement, reject it, or refuse to consider such proposal.

### **Licensed and Classified Personnel Policies**

Personnel policies (including employee salary schedules) shall be created, amended, or deleted in accordance with State law:

#### **(1) Board Proposals:**

The Board may adopt a proposed personnel policy by a majority vote. Such policies may be proposed to the Board by a Board member or the Superintendent. The Board may choose to adopt the proposal, as a proposal only, by majority vote.

Following the adoption of a proposed personnel policy, the proposal must be presented to the appropriate Personnel Policy Committee (PPC). Such presentation shall be in writing, to all members of the Committee.

When the PPC has possessed the proposed personnel policy for a minimum of ten (10) working days from the date the PPC received the proposed policy (i.e., ten workdays, not including weekends or state or national holidays), the Chairman of the PPC, or the Chairman's designee, shall be placed on the Board of Director's meeting agenda to make an oral presentation to the Board to address the proposed policy. Following the presentation, the Board may vote at the same meeting at which the proposal is made, or, in any case, no later than the next regular Board meeting to:

- (a) Adopt the Board's original proposed policy as a policy;
- (b) Adopt the PPC's counter proposed policy as a policy; or

(c) Refer the PPC's counter proposed policy back to the PPC for further study and revision. Any such referral is subject to the same adoption process as a proposed policy originating from the board.

(2) Personnel Policies Committee Proposals:

Either PPC may recommend changes in personnel policies to the Board. When making such a proposal, the Chairman of the PPC, or the Chairman's designee, shall be placed on the Board of Director's meeting agenda to make an oral presentation to the Board.

The Board may vote on the proposed policy at the same meeting at which the proposal is made, or, in any case, no later than the next regular Board meeting. In voting on a proposed policy from the Personnel Policies Committee, the Board may:

- (a) Adopt the proposal;
- (b) Reject the proposal; or
- (c) Refer the proposal back to the Personnel Policies Committee for further study and revision.

When the Board is revising the licensed and classified personnel salaries, the Board of Directors shall, as required by Arkansas law, review and approve by a written resolution any employee's salary increase of 5% or more for the employee.<sup>1</sup>

A copy of all personnel policies shall be signed by the president of the Board of Directors and kept in a central records location.

**Effective date of policy changes:**

All personnel policy changes enacted during one fiscal year will become effective on the first day of the following fiscal year, July 1. This specifically includes any changes made between May 1 and June 30 to ensure compliance with state or federal laws, rules, or regulations or the Arkansas Department of Education Commissioner's Memos.

Changes made to personnel policies between May 1 and June 30 that are **not** made to ensure compliance with state or federal laws or regulations will take effect on July 1 of the same calendar year provided no later than five (5) working days after final board action, a notice of the change is sent to each affected employee by first class mail to the address on record in the personnel file.<sup>2</sup> The notice of the change must include:

- a. The new or modified policy or policies provided in a form that clearly shows the additions underlined and the deletions stricken;
- b. A statement that due to the change(s), the employee has the power to unilaterally rescind his/her contract for a period of thirty (30) days after the school board took final action on the policy (policies). The rescission must be in the form of a letter of resignation within the thirty (30) day period.

For a policy change to be made effective prior to July 1 of the following fiscal year, a vote must be taken of all licensed personnel or all classified personnel, as appropriate, with the vote conducted by the appropriate PPC.

If, by a majority vote, the affected personnel approve, the policy becomes effective as of the date of the vote, unless otherwise specified by the Board in requesting such vote. No staff vote taken prior to final board action will be considered effective to make a policy change.

All non-personnel policy changes may become effective upon the Board's approval of the change, unless the Board specifies a different date.

Student discipline policies shall be reviewed annually by the District's personnel policy committees and may recommend changes to such policies to the Board of Directors.<sup>3</sup>

Parents, students, and school district personnel, including teachers, shall be involved in the development of student discipline policies.<sup>4</sup>

Notes: <sup>1</sup> Act 1120 (codified at A.C.A. § 6-13-635) requires the resolution, but all of the Act's listing of reasons except one are statutorily required raises and most are paid by the state and not district funds. None-the-less, the resolution is required.

Whereas, the superintendent has identified all changes from last school-year's published salary schedule, and has identified and presented the Board of Directors with each employee's salary increase of 5% or more as required under A.C.A. § 6-13-635 and created a spreadsheet explaining each;

Therefore, the Bismarck School District Board of Directors approves and resolves that the spread sheet including those explanations are a factual representation of the raises given for the **insert date** school-year.

<sup>2</sup> Districts should plan carefully to avoid accidentally triggering the late-adopted personnel policy right of recession. School employees who take the opportunity to escape their contractual obligations and leave the school district would be very disruptive to staffing plans for the next school year. Salary schedules for the upcoming school year, in particular, should either need to be adopted prior to May 1, or after July 1 (and requiring a vote of the applicable staff to be effective) thus avoiding the right of rescission.

<sup>3</sup> This sentence is governed by Arkansas law. ASBA believes any PPC review of student discipline policies is to be initiated by the PPC. There is no district requirement to make sure it happens.

<sup>4</sup> ASBA believes this statutory requirement is an "umbrella" requirement for discipline policies in general rather than requiring EVERY discipline policy to go through a stakeholder committee pre-approval process.

Cross References:      Policy 3.1—LICENSED PERSONNEL SALARY SCHEDULE;  
                                 Policy 8.1—CLASSIFIED PERSONNEL SALARY SCHEDULE

Legal References:      A.C.A. § 6-13-619(c)  
                                 A.C.A. § 6-13-635  
                                 A.C.A. § 6-17-201, 204, 205, 2301  
                                 A.C.A. § 6-18-502(b)(1)(2)

Date Adopted: 5/19/03

Last Revised: 6/25/12; 4/22/13; 7/15/13

## **ASSOCIATION MEMBERSHIPS**

The Board shall be a member of the Arkansas School Boards Association and may be a member of the National School Boards Association and other organizations which, in the opinion of the Board, will be beneficial to the Board in carrying out its duties more effectively.

Legal Reference:       A.C.A. § 6-13-107

Date Adopted: 5-19-03

Last Revised:

## 1.9 —BOARD MEMBER TRAINING

Board members who have served on the board for twelve (12) or more consecutive months are required to obtain a minimum of six (6) hours of training by December 31 of each calendar year. Effective with the 2006 school election, board members who are elected to serve an initial or non –continuous term shall obtain a minimum of nine (9) hours of training by December 31 of the year following their election and six (6) hours of training by December 31 of each calendar year thereafter. Hours obtained in excess of the required minimums may be carried forward through December 31 of the third calendar year following the year in which the hours were earned.

The training shall be focused on topics relevant to school laws, school operations, and the powers, duties, and responsibilities of the members of the board of directors. The responsibilities include, but are not limited to legal requirements, role differentiation, financial management, improving student achievement, reading and interpreting an audit report, and the duties and responsibilities of the various levels of employees within the district as well as those of the board of directors.

The district is responsible for maintaining a record of the hours of training received by each board member. Board members shall make a concerted effort to submit documentation of training they have received to the superintendent or his/her designee. In the absence of such documentation, the district shall attempt to obtain records of training received from training providers.

Such training may be obtained from an institution of higher learning, from instruction provided by the Arkansas Department of Education or the Arkansas School Boards Association, or from other providers approved by the Arkansas Department of Education.

A statement regarding the number of hours of training received each preceding calendar year shall be:

7. Part of the district's comprehensive school plan and goals;
8. Published in the same way as other components of the comprehensive plan and goals are required to be published;
9. Part of the annual school performance report required to be submitted to, and published by the Arkansas Department of Education.

Board members shall be reimbursed, from school funds, for expenses relating to such training.

Legal References:     A.C.A. § 6-13-629  
                              ADE Rule Governing Required Training for School Board Members

Date Adopted: 5-19-03

Last Revised: 10-16-2006; 6-20-11

## **1.12—COMMITTEES**

From time to time, in order to obtain and/or encourage public participation in the operation of the District, the Board may appoint committees, which may include members of the public, students, parents, and school employees, as well as members of the Board.

Any committee, which includes among its members a member of the School Board, shall operate according to the requirements of the Arkansas Freedom of Information Act.\*

\* Legal Reference:      A.C.A. § 25-19-106

Date Adopted: 5-19-03

Last Revised:



### **1.13—SUPERINTENDENT/ BOARD RELATIONSHIP**

The Board's primary responsibility is to develop, working collaboratively with the community, a vision and mission for the District. The Board formulates and adopts policies to achieve that vision and elects a Superintendent to implement its policies. The Board and the Superintendent and the relationship between them set the tone for the district to follow. The relationship is enhanced when both parties understand their roles and carry them out in an ethical and professional manner working to develop a relationship of mutual trust and respect.

The Superintendent and staff are responsible for administering the Board's policies and will be held responsible for the effective administration and supervision of the District. The Superintendent is authorized to develop and implement administrative regulations to fulfill the Board's policies, provided such regulations are consistent with the intent of the Board's policies.

Date Adopted: 5-19-03

Last Revised:

## 1.14—MEETING AGENDA

The agenda guides the proceedings of the Board meeting. The Superintendent shall prepare the agenda with consultation from the Board President. Other members of the Board who desire to have an item placed on the monthly agenda may do so by contacting the Superintendent or, in writing, the Board President by the date established in this policy and the item will be duly considered for inclusion.

The chairman of the PPC, or the chairman's designee, shall be placed on the Board of Director's meeting agenda to make an oral presentation to the Board to address either a personnel policy proposed by the Board that the PPC committee has possessed for no less than 10 work days or a personnel policy that the PPC wishes to propose to the Board.

District patrons wishing to have an item placed on the Board meeting's agenda must submit their requests, in writing to the Superintendent, at least 5 days prior to the meeting of the Board. The written request must be sufficiently descriptive to enable the Superintendent and Board President to fully understand and evaluate its appropriateness to be an agenda item. Such requests may be accepted, rejected, or referred back to the individual for further clarification.

The Superintendent shall notify the Board President of all written requests to be placed on the agenda along with the Superintendent's recommendation concerning the request. No item shall be placed on the agenda that would operate to prejudice the Board concerning a student or personnel matter that could come before the Board for disciplinary or employment considerations or that is in conflict with other District policy or law.

Patrons whose written request to be placed on the meeting's agenda has been accepted shall have no more than 5 minutes to present to the Board unless specifically granted additional time by a motion approved by a majority of the Board. The speaker shall limit his/her comments to the approved topic/issue or forfeit his/her right to address the Board. The members of the Board will listen to the patron's presentation, but shall not respond to the presenter during the meeting in which the presentation is made. but may. The Board may choose to discuss the issue presented at a later meeting, but is under no obligation to do so.

The Superintendent shall be responsible for Board members receiving copies of the Agenda with all accompanying pertinent information at least 5 days prior to the meeting.

This policy's advance notice requirements do not apply to special or called board meetings.

Legal References:        A.C.A. § 6-13-619(a)(2)  
                                 A.C.A. § 6-17-205(c)

Cross Reference:        1.9—POLICY FORMULATION

Date Adopted: 5-19-03

Last Revised: 6-20-11; 7/15/13



## **1.15—TORT IMMUNITY**

The District, as well as its agents, officers, employees, and volunteers are immune from liability for negligence, pursuant to A.C.A. § 21-9-301. When allegations of negligence are raised, whether in litigation or not, the statutory grant of immunity will be asserted.

[The School Board retains the right to settle claims for negligence, as authorized by A.C.A. § 21-9-301, but it shall do so only in the most extraordinary circumstances. If any claim is settled, the District and the School Board specifically do not waive immunity above the amount of the settlement, nor is that immunity waived for any other claim, at any time, regardless of whether it is similar in nature.]

Date Adopted: 5-19-03

Last Revised:

## **1.16 —DUTIES OF BOARD DISBURSING OFFICER**

The District's Board of Directors' Disbursing Officer, along with the Superintendent, shall be responsible for signing, manually or by facsimile, all warrants and checks other than those issued for food service and activity funds. Any electronic transfer of District funds shall be pre-authorized by the Board of Directors' Disbursing Officer under the provisions of policy 7.20 ELECTRONIC FUND TRANSFERS.

For the purposes of this policy, "activity funds" is defined as those funds whose sources of revenue are from:

1. The sale of tickets to athletic contests or other school-sponsored activities;
2. The sale of food, except that which is sold in the lunchroom;
3. The sale of soft drinks, school supplies, and books; and
4. Fees charged by clubs and organizations.

Cross Reference: 7.20 – ELECTRONIC FUND TRANSFERS

Legal Reference: A.C.A. § 6-13-618(c)

Date Adopted: 10-18-04

Last Revised: 6-20-11; 6/25/12

## **1.18—DISTRICT AUDITS**

The District's annual audit serves as an important opportunity for the Board of Directors to review the fiscal operations and health of the district. As such, it is vital Board members receive sufficient explanation of each audit report to enable the members to understand the report's findings and help them better understand the District's fiscal operations.

The District shall have an audit conducted annually within the timelines prescribed by law. The audit shall be conducted by the Division of Legislative Audit or through the audit services of a private certified public accountant(s) approved by the Board.

The Board of Directors shall review each annual audit at the first regularly scheduled board meeting following the receipt of the audit if the District received the audit prior to ten (10) days before the regularly scheduled meeting. If the audit report is received less than ten (10) days prior to a regularly scheduled board meeting, the board may review the report at the next regularly scheduled board meeting following the ten (10) day period.

The Superintendent shall present sufficient supporting/background information relating to the report's findings and recommendations which will enable the Board of Directors to direct the Superintendent to take appropriate action in the form of a motion or motions relating to each finding and recommendation contained in the audit report. Actions to be taken will be in sufficient detail to enable the Board of Directors to monitor the District's progress in addressing substantial findings and recommendations and subsequently determine that they have been corrected. The minutes of the Board's meeting shall document the review of the audit's findings and recommendations along with any motions made by the Board or actions directed to be taken by the Superintendent or designee.

The Board of Directors is responsible for presenting the audit's findings each year to the public .<sup>1</sup>

Notes: <sup>1</sup> The Standards of Accreditation (7.03.3.1) requires a report to the public by November 15, but doesn't specify it include the audits' findings. A.C.A. § 6-13-

620(6)(F) requires the reporting of the audit's findings, but doesn't specify any date by which they must be reported. In other words, you MAY go over the audit report at you annual meeting, but it is not required.

Legal References: A.C.A. § 6-1-101(d)(1)(2)(3)  
A.C.A. § 6-13-620(6)(F)

Date Adopted: 6-20-11  
Last Revised

TABLE OF CONTENTS

SECTION 2—ADMINISTRATION

DUTIES OF THE SUPERINTENDENT\_\_\_\_\_2.1

SUPERINTENDENT COMPENSATION\_\_\_\_\_2.2



# ADMINISTRATION

## 2.1—DUTIES OF THE SUPERINTENDENT

The Superintendent, as the chief executive officer of the Board and the school system, shall be the administrative head of all departments in the District. The Superintendent shall be responsible to the Bismarck Board of Education for administering the school system according to the mandates of the laws, Arkansas Department of Education, other agencies of jurisdiction, and policies governing school operations. While the Superintendent may delegate his duties when and where necessary and appropriate, he/she shall be responsible to the Board for the results of those duties delegated.

The Superintendent shall be the Ex officio financial secretary as provided for in A.C.A. § 617918(a). Some of the Superintendent's duties include:\* 1) Implementing the policies of the Board; 2) Being responsible for the planning and implementation of an educational program in accordance with State

and Federal requirements and the needs of the District;

3) Reporting to the Board concerning the status of the educational program, personnel, and operations, and making recommendations for improving instruction, activities, services, and facilities; 4) Acting as a liaison between the Board and school personnel; 5) Making recommendations to the Board concerning personnel employment, discipline, and termination; 6) Communicating the District's vision and mission to staff, students, parents, and the community; 7) Being responsible for the development of shortand longterm goals for the District; 8) Preparing and presenting an annual budget for the District to the Board for its consideration; 9) Administering the District's budget and regularly reporting to the Board on the financial condition of the

District; 10) Attending and participating in all meetings of the Board except when his employment is being considered; 11) Preparing, in consultation with the Board President, the agenda for all Board meetings; 12) Being responsible for the planning and implementation of an effective personnel evaluation system that is

aligned with the goals of the District; and 13) Maintaining a current knowledge of developments in curriculum and instruction, as well as pertinent legal changes, and advising the professional staff and Board of such information.

Date Adopted: 51903 Last Revised:

2.2SUPERINTENDENT COMPENSATION

The salary and employment benefits of the Superintendent shall be determined by the Board. This includes such benefits as insurance, transportation allowances, annual vacations, holidays, and any other entitlements as deemed appropriate.

Date Adopted: 51903  
Last Revised:

## **TABLE OF CONTENTS**

### **SECTION 3—CERTIFIED PERSONNEL**

- 3.1—LICENSED PERSONNEL SALARY SCHEDULE
- 3.2—LICENSED PERSONNEL EVALUATIONS
- 3.3—EVALUATION OF LICENSED PERSONNEL BY RELATIVES
- 3.4—LICENSED PERSONNEL REDUCTION IN FORCE
- 3.5— LICENSED PERSONNEL CONTRACT — RETURN
- 3.6— LICENSED PERSONNEL EMPLOYEE TRAINING
- 3.7— LICENSED PERSONNEL DRUG TESTING
- 3.8— LICENSED PERSONNEL SICK LEAVE
- 3.9— LICENSED PERSONNEL SICK LEAVE BANK
- 3.10— LICENSED PERSONNEL PLANNING TIME
- 3.11— LICENSED PERSONNEL PERSONAL AND PROFESSIONAL LEAVE
- 3.12— LICENSED PERSONNEL RESPONSIBILITIES IN DEALING WITH SEX OFFENDERS ON CAMPUS
- 3.13— LICENSED PERSONNEL PUBLIC OFFICE
- 3.14— LICENSED PERSONNEL JURY DUTY
- 3.15— LICENSED PERSONNEL LEAVE — INJURY FROM ASSAULT
- 3.16— LICENSED PERSONNEL REIMBURSEMENT FOR PURCHASE OF SUPPLIES
- 3.17—INSULT OR ABUSE OF LICENSED PERSONNEL
- 3.18— LICENSED PERSONNEL OUTSIDE EMPLOYMENT
- 3.19— LICENSED PERSONNEL EMPLOYMENT
- 3.20— LICENSED PERSONNEL REIMBURSEMENT OF TRAVEL EXPENSES
- 3.21— LICENSED PERSONNEL TOBACCO USE
- 3.22—DRESS OF LICENSED EMPLOYEES
- 3.23— LICENSED PERSONNEL POLITICAL ACTIVITY
- 3.24— LICENSED PERSONNEL DEBTS
- 3.25— LICENSED PERSONNEL GRIEVANCES
- 3.25F— LICENSED PERSONNEL LEVEL TWO GRIEVANCE FORM
- 3.26— LICENSED PERSONNEL SEXUAL HARASSMENT
- 3.27— LICENSED PERSONNEL SUPERVISION OF STUDENTS
- 3.28— LICENSED PERSONNEL COMPUTER USE POLICY
- 3.28F— LICENSED PERSONNEL EMPLOYEE INTERNET USE AGREEMENT
- 3.29— LICENSED PERSONNEL SCHOOL CALENDAR
- 3.30—PARENT-TEACHER COMMUNICATION
- 3.31—DRUG FREE WORKPLACE - LICENSED PERSONNEL
- 3.31F—DRUG FREE WORKPLACE POLICY ACKNOWLEDGEMENT
- 3.32— LICENSED PERSONNEL FAMILY MEDICAL LEAVE
- 3.33—ASSIGNMENT OF EXTRA DUTIES FOR LICENSED PERSONNEL
- 3.34— LICENSED PERSONNEL CELL PHONE USE
- 3.35— LICENSED PERSONNEL BENEFITS
- 3.36— LICENSED PERSONNEL DISMISSAL AND NON-RENEWAL
- 3.37—ASSIGNMENT OF TEACHER AIDES
- 3.38— LICENSED PERSONNEL RESPONSIBILITIES GOVERNING BULLYING
- 3.39— LICENSED PERSONNEL RECORDS AND REPORTS

- 3.40— LICENSED PERSONNEL DUTY TO REPORT CHILD ABUSE, MALTREATMENT OR NEGLECT
  - 3.40.1—BEREAVEMENT LEAVE
- 3.41— LICENSED PERSONNEL VIDEO SURVEILLANCE
  - 3.41.1—SCHOOL BUS DRIVER'S USE OF CELL PHONES
- 3.42—OBTAINING AND RELEASING STUDENT’S FREE AND REDUCED PRICE MEAL ELIGIBILITY INFORMATION
- 3.44—LICENSED PERSONNEL WORKPLACE INJURIES AND WORKERS’ COMPENSATION
- 3.47—DEPOSITING COLLECTED FUNDS
- 3.48—LICENSED PERSONNEL WEAPONS ON CAMPUS
- 3.49—TEACHERS REMOVAL OF STUDENT FROM CLASSROOM

3.1—LICENSED PERSONNEL SALARY SCHEDULE

2013-2014									
Bismarck School District									
Certified Salary Schedule									
APPROVED									
	Experience	BE	MS						
	0	31940	36274						
	1	32390	36774						
	2	32840	37274						
	3	33290	37774						
	4	33740	38274						
	5	34190	38774						
	6	34640	39274						
	7	35090	39774						
	8	35540	40274						
	9	35990	40774						
	10	36440	41274						
	11	36890	41774						
	12	37340	42274						
	13	37790	42774						
	14	38240	43274						
	15	38690	43774						
	16	39140	44274						
	17	39590	44774						
	18	40040	45274						
	19	40490	45774						
	20	40940	46274						
Salaries for those employees w hose contracts exceed 9 1/4 months determined in the follow ing manner: determine appropriate base salary (years experience and degree), divide by 190 days and then multiply salary per day by number of extra days contracted. Add this amount to base salary for total salary amount.									
	STIPENDS								
AMOUNT	DUTY								
\$4,000	HEAD SR HIGH FOOTBALL COACH, HEAD SR HIGH BOYS BASKETBALL,								
	HEAD SR HIGH GIRLS BASKETBALL, HIGH SCHOOL BAND DIRECTOR, MIDDLE SCHOOL BAND DIRECTOR								
\$3,600	FEDERAL COORDINATOR								
\$3,600	ATHLETIC DIRECTOR								
\$3,500	DIRECTOR OF TRANSPORTATION, GROUNDS AND CONSERVATION								
\$2,800	SR HIGH CHEER COACH, JR HIGH CHEER COACH								
\$2,500	BASEBALL, SOFTBALL, WRESTLING								
\$2,500	HEAD JR HIGH FOOTBALL, DEFENSIVE COORDINATOR, HEAD JR HIGH ,OFFENSIVE COORDINATOR (approved 5/10/10)								
	BOYS BASKETBALL, HEAD JR HIGH GIRLS BASKETBALL								
\$2,000	ASSIST. FOOTBALL, ASSIST. BASKETBALL, ASSIST. MS AND HS BAND DIRECTOR, SHOOTING COACH (approved 3/16/09)								
\$2,000	DISTRICT WEBSITE ADMINISTRATOR (approved 4/20/09)								
\$1,500	PEE WEE COORDINATOR BASKETBALL, PEE WEE COORDINATOR FOOTBALL, 7TH GRADE CHEER COACH,								
	7TH GRADE FOOTBALL, 7TH GRADE BASKETBALL, YEARBOOK SPONSOR, BOYS TRACK, GIRLS TRACK								
	GOLF, TENNIS, HIGH SCHOOL STUDENT COUNCIL, 7TH GRADE TRACK (stipend added 7/19/10)								
\$1,200	PARENTAL INVOLVEMENT COORDINATOR								
\$1,000	NATIONAL CERTIFIED BOARD (TEACHERS ONLY) approved 5/18/09								
\$1,000	CROSS COUNTRY (jr high boys), (sr high boys), (jr high girls), (sr high girls) (approved 4/19/10)								
\$900	PART-TIME FOOTBALL, PART-TIME BASKETBALL, SPONSORS FOR JR CLASS								
\$750	SPONSORS FOR SENIOR CLASS								
\$450	MIDDLE SCHOOL STUDENT COUNCIL								
\$1,500	ASSISTANT ATHLETIC DIRECTOR								
\$25 per hour	CREDIT RECOVERY , SATURDAY SCHOOL,BUG PROGRAMS								
\$28 per hour	HOMEBOUND								
The follow ing positions will be paid by an index system. The index w ill be multiplied by the position the employee is located on the salary schedule. All positions are 12 months. (approved 3-19-07)									
HIGH SCHOOL PRINCIPAL	1.585	(approved 3/16/2009)	MIDDLE SCHOOL PRINCIPAL	1.555	(approved 3/16/2009)				
ELEMENTARY PRINCIPAL	1.525	(approved 3/16/2009)	CURRICULUM COORDINATOR	1.525	(approved 05/10/10)				
Employees w ill be moved from the BE schedule to the MS schedule w hen their official college transcript is presented to the district office. The employee w ill receive the pay increase on their next payroll check it the official transcripts are provided at least 2 w eeks before the payroll run. If this cutoff date is missed the increase w ill be added to next payroll run. Adopted 05-21-07									

For the purposes of the salary schedule, a teacher will have worked a “year” if he/she works at least 160 days.

For the purposes of this policy, a master’s degree or higher is considered “relevant to the employee’s position” if it is related to education, guidance counseling, or the teacher’s content area and has been awarded for successful completion of a program at the master’s level or higher by an institution of higher education accredited under Arkansas statutory requirements applicable at the time the degree was awarded.

Teachers who have earned additional, relevant degrees or sufficient college hours to warrant a salary change are responsible for reporting and supplying a transcript to the district office. The appropriate salary increase will be reflected in the next paycheck provided it is at least two weeks from the time the notice and documentation is delivered. All salary changes will be on a “go forward” basis, and no back pay will be awarded.

Non-Traditional Licensure Program

Each employee newly hired by the district to teach under the non-traditional licensure program (NTLP) shall initially be placed on the salary schedule in the category of a bachelor’s degree with no experience,

unless the NTLP employee has previous teaching experience which requires a different placement on the schedule. Upon receiving his/her initial or standard teaching license, the employee shall be moved to the position on the salary schedule that corresponds to the level of education degree earned by the employee which is relevant to the employee's position. Employee's degrees which are not relevant to the NTLP's position shall not apply when determining his/her placement on the salary schedule. A teacher with a non-traditional provisional license shall be eligible for step increases with each successive year of employment, just as would a teacher possessing a traditional teaching license.

### **Licensed employee, seeking additional area or areas of licensure**

Licensed employees who are working on an alternative licensure ~~program~~ **plan** (ALP) to gain licensure in an additional area are entitled to placement on the salary schedule commensurate with their current license, level of education degree and years of experience. Degrees which are not relevant to the employee's position shall not apply when determining his/her placement on the salary schedule.

Notes: A.C.A. § 6-11-129 requires employee contract information to be available on the district's website and also identifies the contract items that must be redacted.

Legal References: A.C.A. § 6-17-201, 202, 2403

A.C.A. § 6-20-2305(f)(4)

**ADE Rules Governing School District Requirements for Personnel Policies, Salary Schedules, Minimum Salaries, and Documents Posted to District Websites**

Adopted: 6/20/11

Last Revised: 3/13/12; 4/22/13

## **3.2—LICENSED PERSONNEL EVALUATIONS**

Evaluations of certified personnel shall be undertaken at least annually. Any forms, procedures or other methods of evaluation, including criteria, are to be developed by the Superintendent and or his designee(s), shall be personnel policies of the District.

Legal Reference: A.C.A. § 6-17-1504 Date Adopted: 5-19-03 Last Revised:

## **3.3—EVALUATION OF LICENSED PERSONNEL BY RELATIVES**

No person shall be employed in, or assigned to, a position which would require that he be evaluated by any relative, by blood or marriage, including spouse, parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, nephew, or first cousin.

Date Adopted: 5-19-03 Last Revised:

## **3.4—LICENSED PERSONNEL REDUCTION IN FORCE**

### **SECTION ONE**

The School Board acknowledges its authority to conduct a reduction in force (RIF) when a decrease in enrollment or other reason(s) make such a reduction necessary or desirable. A RIF will be conducted when the need for a reduction in the work force exceeds the normal rate of attrition for that portion of the staff that is in excess of the needs of the district as determined by the superintendent.

In effecting a reduction in force, the primary goals of the school district shall be: what is in the best interests of the students; to maintain accreditation in compliance with the Standards of Accreditation for Arkansas Public Schools and/or the North Central Association; and the needs of the district. A reduction in force will be implemented when the superintendent determines it is advisable to do so and shall be effected through non-renewal, termination, or both. Any reduction in force will be conducted by evaluating the needs and long- and short-term goals of the school district, and by examining the staffing of the district in each licensure area and/or, if applicable, specific grade levels.

If a reduction in force becomes necessary in a licensure area or specific grade level(s), the RIF shall be conducted for each licensure area and/or specific grade level on the basis of each employee's points as determined by the schedule contained in this policy. The teacher with the fewest points will be **non-renewed or terminated** first. In the event of a tie between two or more employees, the teacher(s) shall be retained whose name(s) appear first in the board's minutes of the date of hire. There is no right or implied right for any teacher to "bump" or displace any other teacher. Being employed fewer than 160 days in a school year shall not constitute a year. It is each teacher's individual responsibility to ensure his/her point totals are current in District files.

## **Points**

Years of service in the district—1 point per year

All licensed position years in the district count including non-continuous years.

Service in any position not requiring teacher licensure does not count toward years of service. Being employed fewer than 160 days in a school year shall not constitute a year.

Graduate degree in any area of licensure in which the teacher will be ranked (only the highest level of points apply)

1 point—Master's degree

2 points—Master's degree plus thirty additional hours

3 points—Educational specialist degree

4 points—Doctoral degree

National Board of Professional Teaching Standards certification—1 point

Additional academic content areas of endorsement as identified by the State Board—1 point per area

Licensure for teaching in a State Board identified shortage area—2 points

Multiple areas and/or grade levels of licensure as identified by the State Board —1 point per additional area or grade level as applicable. For example, a P-4 license or a 5-8 social studies license is each worth one point.

When the District is conducting a RIF, all potentially affected teachers shall receive a listing of licensed personnel with corresponding point totals. Upon receipt of the list, each teacher has ten (10) working days within which to appeal his or her assignment of points to the superintendent whose decision shall be final. Except for changes made pursuant to the appeals process, no changes will be made to the list that would affect a teacher's point total after the list is released.

A teacher with full licensure in a position shall prevail over a teacher with greater points but who is lacking full licensure in that subject area. "Full licensure" means an initial, or standard, non-contingent license to teach in a subject area or grade level, in contrast with a license that is provisional, temporary, or conditional on the fulfillment of additional course work or passing exams or any other requirement of the Arkansas Department of Education, other than the attainment of annual professional development training.

Pursuant to any reduction in force brought about by consolidation or annexation and as a part of it, the salaries of all teachers will be brought into compliance, by a partial RIF if necessary, with the receiving district's salary schedule. Further adjustments will be made if length of contract or job assignments change. A Partial RIF may also be conducted in conjunction with any job reassignment whether or not it is conducted in relation to an annexation or consolidation.

## **SECTION TWO**

The employees of any school district which annexes to, or consolidates with, the Bismarck District will be subject to dismissal or retention at the discretion of the school board, on the recommendation of the superintendent, solely on the basis of need for such employees on the part of the Bismarck District, if any, at the time of the annexation or consolidation, or within ninety (90) days after the effective date of the annexation or consolidation. The need for any employee of the annexed or consolidated school district shall be determined solely by the superintendent and school board of the Bismarck District.

Such employees will not be considered as having any seniority within the Bismarck District and may not claim an entitlement under a reduction in force to any position held by a Bismarck District employee prior to, or at the time of, or prior to the expiration of ninety (90) days after the consolidation or annexation, if the notification provision below is undertaken by the superintendent.

The superintendent shall mail or have hand-delivered the notification to such employee of his intention to recommend non-renewal or termination pursuant to a reduction in force within ninety (90) days of the effective date of the annexation or consolidation in order to effect the provisions of this section of the Bismarck District's reduction-in-force policy. Any such employees who are non-renewed or terminated pursuant to Section Two are not subject to recall notwithstanding any language in any other section of this policy. Any such employees shall be paid at the rate for each person on the appropriate level on the salary schedule of the annexed or consolidated district during those ninety (90) days and/or through the completion of the reduction-in-force process.

This subsection of the reduction-in-force policy shall not be interpreted to provide that the superintendent must wait ninety (90) days from the effective date of the annexation or consolidation in order to issue notification of his intention to recommend dismissal through reduction-in-force, but merely that the superintendent has that period of time in which to issue notification so as to be able to invoke the



provisions of this section.

The intention of this section is to ensure that those Bismarck District employees who are employed prior to the annexation or consolidation shall not be displaced by employees of the annexed or consolidated district by application of the reduction-in-force policy.

Legal Reference: A.C.A. § 6-17-2407

Date Adopted: 5-19-2003

Last Revised: 12-21-2006; 6/20/11; 3/13/12; 4/22/13

### **3.5—LICENSED PERSONNEL CONTRACT — RETURN**

An employee shall have thirty (30) days from the date of the receipt of his contract for the following school year in which to return the contract, signed, to the office of the Superintendent. The date of receipt of the contract shall be presumed to be the date of a cover memo which will be attached to the contract.

Failure of an employee to return the signed contract to the office of the Superintendent within thirty (30) days of the receipt of the contract shall operate as a resignation by the employee. No further action on the part of the employee, the Superintendent, or the School Board shall be required in order to make the employee's resignation final.

Legal Reference: A.C.A. § 6-17-1506 (c) (1) Date Adopted: 5-19-03 Last Revised: 6/20/11

### **3.6—LICENSED PERSONNEL EMPLOYEE TRAINING**

Unless otherwise directed by a supervisor, all employees shall attend all local professional development training sessions as directed by a supervisor.

The District shall develop and implement a plan for the professional development of its licensed employees. The District's plan shall, in part, align District resources to address the professional development activities identified in each school's ACSIP. The plan shall describe how the District's categorical funds will be used to address deficiencies in student performance and any identified academic achievement gaps between groups of students. At the end of each school year, the District shall evaluate the professional development activities' effectiveness in improving student performance and closing achievement gaps.

Each licensed employee shall receive a minimum of sixty (60) hours of professional development annually to be fulfilled between June 1 and May 31. Licensed employees are required to obtain their sixty (60) hours of approved professional development each year over a five-year period as part of licensure renewal requirements. Professional development hours earned in excess of sixty (60) in the designated year cannot be carried over to the next year.

Licensed employees who are prevented from obtaining the required professional development hours due to their illness or the illness of an immediate family member as defined in A.C.A. § 6-17-1202 have until the end of the following school year to make up the deficient hours. Missed hours of professional development shall be made up with professional development that is substantially similar to that which was missed. This time extension does not absolve the employee from also obtaining the following year's required 60 hours of professional development. Failure to obtain required professional development or to make up missed professional development could lead to disciplinary consequences, up to termination or nonrenewal of the contract of employment.

The goal of all professional development activities shall be improved student achievement and academic performance that results in individual, school-wide, and system-wide improvement designed to ensure that all students demonstrate proficiency on the state's assessments. The District's professional development plan shall demonstrate scientifically research-based best practice, and shall be based on student achievement data and in alignment with applicable ADE Rules and/or Arkansas code.

Teachers and administrators shall be involved in the design, implementation, and evaluation of the plan for their own professional development. The results of the evaluation made by the participants in each program

shall be used to continuously improve the District's professional development offerings and to revise the school improvement plan.

Flexible professional development hours (flex hours) are those hours which an employee is allowed to substitute professional development activities, different than those offered by the District, but which still meet criteria of either the employee's Individual Improvement Plan or the school's ACSIP, or both. The District shall determine on an annual basis how many, if any, flex hours of professional development it will allow to be substituted for District scheduled professional development offerings. The determination may be made at an individual building, a grade, or by subject basis. The District administration and the building principal have the authority to require attendance at specific professional development activities. Employees must receive advance

approval from the building principal for activities they wish to have qualify for flex professional development hours. To the fullest extent possible, professional development activities are to be scheduled and attended such that teachers do not miss their regular teaching assignments. Six (6) approved flex hours credited toward fulfilling the sixty (60) hour requirement shall equal one contract day. Hours of professional development earned by an employee that is not at the request of the District and is in excess of sixty (60) or not pre-approved by the building principal shall not be credited toward fulfilling the required number of contract days for that employee. Hours earned that count toward the required sixty (60) also count toward the required number of contract days for that employee. Employees shall be paid their daily rate of pay for professional development hours earned at the request of the District that necessitate the employee work more than the number of days required by their contract.

Teachers and administrators who, for any reason, miss part or all of any scheduled professional development activity they were required to attend, must make up the required hours in comparable activities which are to be pre-approved by the building principal.

To receive credit for his/her professional development activity each employee is responsible for obtaining and submitting documents of attendance, or completion for each professional development activity he/she attends. Documentation is to be submitted to the building principal or designee.

At least six (6) of the sixty (60) annual hours shall be in the area of educational technology.

Teachers are required to receive at least two hours annually of their sixty (60) required hours of professional development designed to enhance their understanding of effective parental involvement strategies. Up to once every five (5) years, an educator may substitute no more than three (3) hours of the required training related to child maltreatment for the parental involvement training requirement.

All licensed personnel shall receive two (2) hours of professional development in teen suicide awareness and prevention one (1) time every five (5) school years which may be obtained by self-review of suitable suicide prevention materials approved by ADE.

Teachers who provide instruction in Arkansas history shall receive at least two (2) hours of professional development in Arkansas history as part of the sixty (60) hours required annually.

Anticipated rescuers shall receive training in cardiopulmonary resuscitation and the use of automated external defibrillators as required by ADE Rule. Such training shall count toward the required annual hours of professional development.

At least once every three (3) years, persons employed as athletics coaches, shall receive training related to concussions, dehydration, or other health emergencies as well as students' health and safety issues related to environmental issues and communicable diseases.

All licensed personnel shall receive at least two (2) hours of training related to child maltreatment within twelve (12) months of their initial licensure and/or the renewal of their license. The training curriculum shall meet the criteria established by ADE Rule which shall be based on the curriculum approved by the Arkansas Child Abuse/Rape/Domestic Violence Commission. Up to once every five (5) years, an educator may substitute no more than three (3) hours of the required training related to child maltreatment for the parental involvement training requirement. For the purposes of this training, "licensed personnel" includes school social workers, psychologists, and nurses.

All licensed personnel shall receive training related to compliance with the District's antibullying policies.

Administrators are required to receive at least three hours annually of their sixty (60) required hours of professional development designed to enhance their understanding of effective parental involvement strategies and the importance of administrative leadership in setting expectations and creating a climate conducive to parental participation.

For each administrator, the sixty (60) hour professional development requirement shall include training in data disaggregation, instructional leadership, and fiscal management, including without limitation the Initial, Tier 1, and Tier 2 training required for superintendents and district designees by ADE's Rules Governing the Arkansas Financial Accounting and Reporting System and Annual Training Requirements.

The superintendent, grades 7-12 principals, and guidance counselors are required to participate in professional development on the availability of, eligibility requirements for, and the process of applying for state-supported student financial assistance. Unless obtained as part of their previous position of employment, affected employees who are new to their position shall receive three (3) hours of such training within the first year in their new position. Subsequently, all affected employees shall receive one (1) hour of such training annually.

Teachers required by the superintendent, building principal, or their designee to take approved training related to teaching an advance placement class for a subject covered by the College Board and Educational Testing Service shall receive up to thirty (30) hours of credit toward the sixty (60) hours of professional development required annually.

Licensed personnel may earn up to twelve (12) hours of professional development for time they are required to spend in their instructional classroom, office or media center prior to the first day of student/teacher interaction **provided** the time is spent in accordance with the state law and current ADE rules that deal with professional development. The hours may be earned through online professional development approved by the ADE provided the professional development relates to the district's ASCIP and the teacher's professional growth plan.

Teachers are eligible to receive fifteen (15) professional development hours for a three-hour college course that meets the criteria identified in law and the applicable ADE rules. The board shall determine if the hours earned apply toward the required sixty (60). A maximum of thirty (30) such hours may be applied toward the sixty (60) hours of professional development required annually.

Employees who do not receive or furnish documentation of the required annual professional development jeopardize the accreditation of their school and academic achievement of their students. Failure of an employee to receive sixty (60) hours of professional development in any given year, unless due to illness as permitted by law, ADE Rule, and this policy, shall be grounds for disciplinary action up to and including termination.

Approved professional development activities may include conferences, workshops, institutes, individual learning, mentoring, peer coaching, study groups, National Board for Professional Teaching Standards Certification, distance learning, internships, District /school programs, and approved college/university course work. Professional development activities should be consistent with the objectives developed by the National Staff Development Council Standards.

Professional development activities shall relate to the following areas: content (K-12); instructional strategies; assessment; advocacy/leadership; systemic change process; standards, frameworks, and curriculum alignment; supervision; mentoring/coaching; educational technology; principles of learning/developmental stages; cognitive research; parent involvement; building a collaborative learning community; and student health and wellness.

Notes: A.C.A. § 6-17-704(e)(2) lists many categories of possible professional development that **can count** toward the required 60 hours of PD, but that **isn't required**. Specifically, items (P) and (Q) in the statute's listing were added by legislation in 2011, but have not been added to the body of this policy.

Cross-Reference: Policy 5.4—STAFF DEVELOPMENT PROGRAM

Legal References: Arkansas State Board of Education: Standards of Accreditation 15.04  
ADE Rules Governing Professional Development  
ADE Rules Governing the Arkansas Financial Accounting and Reporting System  
and Annual Training Requirements

A.C.A. § 6-5-405

A. C.A. § 6-10-122, 123

A.C.A. § 6-15-404(f)(2)

A.C.A. § 6-15-1004(c)

A.C.A. § 6-15-1703

A.C.A. § 6-17-703

A.C.A. § 6-17-704

A.C.A. § 6-17-705

A.C.A. § 6-17-708

A.C.A. § 6-17-1202

A.C.A. § 6-20-2204

A.C.A. § 6-20-2303 (15)

### **3.7—LICENSED PERSONNEL DRUG TESTING**

#### **Scope of Policy**

Each person hired for a position which allows or requires that the employee operate any type of motor vehicle which is privately owned and operated for compensation, or which is owned, leased or otherwise operated by, or for the benefit of the District, and is operated for the transportation of children to or from school or school sponsored activity shall undergo a physical examination, including a drug test.<sup>1</sup> Each person's initial employment for a job entailing a safety sensitive function is conditioned upon the district receiving a negative drug test result for that employee.<sup>2</sup> The offer of employment is also conditioned upon the employee's signing an authorization for the request for information by the district from the Commercial Driver Alcohol and Drug Testing Database.

#### **Methods of Testing**

The collection, testing methods and standards shall be determined by the agency or other medical organizations chosen by the School Board to conduct the collection and testing of samples. The drug and alcohol testing is to be conducted by a laboratory certified pursuant to the most recent guidelines issued by the United States Department of Health and Human Services for such facilities. ("Mandatory Guidelines for Federal Workplace Drug Testing Programs").

#### **Definition**

Safety sensitive function includes: a) All time spent inspecting, servicing, and/or preparing the vehicle; b) All time spent driving the vehicle; c) All time spent loading or unloading the vehicle or supervising the loading or unloading of the vehicle; and d) All time spent repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

#### **Requirements**

Employees shall be drug and alcohol free from the time the employee is required to be ready to work until the employee is relieved from the responsibility for performing work and/or any time they are performing a safety-sensitive function. In addition to the testing required as an initial condition of employment, employees shall submit to subsequent drug tests as required by law and/or regulation. Subsequent testing includes, and/or is triggered by, but is not limited to:

Random tests;  
Testing in conjunction with an accident;  
Receiving a citation for a moving traffic violation; and  
Reasonable suspicion.

#### **Prohibitions**

- A. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater;
- B. No driver shall use alcohol while performing safety-sensitive functions;
- C. No driver shall perform safety-sensitive functions within four (4) hours after using alcohol;

D. No driver required to take a post-accident alcohol test under # 2 above shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first;

E. No driver shall refuse to submit to an alcohol or drug test in conjunction with # 1, 2, and/or 4 above;

F. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when using any controlled substance, except when used pursuant to the instructions of a licensed medical practitioner, knowledgeable of the driver's job responsibilities, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate his/her vehicle. It is the employee's responsibility to inform his/her supervisor of the employee's use of such medication;

G. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. Violation of any of these prohibitions may lead to disciplinary action being taken against the employee, which could include termination or non-renewal.

### **Testing for Cause**

Drivers involved in an accident in which there is a loss of another person's life shall be tested for alcohol and controlled substances as soon as practicable following the accident. Drivers shall also be tested for alcohol within eight (8) hours and for controlled substances within thirty two (32) hours following an accident for which they receive a citation for a moving traffic violation if the accident involved: 1) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or 2) one or more motor vehicles incurs disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

### **Refusal to Submit**

Refusal to submit to an alcohol or controlled substance test means that the driver:

- Failed to appear for any test within a reasonable period of time as determined by the employer consistent with applicable Department of Transportation agency regulation;

- Failed to remain at the testing site until the testing process was completed;

- Failed to provide a urine specimen for any required drug test;

- Failed to provide a sufficient amount of urine without an adequate medical reason for the failure;

- Failed to undergo a medical examination as directed by the Medical Review Officer as part of the verification process for the previous listed reason;

- Failed or declined to submit to a second test that the employer or collector has directed the driver to take;

- Failed to cooperate with any of the testing process; and/or

- Adulterated or substituted a test result as reported by the Medical Review Officer.

### **Consequences for Violations**

Drivers who engage in any conduct prohibited by this policy, who refuse to take a required drug or alcohol test, refuse to sign the request for information required by law, or who exceed the acceptable limits for the respective tests shall no longer be allowed to perform safety sensitive functions. Actions regarding their continued employment shall be taken in relation to their inability to perform these functions and could include termination or non-renewal of their contract of employment. Drivers who exhibit signs of violating the prohibitions of this policy relating to alcohol or controlled substances shall not be allowed to perform or continue to perform safety-sensitive functions if they exhibit those signs during, just preceding, or just after the period of the work day that the driver is required to be in compliance with the provisions of this policy. This

action shall be based on specific, contemporaneous, articulatable observations concerning the behavior, speech, or body odors of the driver. The Superintendent or his/her designee shall require the driver to submit to “reasonable suspicion” tests for alcohol and controlled substances. The direction to submit to such tests must be made just before, just after, or during the time the driver is performing safety-sensitive functions. If circumstances prohibit the testing of the driver the Superintendent or his/her designee shall remove the driver from reporting for, or remaining on, duty for a minimum of 24 hours from the time the observation was made triggering the driver’s removal from duty. If the results for an alcohol test administered to a driver is equal to or greater than 0.02, but less than 0.04, the driver shall be prohibited from performing safety-sensitive functions for a period not less than 24 hours from the time the test was administered. Unless the loss of duty time triggers other employment consequence policies, no further other action against the driver is authorized by this policy for test results showing an alcohol concentration of less than 0.04. **Notes:** You are required to give drivers a copy of the procedures that will be used in the testing for drugs and alcohol. If you are following your own policy in this regard, give your drivers a copy of that policy; if you’re using a drug testing company to administer the tests, give your drivers a copy of the test administration procedures. You are required to provide your drivers the name of the person you have designated to answer your drivers questions about the materials you give them regarding drug and alcohol testing. You are also required to give your employees “information pertaining to the effects of alcohol and controlled substance use on an individual’s health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver’s or a co-worker’s); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.” Give a copy of this policy to your drivers. Have your drivers sign an acknowledgement that they have received all of the information contained in this policy and these footnotes.

**1** You have the option of also requiring an alcohol test, but you may not selectively require it, i.e. if you require it for one prospective employee you must require it for all prospective employees. **2** While A.C.A. § 6-19-108(e) permits a district to hire a non-certified bus driver in an emergency situation, 49CFR382.301 forbids a first time driver (employee) from performing any safety sensitive functions prior to the district receiving a negative drug test for the employee. Therefore, ASBA advises not hiring a bus driver under A.C.A. § 619-108(e) until he/she has had a negative drug/alcohol test. **3** While the provisions for fines contained in 27-23-209 do not apply to school districts, school districts are still required to comply with this law. It is for this reason, along with simple prudence in not hiring a person who receives a positive drug/alcohol test, that this language is included. The request for information required by the state is in addition to the federal requirement (49CFR40.25(a)(b) that you request drug and alcohol test results from any U.S. Department of Transportation regulated employers who have employed the employee during any period during the two years prior to the date of the employee’s application. **4** Employers are required to report to the Office of Driver Services of the Revenue Division of the Department of Finance and Administration within three (3) business days the results of an alcohol test if it was performed due to cause or as part of random testing and the results were positive or the employee refused to provide a specimen for testing. **25** The drivers covered under this policy are those who are required to have a teaching license as a prerequisite for their job. Federal law requires you to remove them from safety-sensitive functions when a drug or alcohol related problem exists, but does not enter into the realm of dismissing them from their teaching duties. Bus drivers who are not also teaching licensed personnel are covered under the Classified Policy 8.4 and may be dealt with given the specific provisions of their employment. ASBA recommends that licensed employees who are hired for driving a bus in addition to their teaching responsibilities be hired under separate contracts for each position. This policy is similar to Policy 8.4. If you change this policy, review 8.4 at the same time to ensure applicable consistency between the two.

Legal Reference:



A.C.A. § 6-19-108; A.C.A. § 27-23-201 et seq. 49 C.F.R. § 382-101 – 605 49 C.F.R. § part 40 Arkansas Division of Academic Facilities and Transportation Rules Governing Maintenance and Operations of Arkansas Public School Buses and Physical Examinations of School Bus Drivers

Date Adopted: 08-15-05 Last Revised: 11-19-2007

### **3.8—LICENSED PERSONNEL SICK LEAVE**

#### **Definitions**

1. “Employee” is a full-time employee of the District.
2. “Sick Leave” is absence from work due to illness, whether by the employee or a member of the employee’s immediate family, or due to a death in the family. The principal shall determine whether sick leave will be approved on the basis of a death outside the immediate family of the employee.
3. “Current Sick Leave” means those days of sick leave for the current contract year, which leave is granted at the rate of one day of sick leave per contracted month, or major part thereof.
4. “Accumulated Sick Leave” is the total of unused sick leave, up to a maximum of ninety (90) days accrued from previous contract, but not used.
5. “Immediate family” means an employee’s spouse, child, parent, or any other relative provided the other relative lives in the same household as the teacher.

#### **Sick Leave**

The principal has the discretion to approve sick leave for an employee to attend the funeral of a person who is not related to the employee, under circumstances deemed appropriate by the principal.

Employees who are adopting or seeking to adopt a minor child or minor children may use up to 15 sick leave days in any school year for absences relating to the adoption, including time needed for travel, time needed for home visits, time needed for document translation, submission or preparation, time spent with legal or adoption agency representatives, time spent in court and bonding time. See also, 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE, which also [applies](#). Except for bonding time, documentation shall be provided by the employee upon request.<sup>1</sup>

Pay for sick leave shall be at the employee’s daily rate of pay, which is that employee’s total contracted salary, divided by the number of days employed as reflected in the contract. Absences for illness in excess of the employee’s accumulated and current sick leave shall result in a deduction from the employee’s pay at the daily rate as defined above.

At the discretion of the principal (or Superintendent), and, if FMLA is applicable, subject to the certification or recertification provisions contained in policy 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE the District may require a written statement from the employee’s physician documenting the employee’s illness. Failure to provide such documentation of illness may result in sick leave not being paid, or in dismissal.

Should a teacher be absent frequently during a school year, and said absences are not subject to FMLA leave, and if such a pattern of absences continues, or is reasonably expected to continue, the Superintendent may relieve the teacher of his/[her](#) assignment (with Board approval) and assign the teacher substitute duty at the teacher’s daily rate of pay. Should the teacher fail, or otherwise be unable, to report for substitute duty when called, the teacher will be charged a day of sick leave, if available or if unavailable, the teacher will lose a day’s wages at his/her daily rate of pay.

Temporary reassignment may also be offered or required in certain circumstances as provided in 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE.

If the employees absences are not subject to the FMLA or are in excess of what is protected under the

FMLA, excessive absenteeism, to the extent that the employee is not carrying out his assigned duties to an extent that the education of students is substantially adversely affected (at the determination of the principal or Superintendent), may result in dismissal.

### **Sick Leave and Family Medical Leave Act (FMLA) Leave**

When an employee takes sick leave, the District shall determine if the employee is eligible for FMLA leave and if the leave qualifies for FMLA leave. The District may request additional information from the employee to help make the applicability<sup>2</sup> determination. If the employee is eligible for FMLA leave and if the leave qualifies under the FMLA, the District will notify the employee, in writing<sup>3</sup>, of the decision within five (5) workdays. If the circumstances for the leave as defined in policy 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE don't change, the District is only required to notify the employee once of the determination regarding the applicability of sick leave and/or FMLA leave within any applicable twelve (12) month period. To the extent the employee has accrued paid sick leave, any sick leave taken that qualifies for FMLA leave shall be paid leave and charged against the employee's accrued leave including, once an employee exhausts his/her accrued sick leave, vacation or personal leave. See 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE .

Notes: As used in this policy, “applicable” is a very important word. Some leave taken under FMLA also applies to sick leave and therefore, the employee will get paid for the leave to the extent the employee has sick leave accrued. Other leave taken under FMLA is not eligible for sick leave and therefore the FMLA leave is unpaid except to the extent vacation and/or personal leave is available to the employee. For instance, “applicable leave” in terms of time taken under FMLA due to the birth of a child will vary depending on the language in your district's policy on sick leave. For instance, if sick leave may be taken “for reason of personal illness or illness in the immediate family” (based on the statutory definition in 6-17-1202), and an employee gives birth to a child, she may take sick leave for the amount of time that her personal physician deems it necessary for her to physically recover from childbirth. Once the medically necessary time has passed, sick leave is no longer appropriate and cannot be used. While under the FMLA, the employee could take additional time off work, she would need to take unpaid FMLA leave for this purpose, unless she had personal days or vacation days available. However, if your District has a much more liberal definition of sick leave in District policy, the results could be entirely different. Another example would be the potential for overlap between pregnancy complications that arise to the level of a “serious health condition.” For instance, pregnancy complications that rose to the level of a “serious health condition” would qualify for both, while missing work for a dentist's appointment would qualify for sick leave, but would not qualify for FMLA leave. Consult policy 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE when making the determination of what sick leave qualifies under both policies. It may also be helpful to consult 29 CFR 825.113, 114, and 115 which ~~is~~ are available by calling the ASBA office.

Cross Reference: Policy 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE

Legal References: A.C.A. § 6-17-1201 et seq.  
29 USC §§ 2601 et seq.  
29 CFR part 825  
29 CFR 825.100 et seq.

Date Adopted: 6/20/11  
Last Revised: 3/13/12; 4/22/13

### **3.9—LICENSED PERSONNEL SICK LEAVE BANK**

A sick leave bank is established for the purpose of permitting employees, upon approval, to obtain sick leave in excess of accumulated and current sick leave, when the employee has exhausted all such leave. Only those employees who contribute to the sick leave bank during a given contract year shall be eligible to withdraw from the sick leave bank.

The sick leave bank will conduct an open enrollment during the first 10 days of the school year or the first week of employment for those hired at a later date. These dates will be recommended by the sick leave bank committee and approved by the District office.

Sick leave bank days will be carried over from year to year. Bank members must donate one day at the beginning of each school year during the donation period outlined above.

However, if the sick leave bank contains 50 or more days on the date of the open enrollment period, current members will not be required to donate one of their sick leave days.

If at any time the number of sick bank days drops below 25, all pool members will be required to donate one day. Any employee wishing to join the sick leave bank may do so

at that time.

Any member who does not give one sick day during this process will no longer be a member of the sick pool.

The sick leave bank will be a self-governing committee of employees. A Sick Leave Bank Committee of **seven** members shall be chosen by the faculty. Five (5) teachers, one each from elementary, middle school and high school, and two "at large" members **consisting of representation from at least two administrators at every committee voting meeting (Definition of "at large" members: superintendent, curriculum coordinator, high school, middle school, and elementary principal).**

1 high school member elected to a 2 year term, 1 middle school member to serve a three year term, 1 elementary member elected to a 1 year term. Two "at-large positions", one to serve 1 year and the second to serve 2 years. At the end of the initial terms all elected positions will be for 3 years with members being replaced each year.

*The terms of the committee shall be for three years with a member being replaced each year.*

Only employees that are members of the sick leave pool will be eligible to vote for sick leave bank committee positions. Only employees that are members of the sick leave pool will be eligible for a position on the sick leave pool committee. The election will be by majority vote. Secret balloting will be conducted by the respective building principals.

The Committee shall meet as necessary for the purpose of reviewing requests for withdrawal from the bank. The determination of the committee shall be final.

The Committee shall meet as necessary for the purpose of reviewing requests for withdrawal from the bank. The determination of the committee shall be final.

#### **Withdrawals**

The Committee may **allow** sick leave up to 25 days per contract year for personal or family illness, disabilities or accidents (not including accidents for which the employee is receiving Workers' Compensation), which cause the employee to be absent from work and when the employee has exhausted all accumulated and current sick leave. This may apply to immediate family members as well. "Immediate family" means an employee's spouse, child, parent, or any other relative provided the other relative lives in the same household as the teacher.

When a sick leave bank member borrows leave from the sick leave bank that member must donate one sick leave day to the pool when additional sick leave is made available to them via their contract, even if they no longer wish to participate in the sick leave bank and regardless of the number of days residing in the sick leave bank.

A pool member may borrow the number of sick leave days that they have available at the beginning of their contract year up to a maximum of twenty-five days.

Employees who receive bank days cannot carry over unused bank days to the next year.

Any unused sick bank days will be placed back into the sick leave bank.

**In the event of a prolonged illness for which the employee has no other compensation, the employee may make a second request to the sick leave bank committee for an additional 10 days.**

The committee is charged with the responsibility of deciding if a member is eligible to receive sick bank days and the number of days that should be given. The decision must be made within five working days after receiving the written request.

It will be the responsibility of the superintendent's office to maintain a copy of all sick leave bank records.

Absence from work due to normal pregnancy or elective surgery **will** not make the employee eligible to withdraw from the sick leave bank.

Requests for withdrawal from the sick leave bank must state the reason(s) for the request and the number of days requested and must be accompanied by a detailed statement from an attending physician of the nature of the malady and the expected duration thereof.

If the information provided to the Committee is deemed by a majority of the Committee to be insufficient, the Committee may require additional information or deny the employee's request, at its discretion.

The Committee shall have the authority to grant, reduce or deny any request. However, the Committee may grant no request, or any granted time may be withdrawn, when the employee accepts retirement; is eligible for Social Security Disability; or other disability insurance or the employee returns to work.

#### **Spousal Donations**

District employees who are husband and wife are eligible to utilize each other's sick leave. Written permission must be received for each day of donated sick leave. If the employees are paid at different rates of pay, the lesser rate of pay shall be used for the purpose of the donated sick leave days. Example: Teacher, whose daily rate is \$150 a day, has a sick leave day transferred to her by her husband, who works as a custodian and whose daily rate is \$75. She would be credited \$75 for the day instead of \$150, due to her husband's donation (or ½ the teacher's rate for sick leave).

### **3.10—LICENSED PLANNING TIME**

The superintendent is responsible for ensuring master schedules are created which determine the timing and duration of each teacher's planning and scheduled lunch periods. Planning time is for the purpose of scheduling conferences, instructional planning, and preparation. Each teacher will have the ability to schedule these activities during his/her designated planning time. Teachers may not leave campus during their planning time without prior permission from their building level supervisor.

The planning time shall be in increments of not less than forty (40) minutes and shall occur during the student instructional day unless a teacher requests, in writing, to have his/her planning time occur outside of the student instructional day. For the purposes of this policy, the student instructional day means the time that students are required to be present at school.

#### **Notes:**

The Arkansas Attorney General Opinion 2005-299 has declared that the teacher must be in control of the scheduling of this time. Therefore, any time scheduled by the District that conflicts with the teacher's 200 minutes of weekly planning time (for any purpose) must be compensated at the teacher's hourly rate of pay.

Legal Reference: ACA § 6-17-114 (a)(d)

Date Adopted: 4-19-2004 Last Revised: 12-21-2006; 3/13/12

### **3.11 —LICENSED PERSONNEL PERSONAL AND PROFESSIONAL LEAVE**

#### **Personal Leave**

For the district to function efficiently and have the necessary personnel present to effect a high achieving learning environment, employee absences need to be kept to a minimum. The district acknowledges that there are times during the school year when employees have personal business that needs to be addressed during the school day. Each full-time employee shall receive two (2) <sup>1</sup> days of personal leave per contract year. The leave may be taken in any increment.

Employees shall take personal leave or leave without pay for those absences which are not due to attendance at school functions which are related to their job duties and do not qualify for other types of leave (for sick leave see Policy 3.8, for professional leave see below).

School functions, for the purposes of this policy, means:

1. Athletic or academic events related to the school district; and
2. Meetings and conferences related to education.

For employees other than the superintendent, the determination of what activities meet the definition of a school function shall be made by the employee's immediate supervisor or designee. For the superintendent, the school board of directors shall determine what activities meet the definition of a school function. In no instance shall paid leave in excess of allotted vacation days and/or personal days be granted to an employee who is absent from work while receiving remuneration from another source as compensation for the reason for their absence.

Any employee desiring to take personal leave may do so by making a written request to his supervisor at least twenty-four (24) hours prior to the time of the requested leave. The twenty-four hour requirement may be waived by the supervisor when the supervisor deems it appropriate.

Employees who fail to report to work when their request for a personal day has been denied or who have exhausted their allotted personal days, shall lose their daily rate of pay for the day(s) missed (leave without pay). While there are instances where personal circumstances necessitate an employee's absence beyond the allotted days of sick and/or personal leave, any employee who requires leave without pay must receive advance permission (except in medical emergencies and/or as permitted by policy 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE) from their immediate supervisor. Failure to report to work without having received permission to be absent is grounds for discipline, up to and including termination.

Personal leave does not accumulate from one contract year to the next.

#### **Professional Leave**



“Professional Leave” is leave granted for the purpose of enabling an employee to participate in professional activities (e.g., teacher workshops or serving on professional committees) which can serve to improve the school District’s instructional program or enhances the employee’s ability to perform his duties. Professional leave will also be granted when a school District employee is subpoenaed for a matter arising out of the employee’s employment with the school District. Any employee seeking professional leave must make a written request to his immediate supervisor, setting forth the information necessary for the supervisor to make an informed decision. The supervisor’s decision is subject to review and overruling by the superintendent. Budgeting concerns and the potential benefit for the District’s students will be taken into consideration in reviewing a request for professional leave.

Applications for professional leave should be made as soon as possible following the employee’s discerning a need for such leave, but, in any case, no less than two (2) weeks before the requested leave is to begin, if possible.

If the employee does not receive or does not accept remuneration for his/her participation in the professional leave activity and a substitute is needed for the employee, the District shall pay the full cost of the substitute. If the employee receives and accepts remuneration for his/her participation in the professional leave activity (e.g. scholastic audits), the employee shall forfeit his/her daily rate of pay from the District for the time the employee misses. The cost of a substitute, if one is needed, shall be paid by the District.

Legal Reference: A.C.A. § 6-17-211

Date Adopted: 8-15-05

Last Revised: 11-19-2007; 6-16-08; 3/13/12; 4/22/13

### **3.12— LICENSED PERSONNEL RESPONSIBILITIES IN DEALING WITH SEX OFFENDERS ON CAMPUS**

Individuals who have been convicted of certain sex crimes must register with law enforcement as sex offenders. Arkansas law places restrictions on sex offenders with a Level 1 sex offender having the least restrictions (lowest likelihood of committing another sex crime), and Level 4 sex offenders having the most restrictions (highest likelihood of committing another sex crime). While Levels 1 and 2 place no restrictions prohibiting the individual’s presence on a school campus, Levels 3 and 4 have specific prohibitions. These are specified in Policy 6.10—SEX OFFENDERS ON CAMPUS (MEGAN’S LAW) and it is the responsibility of district staff to know and understand the policy and, to the extent requested, aid school administrators in enforcing the restrictions placed on campus access to Level 3 and Level 4 sex offenders. It is the intention of the board of directors that district staff not stigmatize students whose parents or guardians are sex offenders while taking necessary steps to safeguard the school community and comply with state law. Each school’s administration should establish procedures so attention is not drawn to the accommodations necessary for registered sex offender parents or guardians.

Cross Reference: 6.10—SEX OFFENDERS ON CAMPUS (MEGAN’S LAW) Legal Reference: A.C.A. § 12-12-913 (g) (2) Arkansas Department of Education Guidelines for “Megan’s Law”  
A.C.A. § 5-14-132

Date Adopted: 5-19-03

Last Revised: 11-19-2007 6-16-08

### **3.13—LICENSED PERSONNEL PUBLIC OFFICE**

An employee of the District who is elected to the Arkansas General Assembly or any elective or appointive public office (not legally constitutionally inconsistent with employment by a public school district) shall not be discharged or demoted as a result of such service.

No sick leave will be granted for the employee’s participation in such public office. The employee may take personal leave or vacation (if applicable), if approved in advance by the Superintendent, during his absence.

Prior to taking leave, and as soon as possible after the need for such leave is discerned by the employee, he must make written request for leave to the Superintendent, setting out, to the degree possible, the dates such leave is needed.

An employee who fraudulently requests sick leave for the purpose of taking leave to serve in public office may be subject to nonrenewal or termination of his employment contract.

Legal Reference: A.C.A. § 6-17-115

Date Adopted: 5-19-03

Last Revised: 10-18-04; 3/13/12

### **3.14 —LICENSED PERSONNEL JURY DUTY**

Employees are not subject to discharge, loss of sick leave, loss of vacation time or any other penalty due to absence from work for jury duty, upon giving reasonable notice to the District through the employee's immediate supervisor. The employee must present the original (not a copy) summons to jury duty to his supervisor in order to confirm the reason for the requested absence. \*Employees shall receive their regular pay from the district while serving jury duty, and shall reimburse the district from the stipend they receive for jury duty, up to, but not to exceed, the cost of the substitute hired to replace the employee in his/her absence.

Legal Reference: A.C.A. § 16-31-106

Date Adopted: 5-19-03

Last Revised: \*10-18-04

### **3.15 —LICENSED PERSONNEL LEAVE — INJURY FROM ASSAULT**

Any teacher who, \*while in the course of their employment, is injured by an assault or other violent act; while intervening in a student fight; while restraining a student; or while protecting a student from harm, shall be granted a leave of absence for up to one (1) year from the date of the injury, with full pay. A leave of absence granted under this policy shall not be charged to the teacher's sick leave. In order to obtain leave under this policy, the teacher must present documentation of the injury from a physician, with an estimate for time of recovery sufficient to enable the teacher to return to work, and written statements from witnesses (or other documentation as appropriate to a given incident) to prove that the incident occurred in the course of the teacher's employment.

Legal Reference: A.C.A. § 6-17-1209

Date Adopted: 5-19-03 Last Revised: \*10-18-04

### **3.16—LICENSED PERSONNEL REIMBURSEMENT FOR PURCHASE OF SUPPLIES**

Prekindergarten through sixth grade teachers shall be allotted the amount required by law per student enrolled in the teacher's class to be used for the purchase of classroom supplies and class activities. The amount shall be credited to an account from which the teacher shall be reimbursed for his/her covered purchases to the extent funds are available in the account. For the purposes of this policy, pre-kindergarten through sixth grade teachers shall be eligible for the allotted supply reimbursement for those students enrolled in the teacher's class for more than 50% of the school day at the end of the first three months of the school year.

Teachers may purchase supplies and supplementary materials from the District at the District's cost to take advantage of the school's bulk buying power. To do so, teachers shall complete and have approved by their principal and superintendent a purchase order for supplies which will then be purchased on the teacher's behalf by the school and subtracted from the teacher's total supply and material allocation. Teachers may also purchase materials and supplies using their own funds and apply for reimbursement by submitting itemized receipts. Reimbursements will be processed within 10 days of receipt at the district office. Supplies and materials purchased with school funds, or for which the teacher is reimbursed with school funds, are school property, and should remain on school property except to the extent they are used up or consumed or the purchased supplies and/or materials are intended/designed for use away from the school campus.

Unused allotments shall not be carried over from one fiscal year to the next.

**Notes:** Each district is required to annually provide a statement to the State Board of Education attesting to compliance with the statute covered by this policy.

Legal Reference: A.C.A. § 6-21-303(b)(1)  
Date Adopted: 4-19-04 Last Revised: 3/13/12

### **3.17 —INSULT OR ABUSE OF LICENSED PERSONNEL**

Employees are protected from abusive language and conduct by state law. An employee may report to the police any language which is calculated to:

- Cause a breach of the peace;
- Materially and substantially interfere with the operation of the school; and/or
- Arouse the person to whom the language is addressed to anger, to the extent likely to cause imminent retaliation.

Legal Reference: A.C.A. § 6-17-106  
Date Adopted: 5-19-03 Last Revised:

### **3.18 —LICENSED PERSONNEL OUTSIDE EMPLOYMENT**

An employee of the District may not be employed in any other capacity during regular working hours. An employee may not accept employment outside of his district employment which will interfere, or otherwise be incompatible with the District employment, including normal duties outside the regular work day; nor shall an employee accept other employment which is inappropriate for an employee of a public school. The Superintendent, or his designee(s), shall be responsible for determining whether outside employment is incompatible, conflicting or inappropriate.

Legal Reference: A.C.A. § 6-24-106, 107, 111  
Date Adopted: 5-19-03 Last Revised:

### **3.19—LICENSED PERSONNEL EMPLOYMENT**

All prospective employees must fill out an application form provided by the District, in addition to any resume provided, all of which information is to be placed in the personnel file of those employed.

If the employee provides false or misleading information, or if he withholds information to the same effect, it may be grounds for dismissal. In particular, it will be considered a material misrepresentation and grounds for termination of contract of employment if an employee's licensure status is discovered to be other than as it was represented by an employee or applicant, either in writing on application materials or in the form of verbal assurances or statements made to the school district.

The Bismarck School District is an equal opportunity employer and shall not discriminate on the grounds of race, color, religion, national origin, sex, age, or disability.

Date Adopted: 5-19-03 Last Revised: 3/13/12

### **3.20—LICENSED PERSONNEL REIMBURSEMENT OF TRAVEL EXPENSES**

Employees shall be reimbursed for personal and/or travel expenses incurred while performing duties or attending workshops or other employment-related functions, provided that prior written approval for the activity for which the employee seeks reimbursement has been received from the Superintendent, principal (or other immediate supervisor with the authority to make school approvals), or the appropriate designee of the Superintendent and that the teacher's attendance/travel was at the request of the district.

It is the responsibility of the employee to determine the appropriate supervisor from which he must obtain approval.

Reimbursement claims must be made on forms provided by the District and must be supported by appropriate, original receipts. Copies of receipts or other documentation are not acceptable, except in extraordinary circumstances.

The provisions of policy 7.12—EXPENSE REIMBURSEMENT are incorporated by reference into this policy.

Cross Reference: Policy 7.12—EXPENSE REIMBURSEMENT

Date Adopted: 6/20/11 Last Revised: 3/13/12

### **3.21 — LICENSED PERSONNEL TOBACCO USE**

Smoking or the use of tobacco, or products containing tobacco in any form, in or on any property owned or leased by the district, including buses or other school vehicles, is prohibited.

Legal Reference: A.C.A. § 6-21-609 Date Adopted: 5-19-03 Last Revised:

### **3.22 —DRESS OF LICENSED EMPLOYEES**

Employees shall ensure that their dress and appearance are professional and appropriate to their positions.

Date Adopted: 5-19-03

Last Revised:

### **3.23 — LICENSED PERSONNEL POLITICAL ACTIVITY**



Employees are free to engage in political activity outside of work hours and to the extent that it does not affect the performance of their duties or adversely affect important working relationships. It is specifically forbidden for employees to engage in political activities on the school grounds or during work hours. The following activities are forbidden on school property:

- Using students for preparation or dissemination of campaign materials;
- Distributing political materials;
- Distributing or otherwise seeking signatures on petitions of any kind;
- Posting political materials; and
- Discussing political matters with students, in the classroom, in other than circumstances appropriate to the Frameworks and/or the curricular goals and objectives of the class.

Date Adopted: 5-19-2003 Last Revised: 12-21-2006

### **3.24 — LICENSED PERSONNEL DEBTS**

For the purposes of this policy, "garnishment" of a district employee is when the employee has lost a lawsuit to a judgment creditor who brought suit against a school district employee for an unpaid debt, has been awarded money damages as a result, and these damages are recoverable by filing a garnishment action against the employee's wages. For the purposes of this policy, the word "garnishment" excludes such things as child support, student loan or IRS liens or voluntary deductions levied against an employee's wages.

All employees are expected to meet their financial obligations. If an employee writes "hot" checks or has his income garnished by a judgment creditor, dismissal may result.

An employee will not be dismissed for having been the subject of one (1) garnishment. However, a second or third garnishment may result in dismissal.

At the discretion of the Superintendent, he or his designee may meet with an employee who has received a second garnishment for the purpose of warning the employee that a third garnishment will result in a recommendation of dismissal to the School Board.

At the discretion of the Superintendent, a second garnishment may be used as a basis for a recommended dismissal. The Superintendent may take into consideration other factors in deciding whether to recommend dismissal based on a second garnishment. Those factors may include, but are not limited to, the amount of the debt, the time between the first and the second garnishment, and other financial problems which come to the attention of the District.

**Note:** This policy is similar to Policy 8.18. If you change this policy, review 8.18 at the same time to ensure applicable consistency between the two.

Date Adopted: 5-19-03

Last Revised: 4/22/13

### **3.25 — LICENSED PERSONNEL GRIEVANCES**

The purpose of this policy is to provide an orderly process for employees to resolve, at the lowest possible level, their concerns related to the personnel policies or salary payments of this district.

#### **Definitions**

Grievance: a claim or concern related to the interpretation, application, or claimed violation of the personnel policies, including salary schedules, federal or state laws and regulations, or terms or conditions of employment, raised by an individual employee of this school district. Other matters for which the means of resolution are provided or foreclosed by statute or administrative procedures shall not be considered grievances. Specifically, no grievance may be entertained against a supervisor for directing, instructing, reprimanding, or "writing up" an employee under his/her supervision. A group of employees who have the same grievance may file a group grievance. Group Grievance: A grievance may be filed as a group grievance if it meets the following criteria: (meeting the criteria does not ensure that the subject of the grievance is, in fact, grievable)

- More than one individual has interest in the matter; and

- The group has a well-defined common interest in the facts and/or circumstances of the grievance; and

- The group has designated an employee spokesperson to meet with administration and/or the board; and

- All individuals within the group are requesting the same relief.

Employee: any person employed under a written contract by this school district. Immediate Supervisor: the person immediately superior to an employee who directs and supervises the work of that employee. Working day: Any weekday other than a holiday whether or not the employee under the provisions of their contract is scheduled to work or whether they are currently under contract.

## Process

**Level One:** An employee who believes that he/she has a grievance shall inform that employee's immediate supervisor that the employee has a potential grievance and discuss the matter with the supervisor within five working days of the occurrence of the grievance. The supervisor shall offer the employee an opportunity to have a witness or representative who is not a member of the employee's immediate family present at their conference. (The five-day requirement does not apply to grievances concerning back pay.) If the grievance is not advanced to Level Two within five working days following the conference, the matter will be considered resolved and the employee shall have no further right with respect to said grievance. If the grievance cannot be resolved by the immediate supervisor, the employee can advance the grievance to Level Two. To do this, the employee must complete the top half of the Level Two Grievance Form within five working days of the discussion with the immediate supervisor, citing the manner in which the specific personnel policy was violated that has given rise to the grievance, and submit the Grievance Form to his/her immediate supervisor. The supervisor will have ten working days to respond to the grievance using the bottom half of the Level Two Grievance Form which he/she will submit to the building principal or, in the event that the employee's immediate supervisor is the building principal, the superintendent. **Level Two (when appeal is to the building principal):** Upon receipt of a Level Two Grievance Form, the building principal will have ten working days to schedule a conference with the employee filing the grievance. The principal shall offer the employee an opportunity to have a witness or representative who is not a member of the employee's immediate family present at their conference. After the conference, the principal will have ten working days in which to deliver a written response to the grievance to the employee. If the grievance is not advanced to Level Three within five working days the matter will be considered resolved and the employee shall have no further right with respect to said grievance. **Level Two (when appeal is to the superintendent):** Upon receipt of a Level Two Grievance Form, the superintendent will have ten working days to schedule a conference with the employee filing the grievance. The superintendent shall offer the employee an opportunity to have a witness or representative who is not a member of the employee's immediate family present at their conference. After the conference, the superintendent will have ten working days in which to deliver a written response to the grievance to the employee. **Level Three:** If the proper recipient of the Level Two Grievance was the building principal, and the employee remains unsatisfied with the written response to the grievance, the employee may advance the grievance to the superintendent by submitting a copy of the Level Two Grievance Form and the principal's reply to the superintendent within five working days of his/her receipt of the principal's reply. The superintendent will have ten working days to schedule a conference with the employee filing the grievance. The superintendent shall offer the employee an opportunity to have a witness or representative who is not a member of the employee's immediate family present at their conference. After the conference, the superintendent will have ten working days in which to deliver a written response to the grievance to the employee. **Appeal to the Board of Directors:** An employee who remains unsatisfied by the written response of the superintendent may appeal the superintendent's decision to the Board of Education within five working days of his/her receipt of the Superintendent's written response by submitting a written request for a board hearing to the superintendent<sup>2</sup>. If the grievance is not appealed to the Board of Directors within five working days of his/her receipt of the superintendent's response, the matter will be considered resolved and the employee shall have no further right with respect to said grievance. The school board will address the grievance at the next regular meeting of the school board, unless the employee agrees in writing to an alternate date for the hearing. After reviewing the Level Two Grievance Form and the superintendent's reply, the board will decide if the grievance, on its face, is grievable under district policy. If the grievance is presented as a "group grievance," the Board shall first determine if the composition of the group meets the definition of a "group grievance." If the Board determines that it is a group grievance, the Board shall then determine

whether the matter raised is grievable. If the Board rules the composition of the group does not meet the definition of a group grievance, or the grievance, whether group or individual, is not grievable, the matter shall be considered closed. (Individuals within the disallowed group may choose to subsequently refile their grievance as an individual grievance beginning with Level One of the process.) If the Board rules the grievance to be grievable, they shall immediately commence a hearing on the grievance. All parties have the right to representation by a person of their own choosing who is not a member of the employee's immediate family at the appeal hearing before the Board of Directors. The employee shall have no less than 90 minutes to present his/her grievance, unless a shorter period is agreed to by the employee, and both parties shall have the opportunity to present and question witnesses. The hearing shall be open to the public unless the employee requests a private hearing. If the hearing is open, the parent or guardian of any student under the age of eighteen years who gives testimony may elect to have the student's testimony given in closed session. At the conclusion of the hearing, if the hearing was closed, the Board of Directors may excuse all parties except board members and deliberate, by themselves, on the hearing. At the conclusion of an open hearing, board deliberations shall also be in open session unless the board is deliberating the employment, appointment, promotion, demotion, disciplining, or resignation of the employee. A decision on the grievance shall be announced no later than the next regular board meeting.

#### **Records**

Records related to grievances will be filed separately and will not be kept in, or made part of, the personnel file of any employee.

#### **Reprisals**

No reprisals of any kind will be taken or tolerated against any employee because he/she has filed or advanced a grievance under this policy. . Legal Reference: A.C.A. § 6-17-208, 210

Date Adopted: 5-19-2003 Last Revised: 12-21-2006 11-19-2007

### **3.25 F— LICENSED PERSONNEL LEVEL TWO GRIEVANCE FORM**

Name:            Date submitted to supervisor:

Personnel Policy grievance is based upon: Grievance (be specific):

What would resolve your grievance?

Supervisor's Response Date submitted to recipient:

Date Adopted: 5-19-03 Last Revised:

### **3.26 —LICENSED PERSONNEL SEXUAL HARASSMENT**

The Bismarck School District is committed to having an academic and work environment in which all students and employees are treated with respect and dignity. Student achievement and amicable working relationships are best attained in an atmosphere of equal educational and employment opportunity that is free of discrimination. Sexual harassment is a form of discrimination that undermines the integrity of the educational environment and will not be tolerated.

Believing that prevention is the best policy, the district will periodically inform students and employees about the nature of sexual harassment, the procedures for registering a complaint, and the possible redress that is available. The information will stress that the district does not tolerate sexual harassment and that students and employees can report inappropriate behavior of a sexual nature without fear of adverse consequences.

It shall be a violation of this policy for any student or employee to be subjected to, or to subject another person to, sexual harassment as defined in this policy. Any employee found, after an investigation, to have engaged in sexual harassment will be subject to disciplinary action up to, and including, termination.

Sexual harassment refers to unwelcome sexual advances, requests for sexual favors, or other personally offensive verbal, visual, or physical conduct of a sexual nature made by someone under any of the following conditions:

Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's education or employment;

Submission to, or rejection of, such conduct by an individual is used as the basis for academic or employment decisions affecting that individual; and/or

Such conduct has the purpose or effect of substantially interfering with an individual's academic or work performance or creates an intimidating, hostile, or offensive academic or work environment.

The terms "intimidating," "hostile," and "offensive" include conduct of a sexual nature which has the effect of humiliation or embarrassment and is sufficiently severe, persistent, or pervasive that it limits the student's or employee's ability to participate in, or benefit from, an educational program or activity or their employment environment.

Within the educational or work environment, sexual harassment is prohibited between any of the following: students; employees and students; non-employees and students; employees; employees and non-employees.

Actionable sexual harassment is generally established when an individual is exposed to a pattern of objectionable behaviors or when a single, serious act is committed. What is, or is not, sexual harassment will depend upon all of the surrounding circumstances. Depending upon such circumstances, examples of sexual harassment include, but are not limited to: unwelcome touching; crude jokes or pictures; discussions of sexual experiences; pressure for sexual activity; intimidation by words, actions, insults, or name calling; teasing related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct or is homosexual, regardless of whether or not the individual self-identifies as homosexual; and spreading rumors related to a person's alleged sexual activities.

Employees who believe they have been subjected to sexual harassment are encouraged to file a complaint by contacting their immediate supervisor, administrator, or Title IX coordinator who will assist them in the complaint process. Under no circumstances shall an employee be required to first report allegations of sexual harassment to a school contact person if that person is the individual who is accused of the harassment. To the extent possible, complaints will be treated in a confidential manner. Limited disclosure may be necessary in order to complete a thorough investigation.

Employees who file a complaint of sexual harassment will not be subject to retaliation or reprisal in any form. Employees who knowingly fabricate allegations of sexual harassment shall be subject to disciplinary action up to and including termination.

Individuals who withhold information, purposely provide inaccurate facts, or otherwise hinder an investigation of sexual harassment shall be subject to disciplinary action up to and including termination.

Legal References: Title IX of the Education Amendments of 1972, 20 USC 1681, et seq.

Title VII of the Civil Rights Act of 1964, 42 USC 2000-e, et seq.

A.C.A. § 6-15-1005 (b) (1)

Date Adopted: 6/20/11 Last Revised:

### **3.27—LICENSED PERSONNEL SUPERVISION OF STUDENTS**

All District personnel are expected to conscientiously execute their responsibilities to promote the health, safety, and welfare of the District's students under their care. The Superintendent shall direct all principals to establish regulations ensuring faculty supervision of students throughout the school day and at extracurricular activities.

Date Adopted: 5-19-03 Last Revised:

3.27 —LICENSED PERSONNEL COMPUTER USE POLICY

The Bismarck School District provides computers and/or computer Internet access for many employees, to assist employees in performing work related tasks. Employees are advised that they enjoy no expectation of privacy in any aspect of their computer use, including email, and that under Arkansas law, both email and computer use records maintained by the district are subject to disclosure under the Freedom of Information Act. Passwords or security procedures are to be used as assigned, and confidentiality of student records is to be maintained at all times. Employees must not disable or bypass security procedures, compromise, attempt to compromise, or defeat the district’s technology network security, alter data without authorization, disclose passwords to other staff members or students, or grant students access to any computer not designated for student use. It is the policy of this school district to equip each computer with Internet filtering software designed to prevent users from accessing material that is harmful to minors. The designated District Technology Administrator or designee may authorize the disabling of the filter to enable access by an adult for a bona fide research or other lawful purpose. Employees who misuse district-owned computers in any way, including excessive personal use, using computers for personal use during instructional time, using computers to violate any other policy, knowingly or negligently allowing unauthorized access, or using the computers to access or create sexually explicit or pornographic text or graphics, will face disciplinary action, up to and including termination or non-renewal of the employment contract. **Note:** This policy is similar to Policy 8.22. If you change this policy, review 8.22 at the same time to ensure applicable consistency between the two. Legal References: 20 USC 6801 et seq. (Children’s Internet Protection Act; PL 106-554)

§ 6-21-107

§ 6-21-111

Date Adopted: 5-19-03 Last Revised: 6-16-08

3.28F—LICENSED PERSONNEL EMPLOYEE INTERNET USE AGREEMENT

Name (Please Print)

School

Date

The Bismarck School District agrees to allow the employee identified above (“Employee”) to use the district’s technology to access the Internet under the following terms and conditions:

Conditional Privilege: The Employee’s use of the district’s access to the Internet is a privilege conditioned on the Employee’s abiding by this agreement.

Acceptable Use: The Employee agrees that in using the District’s Internet access he/she will obey all federal and state laws and regulations. Internet access is provided as an aid to employees to enable them to better perform their job responsibilities. Under no circumstances shall an Employee’s use of the District’s Internet access interfere with, or detract from, the performance of his/her job-related duties.

Penalties for Improper Use: If the Employee violates this agreement and misuses the Internet, the Employee shall be subject to disciplinary action up and including termination.

“Misuse of the District’s access to the Internet” includes, but is not limited to, the following:

- a. using the Internet for any activities deemed lewd, obscene, vulgar, or pornographic as defined by prevailing community standards;
- b. using abusive or profane language in private messages on the system; or using the system to harass, insult, or verbally attack others;
- c. posting anonymous messages on the system;
- d. using encryption software;
- e. wasteful use of limited resources provided by the school including paper;
- f. causing congestion of the network through lengthy downloads of files;
- g. vandalizing data of another user;
- h. obtaining or sending information which could be used to make destructive devices such as guns, weapons, bombs, explosives, or fireworks;

- i. gaining or attempting to gain unauthorized access to resources or files;
- j. identifying oneself with another person's name or password or using an account or password of another user without proper authorization;
- k. using the network for financial or commercial gain without district permission;
- l. theft or vandalism of data, equipment, or intellectual property;
- m. invading the privacy of individuals;
- n. using the Internet for any illegal activity, including computer hacking and copyright or intellectual property law violations;
- o. introducing a virus to, or otherwise improperly tampering with, the system;
- p. degrading or disrupting equipment or system performance;
- q. creating a web page or associating a web page with the school or school district without proper authorization;
- r. attempting to gain access or gaining access to student records, grades, or files of students not under their jurisdiction;
- s. providing access to the District's Internet Access to unauthorized individuals; or
- t. taking part in any activity related to Internet use which creates a clear and present danger of the substantial disruption of the orderly operation of the district or any of its schools;
- u. making unauthorized copies of computer software;
- v. personal use of computers during instructional time; or
- w. \*Installing software on district computers without prior approval of technology director or his/her designee.

Liability for debts: Staff shall be liable for any and all costs (debts) incurred through their use of the District's computers or the Internet including penalties for copyright violations.

No Expectation of Privacy: The Employee signing below agrees that in using the Internet through the District's access, he/she waives any right to privacy the Employee may have for such use. The Employee agrees that the district may monitor the Employee's use of the District's Internet Access and may also examine all system activities the Employee participates in, including but not limited to e-mail, voice, and video transmissions, to ensure proper use of the system.

Signature: The Employee, who has signed below, has read this agreement and agrees to be bound by its terms and conditions. Employee's Signature: \_\_\_\_\_ Date \_\_\_\_\_

Date Adopted: 5-19-03 Last Revised: \*10-18-04

### **3.28 —LICENSED PERSONNEL SCHOOL CALENDAR**

The superintendent shall present to the [personnel policies committee \(PPC\)](#) a school calendar which the board has adopted as a proposal. The superintendent, in developing the calendar, shall accept and consider recommendations from any staff member or group wishing to make calendar proposals. The PPC shall have the time prescribed by law and/or policy in which to make any suggested changes before the board may vote to adopt the calendar.

[The District shall not establish a school calendar that interferes with any ACTAAP scheduled testing that might jeopardize or limit the valid testing and comparison of student learning gains.](#)

The Bismarck School District shall operate by the following calendar.

BISMARCK SCHOOL DISTRICT									
2013-2014 Calendar									
1ST SEMESTER									
August 15.....Open House (5pm-7pm)									
August 19.....First Day of 13-14 Term									
September 2.....Labor Day Holiday									
October 16.....End of 1st Quarter (42 days)									
October 22.....P/T Conferences (2:30-7:30)									
October 25.....Fall Break Holiday									
November 25-29.....Thanksgiving Holiday									
December 20.....End of 2nd Quarter (41 Days)									
December 23- January 3, 2014.....Christmas Holiday									
2ND SEMESTER									
January 6.....1st Day of 2nd Semester									
February 14.....Winter Holiday Break									
March 11 - 12.....Grade 11 Literacy Exam									
March 13.....P/T Conferences (2:30-7:30)									
March 14.....End of 3rd Quarter (49 days)									
March 24-March 28.....Spring Break									
March 31 - April 11.....Grades 1-2 and Grade 9 Iowa Test									
April 7 - 11.....Grades 3 - 8 Benchmark Test									
April 18.....Good Friday Holiday									
April 29 - 30.....End of Course Biology Exam									
May 13 - 14.....End of Course Algebra I Exam									
May 23.....High School Graduation									
May 26.....Memorial Day Holiday									
May 28.....Last day of school (46 days for 4th Quarter)									
Inclement weather days will be at end of the school year beginning 5/29 and progressing in consecutive order.									

Board Approved: 03/14/2011  
Legal References:       A.C.A. § 6-17-201  
                                  [Arkansas Comprehensive Testing, Assessment, and Accountability Plan Rules](#)  
Date Adopted: 5-19-2003  
Last Revised: 12-21-2006; 3/14/11; 3/13/12; 4/22/13

### **3.30—PARENT-TEACHER COMMUNICATION**

The district recognizes the importance of communication between teachers and parents/legal guardians. To help promote positive communication, parent/teacher conferences shall be held once each semester. Parent-teacher conferences are encouraged and may be requested by parents or guardians when they feel they need to discuss their child's progress with his/her teacher.

Teachers are required to communicate during the school year with the parent(s), legal guardian(s), or care-giving adult or adults in a student's home to discuss the student's academic progress unless the student has been placed in the custody of the Department of Human Services and the school has received a court order prohibiting parent or legal guardian participation in parent/teacher conferences. More frequent communication is required with the parent(s) or legal guardian(s) of students who are performing below grade level.

All parent/teacher conferences shall be scheduled at a time and place to best accommodate those participating in the conference. Each teacher shall document the participation or non-participation of parent(s)/legal guardian(s) for each scheduled conference.

If a student is to be retained at any grade level, notice of, and the reasons for retention shall be communicated promptly in a personal conference.

Note: A.C.A. § 9-28-113(b)(6) provides that when the court transfers custody of a child to the Department of Human Services, the court shall issue an order stating whether the parent or legal guardian may participate in parent/teacher conferences.

Legal References: State Board of Education Standards of Accreditation 12.04.1, 12.04.2, and 12.04.3  
A.C.A. § 6-15-1701(b)(3)(C)

Date Adopted: 08-15-05 Last Revised: 3/13/12

#### **3.30.1—PARENT-TEACHER CONFERENCES—ELEMENTARY SCHOOLS**

All elementary teachers \*are required to communicate with the parents or guardians of each student at least once a semester through a parent-teacher conference, telephone conference, or a home visit. If a home visit is required, a certified employee will accompany the teacher. Teachers shall communicate more often with parents/guardians of students performing below grade level. \*This visit will be made during the regular school week. Parent-teacher conferences are encouraged and may be requested by parents or guardians when they feel they need to discuss their child's progress with his/her teacher. Conferences shall be scheduled at a time and place to best accommodate those participating in the conference.

Legal Reference: State Board of Education Standards of Accreditation \*12.04.2, 12.04.3

Date Adopted: 5-19-03 Last Revised: \*10-18-04

#### **3.30.2—PARENT-TEACHER CONFERENCES—SECONDARY SCHOOLS**

Teachers shall attempt to communicate personally with the parents or guardians of each student at least twice during the school year to discuss the student's academic progress. Teachers shall communicate more often with parents/guardians of students performing below the level expected for their grade. Parent-teacher conferences are encouraged and may be requested by parents or guardians when they feel they need to discuss



their child's progress with his/her teacher. Conferences shall be scheduled at a time and place to best accommodate those participating in the conference.

Legal Reference: State Board of Education Standards of Accreditation 12.04.1

A.C.A. § 6-15-1601(b)(3)(C) Date Adopted: 5-19-03 Last Revised: 8-15-05

### **3.31—DRUG FREE WORKPLACE - LICENSED PERSONNEL**

The conduct of district staff plays a vital role in the social and behavioral development of our students. It is equally important that the staff have a safe, healthful, and professional environment in which to work. To help promote both interests, the district shall have a drug free workplace. It is, therefore, the district's policy that district employees are prohibited from the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances, illegal drugs, inhalants, alcohol, as well as inappropriate or illegal use of prescription drugs. Such actions are prohibited both while at work or in the performance of official duties while off district property; violations of this policy will subject the employee to discipline, up to and including termination. To help promote a drug free workplace, the district shall establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the district's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance abuse programs, and the penalties that may be imposed upon employees for drug abuse violations. (Insert substance abuse resources here.) Should any employee be found to have been under the influence of, or in illegal possession of, any illegal drug, or controlled substance or under the influence of alcohol, whether or not engaged in any school or school-related activity, and the behavior of the employee, if under the influence, is such that it is inappropriate for a school employee in the opinion of the superintendent, the employee may be subject to discipline, up to and including termination. Possession, use or distribution of drug paraphernalia by any employee, whether or not engaged in school or school-related activities, may subject the employee to discipline, up to and including termination. Possession in one's vehicle or in an area subject to the employee's control will be considered to be possession as though the substance were on the employee's person. It shall not be necessary for an employee to test at a level demonstrating intoxication by any substance in order to be subject to the terms of this policy. Any physical manifestation of being under the influence of a substance may subject an employee to the terms of this policy. Those physical manifestations include, but are not limited to: unsteadiness; slurred speech; dilated or constricted pupils; incoherent and/or irrational speech; or the presence of an odor associated with a prohibited substance on one's breath or clothing. Should an employee desire to provide the District with the results of a blood, breath or urine analysis, such results will be taken into account by the District only if the sample is provided within a time range that could provide meaningful results and only by a testing agency chosen or approved by the District. The District shall not request that the employee be tested, and the expense for such voluntary testing shall be borne by the employee. Any employee who is charged with a violation of any state or federal law relating to the possession, use or distribution of illegal drugs, other controlled substances or alcohol, or of drug paraphernalia, must notify his immediate supervisor within five (5) week days (i.e., Monday through Friday, inclusive, excluding holidays) of being so charged. The supervisor who is notified of such a charge shall notify the Superintendent immediately. If the supervisor is not available to the employee, the employee shall notify the Superintendent within the five (5) day period. Any employee so charged is subject to discipline, up to and including termination. However, the failure of an employee to notify his supervisor or the Superintendent of having been so charged shall result in that employee being recommended for termination by the Superintendent. Any employee convicted of any criminal drug statute violation for an offense that occurred while at work or in the performance of official duties while off district property shall report the conviction within 5 calendar days to the superintendent.

Within 10 days of receiving such notification, whether from the employee or any other source, the district shall notify federal granting agencies from which it receives funds of the conviction. Compliance with these requirements and prohibitions is mandatory and is a condition of employment. Any employee convicted of any state or federal law relating to the possession, use or distribution of illegal drugs, other controlled substances or alcohol, or of drug paraphernalia, shall be recommended for termination. Any employee who must take prescription medication at the direction of the employee's physician, and who is impaired by the prescription medication such that he cannot properly perform his duties shall not report for duty. Any employee who reports for duty and is so impaired, as determined by his supervisor, will be sent home. The employee shall be given sick leave, if owed any. The District or employee will provide transportation for the employee, and the employee may not leave campus while operating any vehicle. It is the responsibility of the employee to contact his physician in order to adjust the medication, if possible, so that the employee may return to his job unimpaired. Should the employee attempt to return to work while impaired by prescription medications, for which the employee has a prescription, he will, again, be sent home and given sick leave, if owed any. Should the employee attempt to return to work while impaired by prescription medication a third time the employee may be subject to discipline, up to and including a recommendation of termination. Any employee who possesses, uses, distributes or is under the influence of a prescription medication obtained by a means other than his own current prescription shall be treated as though he was in possession, possession with intent to deliver, or under the influence, etc. of an illegal substance. An illegal drug or other substance is one which is (a) not legally obtainable; or (b) one which is legally obtainable, but which has been obtained illegally. The District may require an employee to provide proof from his physician and/or pharmacist that the employee is lawfully able to receive such medication. Failure to provide such proof, to the satisfaction of the Superintendent, may result in discipline, up to and including a recommendation of termination.

Legal References: 41 USC § 702, 703, and 706

Date Adopted: 8-15-2005 Last Revised: 12-21-2006

### **3.31F—DRUG FREE WORKPLACE POLICY ACKNOWLEDGEMENT**

CERTIFICATION I, hereby certify that I have been presented with a copy of the Bismarck School District's drug-free workplace policy, that I have read the statement, and that I will abide by its terms as a condition of my employment with District. Signature \_\_\_\_\_ Date \_\_\_\_\_

Date Adopted: 5-19-03 Last Revised: 6-16-08

### **3.32— LICENSED PERSONNEL FAMILY MEDICAL LEAVE \***

The Family and Medical Leave Act (FMLA) leave offers job protection for what might otherwise be considered excessive absences. Employees need to carefully comply with this policy to ensure they do not lose FMLA protection due to inaction or failure to provide the District with needed information. The FMLA provides up to 12 work weeks (or in some cases 26 weeks) of job-protected leave to eligible employees with absences that qualify under the FMLA. While an employee can request FMLA leave and has a duty to inform the District as provided in this policy of foreseeable absences that may qualify for FMLA leave, it is the District's ultimate responsibility to identify qualifying absences as FMLA or non-FMLA. FMLA leave is unpaid, except to the extent that paid leave applies to any given absence as governed by the FMLA and this policy.

#### **SECTION ONE**

##### **Definitions:**

Eligible Employee: is an employee who has been employed by the District for at least twelve (12) months and for 1250 hours of service during the twelve (12) month period immediately preceding the commencement of the leave.<sup>1</sup>

FMLA: is the Family and Medical Leave Act

Health Care Provider: is a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices. It also includes any other person determined by the U.S. Secretary of Labor to be capable of providing health care services.

Instructional Employee: is an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting and includes athletic coaches, driving instructors, preschool teachers, and special education assistants such as signers for the hearing impaired. The term does not include, and the special rules related to the taking of leave near the end of a semester do not apply to, teacher assistants or aides who do

not have as their principal job actual teaching or instructing, nor does it include administrators, counselors, librarians, psychologists, or curriculum specialists.

Intermittent leave: is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

Next of Kin: used in respect to an individual, means the nearest blood relative of that individual.

Parent: is the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or a daughter. This term does not include parents "in-law."

Serious Health Condition: is an injury, illness, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical facility or continuing treatment by a health care provider.

Son or daughter, for numbers 1, 2, or 3 below: is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.<sup>2</sup>

Year: the twelve (12) month period of eligibility shall begin on July first of each school-year.<sup>23</sup>

### **Policy**

The provisions of this policy are intended to be in line with the provisions of the FMLA. If any conflict(s) exist, the Family and Medical Leave Act of 1993 as amended shall govern.

### **Leave Eligibility**

The District will grant up to twelve (12) weeks of leave in a year in accordance with the FMLA<sup>2</sup>; as amended, to its eligible employees for one or more of the following reasons:

1. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
2. Because of the placement of a son or daughter with the employee for adoption or foster care;
3. To care for the spouse, son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition; and
4. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.
5. Because of any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. (See Section Two)
6. To care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury. (See Section Two)

The entitlement to leave for reasons 1 and 2 listed above shall expire at the end of the twelve (12) month period beginning on the date of such birth or placement.

A husband and wife who are both eligible employees employed by the District may not take more than a combined total of 12 weeks of FMLA leave for reasons 1, 2, 3 and 5.

### **Provisions Applicable to both Sections One and Two**

#### **District Notice to Employees**

The District shall post, in conspicuous places in each school within the District where notices to employees and applicants for employment are customarily posted, a notice explaining the FMLA's provisions and providing information about the procedure for filing complaints with the Department of Labor.<sup>34</sup>

#### **Designation Notice to Employee**

When an employee requests FMLA leave or the District determines that an employee's absence may be covered under the FMLA, the District shall provide written notice within five (5) business days (absent extenuating circumstances) to the employee of the District's determination of his/her eligibility for FMLA leave.<sup>45</sup> If the employee is eligible, the District may request additional information from the employee and/or certification from a health care provider to help make the applicability<sup>56</sup> determination. After receiving sufficient information as requested, the District shall provide a written notice within five (5) business days (absent extenuating circumstances) to the employee of whether the leave qualifies as FMLA leave and will be so designated.<sup>67</sup>

If the circumstances for the leave don't change, the District is only required to notify the employee once of the determination regarding the designation of FMLA leave within any applicable twelve (12) month period.

### **Concurrent Leave Under the FMLA**

All FMLA leave is unpaid unless substituted by applicable accrued leave. The District requires employees to substitute any applicable accrued leave (in the order of sick, personal, or vacation leave as may be applicable) for any period of FMLA leave.<sup>36</sup>

### **Health Insurance Coverage**

The District shall maintain coverage under any group health plan for the duration of FMLA leave the employee takes at the level and under the conditions coverage would have been provided if the employee had continued in active employment with the District. Additionally, if the District makes a change to its health insurance benefits or plans that apply to other employees, the employee on FMLA leave must be afforded the opportunity to access additional benefits and/or the same responsibility for changes to premiums. Any changes made to a group health plan which apply to other District employees, must also apply to the employee on FMLA leave. The District will notify the employee on FMLA leave of any opportunities to change plans or benefits. The employee remains responsible for any portion of premium payments customarily paid by the employee. When on unpaid FMLA leave, it is the employee's responsibility to submit his/her portion of the cost of the group health plan coverage to the district's business office on or before it would be made by payroll deduction.<sup>78</sup>

The District has the right to pay an employee's unpaid insurance premiums during the employee's unpaid FMLA leave to maintain the employee's coverage during his/her leave. The District may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the District maintains health coverage for the employee by paying the his/her share. Such recovery shall be made by offsetting the employee's debt through payroll deductions or by other means against any monies owed the employee by the District.

An employee who chooses to not continue group health plan coverage while on FMLA leave, is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.<sup>89</sup>

If an employee gives unequivocal notice of intent not to return to work, or if the employment relationship would have terminated if the employee had not taken FMLA leave, the District's obligation to maintain health benefits ceases.

If the employee fails to return from leave after the period of leave to which the employee was entitled has expired, the District may recover the premiums it paid to maintain health care coverage unless:

- a. The employee fails to return to work due to the continuation, reoccurrence, or onset of a serious health condition that entitles the employee to leave under reasons 3 or 4 listed above; and/or
- b. Other circumstances exist beyond the employee's control.

Circumstances under "a" listed above shall be certified by a licensed, practicing health care provider verifying the employee's inability to return to work.

### **Reporting Requirements During Leave**

Unless circumstances exist beyond the employee's control, the employee shall inform the district every two weeks<sup>90</sup> during FMLA leave of their current status and intent to return to work.

### **Return to Previous Position**

An employee returning from FMLA leave is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An equivalent position must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, and authority. Specifically, upon

returning from FMLA leave, a teacher may be assigned to another position that is not necessarily the same as the teacher's former job assignment. The employee may not be restored to a position requiring additional licensure or certification.

The employee's right to return to work and/or to the same or an equivalent position does not supersede any actions taken by the District, such as conducting a RIF, which the employee would have been subject to had the employee not been on FMLA leave at the time of the District's actions.

### **Provisions Applicable to Section One**

#### **Employee Notice to District**

##### **Foreseeable Leave:**

When the need for leave is foreseeable for reasons 1 through 4 listed above, the employee shall provide the District with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave for the specified reason. An eligible employee who has no reasonable excuse for his/her failure to provide the District with timely advance notice of the need for FMLA leave may delay the FMLA coverage of such leave until 30 days after the date the employee provides notice.

If there is a lack of knowledge of approximately when the leave will be required to begin, a change in circumstances, or an emergency, notice must be given as soon as practicable. As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.

When the need for leave is for reasons 3 or 4 listed above, the eligible employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the District subject to the approval of the health care provider of the spouse, son, daughter, or parent of the employee.

If the need for FMLA leave is foreseeable less than 30 days in advance, the employee shall notify the District as soon as practicable. If the employee fails to notify as soon as practicable, the District may delay granting FMLA leave for the number of days in advance that the employee should have provided notice and when the employee actually gave notice.

##### **Unforeseeable Leave:**

When the approximate timing of the need for leave is not foreseeable, an employee shall provide the District notice of the need for leave as soon as practicable given the facts and circumstances of the particular case.

Ordinarily, the employee shall notify the District within two (2) working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. Notice may be provided in person, by telephone, telegraph, fax, or other electronic means. If the eligible employee fails to notify the District as required, unless the failure to comply is justified by unusual circumstances, the FMLA leave may be delayed or denied.

#### **Medical Certification**

Second and Third Opinions: In any case where the District has reason to doubt the validity of the initial certification provided, the District may require, at its expense, the employee to obtain the opinion of a second health care provider designated or approved by the employer. If the second opinion differs from the first, the District may require, at its expense, the employee to obtain a third opinion from a health care provider agreed upon by both the District and the employee. The opinion of the third health care provider shall be considered final and be binding upon both the District and the employee.

Recertification: The District may request, either orally or in writing, the employee obtain a recertification in connection with the employee's absence, at the employee's expense, no more often than every thirty (30) days unless one or more of the following circumstances apply;

- a. The original certification is for a period greater than 30 days. In this situation, the District may require a recertification after the time of the original certification expires, but in any case, the District may require a recertification every six (6) months.
- b. The employee requests an extension of leave;



- c. Circumstances described by the previous certification have changed significantly; and/or
- d. The district receives information that casts doubt upon the continuing validity of the certification.

The employee must provide the recertification in fifteen (15) calendar days after the District's request.

No second or third opinion on recertification may be required.

The District may deny FMLA leave if an eligible employee fails to provide requested certification.

### **Substitution of Paid Leave**

When an employee's leave has been designated as FMLA leave for reasons 1 (as applicable), 2, 3, or 4 above, the District requires employees to substitute accrued sick, vacation, or personal leave for the period of FMLA leave.<sup>1011</sup>

To the extent the employee has accrued paid vacation or personal leave, any leave taken that qualifies for FMLA leave for reasons 1 or 2 above shall be paid leave and charged against the employee's accrued leave.

Workers Compensation: FMLA leave may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition. To the extent that workers compensation benefits and FMLA leave run concurrently, the employee will be charged for any paid leave accrued by the employee at the rate necessary to bring the total amount of combined income up to 100% of usual contracted daily rate of pay. If the health care provider treating the employee for the workers compensation injury certifies the employee is able to return to a "light duty job," but is unable to return to the employee's same or equivalent job, the employee may decline the District's offer of a "light duty job." As a result, the employee may lose his/her workers' compensation payments, but for the duration of the employee's FMLA leave, the employee will be paid for the leave to the extent that the employee has accrued applicable leave.

### **Return to Work**<sup>1112</sup>

If the District's written designation determination that the eligible employee's leave qualified as FMLA leave under reason 4 above stated that the employee would have to provide a "fitness-for-duty" certification from a health care provider for the employee to resume work, the employee must provide such certification prior to returning to work. The employee's failure to do so voids the District's obligation to reinstate the employee under the FMLA and the employee shall be terminated.

If the District's written designation determination that the eligible employee's leave qualified as FMLA leave under reason 4 above stated that the employee would have to provide a "fitness-for-duty" certification from a

health care provider for the employee to resume work **and** the designation determination listed the employee's essential job functions, the employee must provide certification that the employee is able to perform those functions prior to returning to work. The employee's failure to do so or his/her inability to perform his/her job's essential functions voids the District's obligation to reinstate the employee under the FMLA and the employee shall be terminated.

### **Failure to Return to Work:**

In the event that an employee is unable or fails to return to work within FMLA's leave timelines, the superintendent will make a determination at that time regarding the documented need for a severance of the employee's contract due to the inability of the employee to fulfill the responsibilities and requirements of their contract.

### **Intermittent or Reduced Schedule Leave**

To the extent practicable, employees requesting intermittent or reduced schedule leave shall provide the District with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave.

Eligible employees may only take intermittent or reduced schedule leave for reasons 1 and 2 listed above if the District agrees to permit such leave upon request of the employee. If the District agrees to permit an employee to take intermittent or reduced schedule leave for such reasons, the agreement shall be consistent with this policy's requirements governing intermittent or reduced schedule leave. The employee may be transferred temporarily during the period of scheduled intermittent or reduced leave to an alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. The alternative position shall have equivalent pay and benefits but does not have to have equivalent duties.

Eligible employees may take intermittent or reduced schedule FMLA leave due to reasons 3 or 4 listed above when the medical need is best accommodated by such a schedule. The eligible employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider.

When granting leave on an intermittent or reduced schedule for reasons 3 or 4 above that is foreseeable based on planned medical treatment, the District may temporarily transfer non-instructional, eligible employees for the period of scheduled intermittent or reduced leave to an alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. The alternative position shall have equivalent pay and benefits but does not have to have equivalent duties. When the employee is able to return to full-time work, the employee shall be placed in the same or equivalent job as he/she had when the leave began. The employee will not be required to take more FMLA leave than necessary to address the circumstances requiring the need for the leave.

If an eligible employee who meets the definition of an instructional employee requests intermittent or reduced schedule leave for reasons 3 or 4 above that is foreseeable based on planned medical treatment and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the district may require the employee to elect either

- a. to take medical leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or
- b. to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave than the regular employment position of the employee.

If the employee chooses to transfer to an alternative position it shall have equivalent pay and benefits but does not have to have equivalent duties. When the employee is able to return to full-time work, the employee shall be placed in the same or equivalent job as he/she had when the leave began. The employee will not be required to take more FMLA leave than necessary to address the circumstances requiring the need for the leave.

An eligible instructional employee who needs intermittent leave or leave on a reduced leave schedule for reasons 3 or 4 above may not be transferred to an alternative position during the period of the employee's intermittent or reduced leave schedule if, based on the foreseeable planned medical treatment, the employee would be on leave for 20 percent or less of the total number of working days over the period the leave would extend.

#### **Leave taken by eligible instructional employees near the end of the semester**

In any of the following scenarios, if the District chooses to require the eligible, instructional employee to stay on leave until the end of the semester, only the portion of the leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The required non-FMLA leave will not be considered excessive absenteeism.

#### **Leave more than 5 weeks prior to end of the semester**

If the eligible, instructional employee begins leave, due to reasons 1 through 4 listed above, more than 5 weeks prior to the end of the academic term, the District may require the employee to continue taking leave until the end of the semester, if

- (A) the leave is of at least 3 weeks duration; and
- (B) the return to employment would occur during the 3-week period before the end of the semester.

#### **Leave less than 5 weeks prior to end of the semester**

If the eligible, instructional employee begins leave, due to reasons 1, 2, or 3 listed above, during the period that commences 5 weeks prior to the end of the academic term, the District may require the employee to continue taking leave until the end of the semester, if

- (A) the leave is of greater than 2 weeks duration; and
- (B) the return to employment would occur during the 2-week period before the end of the semester.

#### **Leave less than 3 weeks prior to end of the semester**

If the eligible, instructional employee begins leave, due to 1, 2, or 3 listed above, during the period that commences 3 weeks prior to the end of the semester and the duration of the leave is greater than 5 working days, the District may require the employee to continue to take leave until the end of the semester.

## **SECTION TWO**

## **FMLA LEAVE CONNECTED TO MILITARY SERVICE**

### **Leave Eligibility**

The FMLA provision of military associated leave is in two categories. Each one has some of its own definitions and stipulations. Therefore, they are dealt with separately in this Section of the policy. Definitions different than those in Section One are included under the respective reason for leave. Definitions that are the same as in Section One are NOT repeated in this Section.

### **QUALIFYING EXIGENCY**

An eligible employee may take FMLA leave for any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. Examples include issues involved with short-notice deployment, military events and related activities, childcare and school activities, the need for financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and other activities as defined by federal regulations.<sup>H13</sup>

### **Definitions:**

**Covered active duty** means

- in the case of a member of a **regular** component of the Armed Forces, duty during deployment of the member with the armed forces to a foreign country; and
- in the case of a member of a **reserve** component of the Armed Forces, duty during deployment of the member with the armed forces to a foreign country under a call to order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

**Son or daughter on active duty or call to active duty status** means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

### **Certification**<sup>H14</sup>

The District may require the eligible employee to obtain certification to help the district determine if the requested leave qualifies for FMLA leave for the purposes of a qualifying exigency. The District may deny FMLA leave if an eligible employee fails to provide requested certification.

### **Employee Notice to District**

#### **Foreseeable Leave:**

When the necessity for leave for any qualifying exigency is foreseeable, whether because the spouse, son, daughter, or parent of the employee is on covered active duty, or because of notification of an impending call or order to covered active duty, the employee shall provide such notice to the District as is reasonable and practicable regardless of how far in advance the leave is foreseeable. As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.

#### **Unforeseeable Leave:**

When the approximate timing of the need for leave is not foreseeable, an employee shall provide the District notice of the need for leave as soon as practicable given the facts and circumstances of the particular case. Ordinarily, the employee shall notify the District within two (2) working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. Notice may be provided in person, by telephone, telegraph, fax, or other electronic means. If the eligible employee fails to notify the District as required unless the failure to comply is justified by unusual circumstances, the FMLA leave may be delayed or denied.

### **Substitution of Paid Leave**

When an employee's leave has been designated as FMLA leave any qualifying exigency, the District requires employees to substitute accrued vacation, or personal leave for the period of FMLA leave.

### **Intermittent or Reduced Schedule Leave**

Eligible employees may take intermittent or reduced schedule leave for any qualifying exigency. The employee shall provide the district with as much notice as is practicable.



### **Leave taken by an eligible instructional employees more than 5 weeks prior to end of the semester**

If an eligible, instructional employee begins leave due to any qualifying exigency more than 5 weeks prior to the end of the semester, the District may require the employee to continue taking leave until the end of the semester, if

(A) the leave is of at least 3 weeks duration; and

(B) the return to employment would occur during the 3-week period before the end of the semester.

If the District chooses to require the eligible, instructional employee to stay on leave until the end of the semester, only the portion of the leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement.

### **SERIOUS ILLNESS**

An eligible employee is eligible for leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury under the following conditions and definitions.

#### **Definitions:**

Covered Service Member is

1. a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
2. a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

Outpatient Status: used in respect to a covered service member, means the status of a member of the Armed Forces assigned to

- A) a military medical treatment facility as an outpatient; or
- B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Parent of a covered servicemember: is a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law."

Serious Injury or Illness:

- (A) in the case of a member of the Armed Forces, including the National Guard or Reserves, it means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating and
- (B) in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during a period as a covered service member defined in this policy, it means a qualifying (as defined by the U.S. Secretary of Labor) injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

Son or daughter of a covered servicemember means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.<sup>2</sup>

Year: for leave to care for the serious injury or illness of a covered service member, the twelve (12) month period begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date.

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a **covered service member** shall be entitled to a total of 26 weeks of leave during one 12-month period to care for the service member who has a serious injury or illness as defined in this policy. An eligible employee who cares for such a covered

service member continues to be limited for reasons 1 through 4 in Section One and for any qualifying exigency to a total of 12 weeks of leave during a year as defined in this policy. For example, an eligible employee who cares for such a covered service member for 16 weeks during a 12 month period could only take a total of 10

weeks for reasons 1 through 4 in Section One and for any qualifying exigency. An eligible employee may not take more than 12 weeks of FMLA leave for reasons 1 through 4 in Section One and for any qualifying exigency regardless of how little leave the eligible employee may take to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury.

If husband and wife are both eligible employees employed by the District, the husband and wife are entitled to a combined total of 26 weeks of leave during one 12-month period to care for their spouse, son, daughter, parent, or next of kin who is a **covered service member** with a serious injury or illness as defined in this policy. A husband and wife who care for such a covered service member continues to be limited to a combined total of 12 weeks FMLA leave for reasons 1 through 3 in Section One and for any qualifying exigency during a year as defined in this policy. For example, a husband and wife who are both eligible employees and who care for such a covered service member for 16 weeks during a 12 month period could only take a combined total of 10 weeks for reasons 1 through 3 in Section One and for any qualifying exigency.

### **Medical Certification**<sup>1415</sup>

The District may require the eligible employee to obtain certification of the covered service member's serious health condition to help the District determine if the requested leave qualifies for FMLA leave. The District may deny FMLA leave if an eligible employee fails to provide requested certification.

### **Employee Notice to District**

#### **Foreseeable Leave:**

When the need for leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury is clearly foreseeable at least 30 days in advance, the employee shall provide the District with not less than 30 days' notice before the date the leave is to begin of the employee's intention to take leave for the specified reason. An eligible employee who has no reasonable excuse for his/her failure to provide the District with timely advance notice of the need for FMLA leave may delay the FMLA coverage of such leave until 30 days after the date the employee provides notice.

If the need for FMLA leave is foreseeable less than 30 days in advance, the employee shall notify the District as soon as practicable. If the employee fails to notify as soon as practicable, the District may delay granting FMLA leave for the length of time that the employee should have provided notice and when the employee actually gave notice.

When the need for leave is to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury, the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the district subject to the approval of the health care provider of the spouse, son, daughter, or parent of the employee.

#### **Unforeseeable Leave:**

When the approximate timing of the need for leave is not foreseeable, an employee shall provide the District notice of the need for leave as soon as practicable given the facts and circumstances of the particular case. Ordinarily, the employee shall notify the District within two (2) working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. Notice may be provided in person, by telephone, telegraph, fax, or other electronic means. If the eligible employee fails to notify the District as required unless the failure to comply is justified by unusual circumstances, the FMLA leave may be delayed or denied.

### **Substitution of Paid Leave**

When an employee's leave has been designated as FMLA leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury, the District requires employees to substitute accrued sick, vacation, or personal leave for the period of FMLA leave.

### **Intermittent or Reduced Schedule Leave**

To the extent practicable, employees requesting intermittent or reduced schedule leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury shall provide the District with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave.

Eligible employees may take intermittent or reduced schedule FMLA leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury when the medical need is best accommodated by such a schedule. The eligible employee shall make a reasonable effort to schedule the

treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider.

When granting leave on an intermittent or reduced schedule to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury that is foreseeable based on planned medical treatment, the District may temporarily transfer non-instructional eligible employees for the period of scheduled intermittent or reduced leave to an alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. The alternative position shall have equivalent pay and benefits but does not have to have equivalent duties. When the employee is able to return to full-time work, the employee shall be placed in the same or equivalent job as he/she had when the leave began. Specifically, upon returning from FMLA leave, an employee may be assigned to another position that is not necessarily the same as the employee's former job assignment. The employee will not be required to take more FMLA leave than necessary to address the circumstances requiring the need for the leave.

If an eligible employee who meets the definition of an instructional employee requests intermittent or reduced schedule leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury that is foreseeable based on planned medical treatment and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the District may require the employee to choose either

- a. to take medical leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or
- b. to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave than the regular employment position of the employee.

If the employee chooses to transfer to an alternative position it shall have equivalent pay and benefits but does not have to have equivalent duties. When the employee is able to return to full-time work, the employee shall be placed in the same or equivalent job as he/she had when the leave began. Specifically, upon returning from FMLA leave, a teacher may be assigned to another position that is not necessarily the same as the teacher's former job assignment. The employee will not be required to take more FMLA leave than necessary to address the circumstances the required the need for the leave.

An eligible instructional employee, who needs intermittent leave or leave on a reduced leave schedule leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury, may not be transferred to an alternative position during the period of the employee's intermittent or reduced leave schedule if, based on the foreseeable planned medical treatment, the employee would be on leave for 20 percent or less of the total number of working days over the period the leave would extend.

#### **Leave taken by eligible instructional employees near the end of the academic the semester**

In any of the following scenarios, if the district chooses to require the eligible, instructional employee to stay on leave until the end of the semester, only the portion of the leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The excess non-FMLA leave will not be considered excessive absenteeism.

#### **Leave more than 5 weeks prior to end of the semester**

If the eligible, instructional employee begins leave, for any qualifying exigency or to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury more than 5 weeks prior to the end of the semester, the District may require the employee to continue taking leave until the end of the semester, if

(A) the leave is of at least 3 weeks duration; and

(B) the return to employment would occur during the 3-week period before the end of the semester.

#### **Leave less than 5 weeks prior to end of the semester**

If the eligible, instructional employee begins leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury during the period that commences 5 weeks prior to the end of the semester, the District may require the employee to continue taking leave until the end of the semester, if

(A) the leave is of greater than 2 weeks duration; and

(B) the return to employment would occur during the 2-week period before the end of the semester.

### Leave less than 3 weeks prior to end of the semester

If the eligible, instructional employee begins leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury during the period that commences 3 weeks prior to the end of the semester and the duration of the leave is greater than 5 working days, the District may require the employee to continue to take leave until the end of the semester.

Notes: Determining whether an absence qualifies as FMLA leave is a **DISTRICT** responsibility and not the employee's. While much of the statutes' language refers to an employee's request for FMLA leave, the employee has **NO** mandatory responsibility for initiating the exchange of information that might relate his/her absence to that of the FMLA. The District has the right and the duty to ask for enough information concerning an employee's absence to make a determination. The employee has the responsibility and duty to respond to questions asked in an effort for the District to make the initial determination. Any issue of medical certification to be provided by the employee is secondary to that of informal questioning to determine whether the absence does in fact, fall under the FMLA umbrella. The District must fulfill its responsibility for the posting of employee FMLA notice requirements to make those requirements enforceable. This is done through posting the notices available at the link in footnote #<sup>14</sup> **AND** by the employee's receipt of this policy in the employee handbook.

<sup>1</sup> It is possible for a full time employee to be eligible for FMLA leave one year and not the next. For example, if an employee on a 190 day contract takes the full 12 weeks of FMLA leave in year one, that would mean the employee only worked 130 days. Assuming the employee is credited for 8 hours per workday, the employee would have only worked 1040 (130 x 8=1040) which would make the employee ineligible for FMLA leave for the year following the year in which the employee took the leave.

<sup>2</sup> The Wage and Hour Division of the Department of Labor has issued a Guidance to help interpret the scope of the definition of "son or daughter" as it applies to an employee standing "in loco parentis" to a child. The following quote from the Guidance is offered to give an idea of the complexity of the definition. (The Guidance, in full, is available by calling the ASBA office or at the link in footnote #4.)  
Congress intended the definition of "son or daughter" to reflect "the reality that many children in the United States today do not live in traditional 'nuclear' families with their biological father and mother. Increasingly, those who find themselves in need of workplace accommodation of their child care responsibilities are not the biological parent of the children they care for, but their adoptive, step, or foster parents, their guardians, or sometimes simply their grandparents or other relatives or adults." Congress stated that the definition was intended to be "construed to ensure that an employee who actually has day-to-day responsibility for caring for a child is entitled to leave even if the employee does not have a biological or legal relationship to that child."

<sup>34</sup> A Department of Labor poster along with several additional forms that are necessary to fulfill FMLA's requirements are available at <http://www.dol.gov/whd/fmla/index.htm>. Please note that the DOL forms lack the required disclaimer required by the Genetic Information Nondiscrimination Act (GINA). We suggest that you include the following language taken from the final rule implementing the GINA:  
The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

<sup>45</sup> We suggest you use the Department of Labor's *Notice of Eligibility and Rights and Responsibilities* form (otherwise known as Appendix D) to help you fulfill the requirements of this section. It's available at the link in footnote #<sup>14</sup> or by calling the ASBA office. If due to receipt of the medical certification, it turns out that the leave does not qualify, you will need to readjust the available FMLA leave accordingly.

<sup>56</sup> As used in this policy, "applicable" is a very important word. Some leave taken under FMLA also applies to sick leave and therefore, the employee will get paid for the leave to the extent the employee has sick leave accrued. Other leave taken under FMLA is not applicable to sick leave and therefore the FMLA leave is unpaid. For instance, "applicable leave" in terms of time taken under FMLA due to the birth of a child will vary depending on the language in your District's policy on sick leave. For instance, if sick leave may be taken "for reason of personal illness or illness in the immediate family" (based on the statutory definition in 6-17-1202, and an employee gives birth to a child, she may take sick leave for the amount of time that her personal physician deems it necessary for her to physically recover from childbirth. Once the medically necessary time has passed, sick leave is no longer appropriate and cannot be used. While under the FMLA, the employee could take additional time off work, she would need to take unpaid FMLA leave for this purpose, unless she



had personal days or vacation days available. Consult policy 3.8—LICENSED PERSONNEL SICK LEAVE when making the determination of what sick leave qualifies under both policies.

<sup>41</sup><sup>12</sup> The Department of Labor’s *Designation Notice* has entries that address this section’s requirements. It’s very helpful. Unfortunately, the titles of the DOL forms leave a lot to be desired. The Designation notice **and** the *Medical Condition Certification* form are both listed as Appendix E. For this section you will actually need both of them; the *Designation Notice* to fulfill your notice requirements and the medical certification form to enable you to determine if the employee’s leave is actually covered under the FMLA. They are both available at the link in footnote #<sup>1</sup><sup>4</sup> or by calling the ASBA office.

<sup>42</sup><sup>13</sup> The types and amounts of leave available for a particular type of qualifying exigency are covered in 29 C.F.R. § 825.126. Call the ASBA office for a copy. While the current CFR has not been updated since the FMLA law was amended, it can still be helpful to give an idea of the types of circumstances that trigger leave eligibility.

<sup>43</sup><sup>14</sup> You can use Appendix G, *Certification of Qualifying Exigency for Military Family Leave* to obtain the certification. (It hasn’t been updated to meet the changes in the FMLA law, but it will work. It’s available at the link in footnote #<sup>1</sup><sup>4</sup> or by calling the ASBA office.

<sup>44</sup><sup>15</sup> You can use Appendix H, *Covered Service Member Serious Injury* form to obtain the certification. It’s available at the link in footnote #<sup>1</sup><sup>4</sup> or by calling the ASBA office.

Cross Reference: 3.8—LICENSED PERSONNEL SICK LEAVE

Legal References: 29 USC §§ 2601 et seq.  
29 CFR part 825

Date Adopted: 5/19/03

Last Revised: 6/16/08; 3/13/12; 4/22/2013

### **3.33—ASSIGNMENT OF EXTRA DUTIES FOR LICENSED PERSONNEL**

From time to time extra duties may be assigned to certified personnel by the school principal or the Superintendent as circumstances dictate.

Legal Reference: A.C.A. § 6-17-201 Date Adopted: 4-19-04 Last Revised:

### **3.34—LICENSED PERSONNEL CELL PHONE USE**

Use of cell phones or other electronic communication devices by employees during instructional time for other than instructional purposes is strictly forbidden unless specifically approved in advance by the superintendent, building principal, or their designees.

District staff shall not be given cell phones or computers for any purpose other than their specific use associated with school business. School employees who use a school issued cell phones and/or computers for non-school purposes, except as permitted by District policy, shall be subject to discipline, up to and including termination. School employees who are issued District cell phones due to the requirements of their position may use the phone for personal use on an “as needed” basis provided it is not during instructional time.

All employees are forbidden from using school issued cell phones while driving any vehicle at any time. Violation may result in disciplinary action up to and including termination.

Notes: The IRS has changed its position regarding the use of district issued cell phones for personal use for those employees who have a genuine **need** for a cell phone due to their job’s duties. Cell phones **cannot** be issued as a fringe benefit, but only as a “legitimate” need related to their job’s responsibilities. There is no longer a need to keep track of personal calls and claim their value as income. The district has the option of supplying the phone directly to the employee or of reimbursing the employee for the cost of his/her personal phone that is used for both District and personal purposes. Any such reimbursement can only be for the specific employee and not any other individuals associated with that employee’s cell phone plan. There has been no change to the use of school computers for personal purposes.

When considering the pros and cons of school issued technology, keep in mind that any correspondence made on such technology (cell phone, iPad, computer) would be subject to inspection under the Freedom of Information Act. Because it is district issued, there would be no differentiation between personal and school use.

Cross References: 4.47— POSSESSION AND USE OF CELL PHONES, BEEPERS, ETC.  
7.14—USE OF DISTRICT CELL PHONES AND COMPUTERS

Legal Reference: IRS Publication 15 B

Date Adopted: 4-19-2004

Last Revised: 12-21-2006; 3-13-12; 4-22-13

### **3.35 —CERTIFIED PERSONNEL BENEFITS**

The Bismarck School District provides its certified personnel benefits consisting of the following.

The priceless reward of helping shape the life and future of our children;

Health insurance assistance;

Contribution to the teacher retirement system;

One sick leave day per contract calendar month, or greater portion thereof; and

Two Personal days.

Bereavement leave

Legal Reference: A.C.A. § 6-17-201

Date Adopted: 4-19-04 Last Revised: 6/20/11

### **3.36 —LICENSED PERSONNEL DISMISSAL AND NON-RENEWAL**

For procedures relating to the termination and non-renewal of teachers, please refer to the Arkansas Teacher Fair Dismissal Act A.C.A. §§ 6-17-1501 through 1510. . A copy of the Act is available for review in the office of the principal of each school building.

Legal Reference: A.C.A. § 6-17-201

Date Adopted: 4-19-04 Last Revised:

### **3.37 —ASSIGNMENT OF TEACHER AIDES**

The assignment of teacher aides shall be made by the principal or his/her designee. Changes in the assignments may be made as necessary due to changes in the student population, teacher changes, and to best

meet the educational needs of the students. **Note:** ASBA realizes a policy regarding teacher aides has no place in the certified personnel section, but state law now mandates it anyway.  
Legal Reference: A.C.A. § 6-17-201 Date Adopted: 4.19-04 Last Revised:

### 3.38 —CERTIFIED PERSONNEL RESPONSIBILITIES GOVERNING BULLYING

A school principal or his or her designee who receives a credible report or complaint of bullying shall promptly investigate the complaint or report and make a record of the investigation and any action taken as a result of the investigation.

**Definitions:** **Attribute** means an actual or perceived personal characteristic including without limitation race, color, religion, ancestry, national origin, socioeconomic status, academic status, disability, gender, gender identity, physical appearance, health condition, or sexual orientation; **Bullying** means the intentional harassment, intimidation, humiliation, ridicule, defamation, or threat or incitement of violence by a student against another student or public school employee by a written, verbal, electronic, or physical act that may address an attribute of the other student, public school employee, or person with whom the other student or public school employee is associated and that causes or creates actual or reasonably foreseeable:

1. Physical harm to a public school employee or student or damage to the public school employee's or student's property;  
5. Substantial interference with a student's education or with a public school employee's role in education; e) A hostile educational environment for one (1) or more students or public school employees due to the severity, persistence, or pervasiveness of the act; or

H. Substantial disruption of the orderly operation of the school or educational environment; **Electronic act** means without limitation a communication or image transmitted by means of an electronic device, including without limitation a telephone, wireless phone or other wireless communications device, computer, or pager that results in the substantial disruption of the orderly operation of the school or educational environment. Electronic acts of bullying are prohibited whether or not the electronic act originated on school property or with school equipment, if the electronic act is directed specifically at students or school personnel and maliciously intended for the purpose of disrupting school, and has a high likelihood of succeeding in that purpose; **Harassment** means a pattern of unwelcome verbal or physical conduct relating to another person's constitutionally or statutorily protected status that causes, or reasonably should be expected to cause, substantial interference with the other's performance in the school environment; and **Substantial disruption** means without limitation that any one or more of the following occur as a result of the bullying:

x. Necessary cessation of instruction or educational activities;  
y. Inability of students or educational staff to focus on learning or function as an educational unit because of a hostile environment;  
z. Severe or repetitive disciplinary measures are needed in the classroom or during educational activities; or aa. Exhibition of other behaviors by students or educational staff that substantially interfere with the learning environment.

Examples of "Bullying" may include but are not limited to a pattern of behavior involving one or more of the following:

- a. Sarcastic comments "compliments" about another student's personal appearance or actual or perceived attributes,
- b. Pointed questions intended to embarrass or humiliate,
- c. Mocking, taunting or belittling,
- d. Non-verbal threats and/or intimidation such as "fronting" or "chesting" a person,
- e. Demeaning humor relating to a student's race, gender, ethnicity or actual or perceived attributes,
- f. Blackmail, extortion, demands for protection money or other involuntary donations or loans,
- g. Blocking access to school property or facilities,

- h. Deliberate physical contact or injury to person or property,
- i. Stealing or hiding books or belongings, and/or
- j. Threats of harm to student(s), possessions, or others.

Legal Reference: A.C.A. § 6-18-514

Date Adopted: 8-18-2004 Last Revised: 12-21-2006 11-19-2007; 6/20/11

### **3.39 — LICENSED PERSONNEL RECORDS AND REPORTS**

The superintendent or his/her designee shall determine, by individual or by position, those records a teacher is responsible to keep and those reports he/she is required to maintain. It is a requirement of employment that all required records and reports be completed, submitted, or otherwise tendered, and be accepted by the principal or superintendent as complete and satisfactory, before the last month's pay will be released to the certified employee.

Legal Reference: A.C.A. § 6-17-104

Date Adopted: 11-19-2007 Last Revised:

### **3.40 — LICENSED PERSONNEL DUTY TO REPORT CHILD ABUSE, MALTREATMENT OR NEGLECT**

It is the statutory duty of certified school district employees who have reasonable cause to suspect child abuse or maltreatment to directly and personally report these suspicions to the Arkansas Child Abuse Hotline, by calling 1-800-482-5964. Failure to report suspected child abuse, maltreatment or neglect by calling the Hotline can lead to criminal prosecution and individual civil liability of the person who has this duty. Notification of local or state law enforcement does not satisfy the duty to report; only notification by means of the Child Abuse Hotline discharges this duty.

The duty to report suspected child abuse or maltreatment is a direct and personal duty, and cannot be assigned or delegated to another person. There is no duty to investigate, confirm or substantiate statements a student may have made which form the basis of the reasonable cause to believe that the student may have been abused or subjected to maltreatment by another person; however, a person with a duty to report may find it helpful to make a limited inquiry to assist in the formation of a belief that child abuse, maltreatment or neglect has occurred, or to rule out such a belief<sup>1</sup>. Employees and volunteers who call the Child Abuse Hotline in good faith are immune from civil liability and criminal prosecution. By law, no school district or school district employee may prohibit or restrict an employee or volunteer from directly reporting suspected child abuse or maltreatment, or require that any person notify or seek permission from any person before making a report to the Child Abuse Hotline. Notes: This policy is similar to Policy 8.34. If you change this policy, review 8.34 at the same time to ensure applicable consistency between the two. <sup>1</sup> This is a delicate matter and the district would be wise to avail itself of professional development in this area available from DHS and other sources. Act 1236 of 2009, codified at A.C.A. § 6-61-133, requires professional development related to child maltreatment for licensed employees. Language to this effect has been added to policy 3.6—CERTIFIED PERSONNEL EMPLOYEE TRAINING.

Legal References:

§ 12-18-107

§ 12-18-201 et seq.

§ 12-18-402

Date Adopted: 6-16-08 Last Revised: 6/20/11

#### **3.40.1—BEREAVEMENT LEAVE**

A three (3) day paid bereavement leave is authorized upon the death of each immediate family member. Immediate family is defined as: spouse, children, parents, grandparents, siblings, children's spouse, spouse's parents and grandchildren. This leave is in addition to sick leave and personal leave. The principal should be notified as soon as possible.



Date Adopted: 5-19-03 Last revised: \*4-19-04 6-16-08

### **3.41— LICENSED PERSONNEL VIDEO SURVEILLANCE AND OTHER MONITORING**

The Board of Directors has a responsibility to maintain discipline, protect the safety, security, and welfare of its students, staff, and visitors while at the same time safeguarding district facilities, vehicles, and equipment. As part of fulfilling this responsibility, the board authorizes the use of video/audio surveillance cameras, automatic identification, data compilation devices, and technology capable of tracking the physical location of district equipment, students, and/or personnel.

The placement of video/audio surveillance cameras shall be based on the presumption and belief that students, staff and visitors have no reasonable expectation of privacy anywhere on or near school property, facilities, vehicles, or equipment, with the exception of places such as rest rooms or dressing areas where an expectation of bodily privacy is reasonable and customary.

Signs shall be posted on district property and in or on district vehicles to notify students, staff, and visitors that video cameras may be in use. Violations of school personnel policies or laws caught by the cameras and other technologies authorized in this policy may result in disciplinary action.

The district shall retain copies of video recordings until they are erased which may be accomplished by either deletion or copying over with a new recording.

Videos, automatic identification, or data compilations containing evidence of a violation of district personnel policies and/or state or federal law shall be retained until the issue of the misconduct is no longer subject to review or appeal as determined by board policy or staff handbook; any release or viewing of such records shall be in accordance with current law.

Staff who vandalize, damage, defeat, disable, or render inoperable (temporarily or permanently) surveillance cameras and equipment, automatic identification, or data compilation devices shall be subject to appropriate disciplinary action and referral to appropriate law enforcement authorities.

Video recordings and automatic identification or data compilation records may become a part of a staff member's personnel record.

Date Adopted: 6/20/11 Last Revised:

#### **3.41.1—SCHOOL BUS DRIVER'S USE OF CELL PHONE**

Any driver of a motor vehicle which is privately owned and operated for compensation, or which is owned, leased, or otherwise operated by, or for the benefit of the District, and is operated for the transportation of children to or from school or school sponsored activity shall not operate a cell phone unless the vehicle is safely off the road with the parking brake engaged.

Legal Reference: ADE Rules and Regulations Governing Mobile Phone Usage by School Bus Drivers

Date Adopted: 5-19-03 Last Revised:

### **3.42—OBTAINING and RELEASING STUDENT'S FREE AND REDUCED PRICE MEAL ELIGIBILITY INFORMATION**

#### **Obtaining Eligibility Information**

A fundamental underpinning of the National School Lunch and School Breakfast Programs (Programs) is that in their implementation, there will be no physical segregation of, discrimination against, or overt identification of children who are eligible for the Program's benefits. While the requirements of the Programs are defined in much greater detail in federal statutes and pertinent Code of Federal Regulations, this policy is designed to help employees understand prohibitions on how the student information is obtained and/or released through the Programs. Employees with the greatest responsibility for implementing and monitoring the Programs should obtain the training necessary to become fully aware of the nuances of their responsibilities.

The District is required to inform households with children enrolled in District schools of the availability of the Programs and of how the household may apply for Program benefits. However, the District and anyone employed by the district is **strictly forbidden** from **requiring** any household or student within a household from submitting an application to participate in the program. There are NO exceptions to this prohibition and it would apply, for example, to the offer of incentives for completed forms, or disincentives or negative consequences for failing to submit or complete an application. Put simply, federal law requires that the names of the children shall not be published, posted or announced in any manner.

In addition to potential federal criminal penalties that may be filed against a staff member who violates this prohibition, the employee shall be subject to discipline up to and including termination.

### Releasing Eligibility Information

As part of the district's participation in the National School Lunch Program and the School Breakfast Program, the district collects eligibility data from its students. The data's confidentiality is very important and is governed by federal law. The district has made the determination to release student eligibility status or information as permitted by law. Federal law governs how eligibility data may be released and to whom. The district will take the following steps to ensure its confidentiality:

Some data may be released to government agencies or programs authorized by law to receive such data without parental consent, while other data may only be released after obtaining parental consent. In both instances, allowable information shall only be released on a need to know basis to individuals authorized to receive the data. The recipients shall sign an agreement with the district specifying the names or titles of the persons who may have access to the eligibility information. The agreement shall further specify the specific purpose(s) for which the data will be used and how the recipient(s) shall protect the data from further, unauthorized disclosures.

The superintendent shall designate the staff member(s) responsible for making eligibility determinations. Release of eligibility information to other district staff shall be limited to as few individuals as possible who shall have a specific need to know such information to perform their job responsibilities. Principals, counselors, teachers, and administrators shall not have routine access to eligibility information or status.

Each staff person with access to individual eligibility information shall be notified of their personal liability for its unauthorized disclosure and shall receive appropriate training on the laws governing the restrictions of such information.

Notes: The Child Nutrition Unit of the ADE website (<http://cnm.k12.ar.us>) has the referenced Commissioner's Memos as well as helpful information to develop your policy statement packet. Additionally, Commissioner's Memos FIN 09-041 has two attachments that will go a long way toward explaining the restrictions on the release of eligibility information and status.

The penalty for improper disclosure of eligibility information is a fine of not more than \$1000 per student name if a violation is by either the district or a person in the disclosure without authorization under federal confidentiality regulations and/or imprisonment of not more than one year.

The district owns the data and has the right to choose whether or not to release it to **anyone**. Therefore, the district must make the decisions concerning its release. With the ownership comes the responsibility to ensure proper security of the data.

Legal References: Commissioner's Memos IA-05-018, FIN 09-041, IA 99-011, and FIN 13-018  
ADE Eligibility Manual for School Meals Revised July 2012  
7 CFR 210.1 – 210.31  
7 CFR 220.1 – 220.22  
7 CFR 245.5, 245.6, 245.8  
42 USC 1758(b)(6)

Date Adopted: 4/22/13

Last Revised:

### **3.43—DUTY OF LICENSED EMPLOYEES TO MAINTAIN LICENSE IN GOOD STANDING**

It is the responsibility of each teacher, and not the district, to keep his/her teaching license continuously renewed with no lapses in licensure, and in good standing with the State Board of Education. Failure of a teacher to do so will be grounds for termination.

Legal References: A.C.A. § 6-17-401

Date Adopted: 3/13/12 Last Revised:

### 3.44—LICENSED PERSONNEL WORKPLACE INJURIES AND WORKERS' COMPENSATION

The district provides Workers' Compensation Insurance, as required by law. Employees who sustain **any** injury at work must immediately notify their immediate supervisor, or in the absence of their immediate supervisor notify the superintendent. An injured employee must fill out a Form N and the employee's supervisor will determine whether to report the claim or to file the paperwork if the injury requires neither medical treatment or lost work time. While many injuries will require no medical treatment or time lost at work, should the need for treatment arise later, it is important that there be a record that the injury occurred. All employees have a duty to provide information and make statements as requested for the purposes of the claim assessment and investigation.

For injuries requiring medical attention, the district will exercise its right to designate the initial treating physician and an injured employee will be directed to seek medical attention, if necessary, from a specific physician or clinic.

A Workers' Compensation absence may run concurrently with FMLA leave (policy 3.32) when the injury is one that meets the criteria for a serious health condition. To the extent that workers compensation benefits and FMLA leave run concurrently, the employee will be charged for any paid leave accrued by the employee at the rate necessary to bring the total amount of combined income up to 100% of usual contracted daily rate of pay. If the health care provider treating the employee for the workers compensation injury certifies the employee is able to return to a "light duty job," but is unable to return to the employee's same or equivalent job, the employee may decline the District's offer of a "light duty job." As a result, the employee may lose his/her workers' compensation payments, but for the duration of the employee's FMLA leave, the employee will be paid for the leave to the extent that the employee has accrued applicable leave.

To the extent an employee has accrued sick leave and a WC claim has been filed:

- the employee will be charged for a day's sick leave for the all days missed until such time as the WC claim has been approved or denied;
- an employee whose WC claim is accepted by the WC insurance carrier as compensable and who is absent for eight or more days shall be charged sick leave at the rate necessary, when combined with WC benefits, to bring the total amount of combined income up to 100% of the employee's usual contracted daily rate of pay;
- an employee whose WC claim is accepted by the WC insurance carrier as compensable and is absent for 14 or more days will be credited back that portion of sick leave for the first seven (7) days of absence that is not necessary to have brought the total amount of combined income up to 100% of the employee's usual contracted gross pay.

Cross Reference: 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE

Legal References: Ark. Workers Compensation Commission RULE 099.33 - MANAGED CARE  
A.C.A. § 11-9-508(d)(5)(A)  
A.C.A. § 11-9-514(a)(3)(A)(i)

Date Adopted: 4/22/13 Last Revised:

### **3.47—DEPOSITING COLLECTED FUNDS**

From time to time, staff members may collect funds in the course of their employment. It is the responsibility of any staff member to deposit such funds they have collected at least biweekly into the appropriate accounts for which they have been collected. The Superintendent or his/her designee shall be responsible for determining the need for receipts for funds collected and other record keeping requirements and of notifying staff of the requirements. Staff that use any funds collected in the course of their employment for personal purposes, or who deposit such funds in a personal account, may be subject to discipline up to and including termination.

Date adopted: 6/20/11 Last Revised:

### **3.48—LICENSED PERSONNEL WEAPONS ON CAMPUS**

#### Firearms

Arkansas law A.C.A. 5-73-119 forbids the possession of a firearm on any public school campus or in or upon any school bus. All employees of this school district, including those who may possess a “concealed carry permit,” shall strictly abide by this law, with the exception of those employees who may be participating in a school-approved educational course or program involving the use of firearms such as ROTC programs, hunting safety or military education, or before or after-school hunting or rifle clubs. With the exception of firearms located in an employee’s on-campus personal residence and immediately adjacent parking area, The possession of a firearm by a school district employee anywhere on school property, including parking areas and in or upon a school bus, will result in disciplinary action being taken against the employee, which may include termination or nonrenewal of the contract of employment.

#### Other Weapons

An employee may carry, for the purpose of self-defense, a small container of tear gas or mace which for the purpose of this policy is defined as having a capacity of 150cc or less.

Legal References:      A.C.A. § 5-73-119  
                                 A.C.A. § 5-73-120  
                                 A.C.A. § 5-73-124(a)(2)

Date Adopted: 4/22/13

Last Revised

### **3.49---TEACHERS' REMOVAL OF STUDENT FROM CLASSROOM**

Note and advisement: This policy is adopted by the Board of Directors in order to bring the District into compliance with ADE rules concerning student discipline, and to incorporate the provisions of A.C.A. § 6-18-511. However, teachers should be aware that federal law governing a student's Individual Education Program (IEP) or 504 plan, or status as an individual with a disability will supersede Arkansas law. In many cases, removing a student from a classroom due to behavioral problems, will violate a student's IEP, violate a student's 504 plan, or constitute discrimination against the student due to a disability that affects the student's ability to conform his or her behavior. Teachers have been successfully sued for IEP and 504 plan violations in other jurisdictions, and teachers need to understand that violating a student's rights is outside of the scope of his or her employment, and no insurance is available or provided by the school district for either legal defense or to pay a money judgment. Teachers who rely on this law and this policy to exclude a student with special needs or a disability are assuming a grave personal risk.<sup>1</sup>

A teacher may remove a student from class whose behavior the teacher has documented to be repeatedly interfering with the teacher's ability to teach the students in the class or whose behavior is so unruly, disruptive or abusive that it interferes with the ability of the student's other classmates to learn. Students who have been removed from their classroom by a teacher shall be sent to the principal's or principal's designee's office for appropriate discipline.

The teacher's principal or the principal's designee may:

1. Place the student into another appropriate classroom;
2. Place the student into in-school suspension;
3. Place the student into the District's alternative learning environment;
4. Return the student to the class; or
5. Take other appropriate action consistent with the District's student discipline policies and state and federal law.

If a teacher removes a student from class two (2) times during any nine-week grading period, the principal or the principal's designee may not return the student to the teacher's class unless a conference has been held for the purpose of determining the cause of the problem and possible solutions. The conference is to be held with the following individuals present:

1. The principal or the principal's designee;
2. The teacher;
3. The school counselor;
4. The parents, guardians, or persons in loco parentis; and
5. The student, if appropriate.

However, the failure of the parents, guardians, or persons in loco parentis to attend the conference does not prevent any action from being taken as a result of the conference.

Legal References:      A.C.A. § 6-18-511

Arkansas Department of Education Guidelines for the Development, Review and Revision of School District Student Discipline and School Safety Policies

Date Adopted: 4/22/13

Last Revised

## **SECTION 4—STUDENT POLICIES**

# TABLE OF CONTENTS

## SECTION 4—STUDENTS

4.0—ATHLETIC AWARDS.	3
4.1—RESIDENCE REQUIREMENTS	4
4.2—ENTRANCE REQUIREMENTS	4
4.3—COMPULSORY ATTENDANCE REQUIREMENTS	7
4.4—STUDENT TRANSFERS	8
4.5—SCHOOL CHOICE	9
4.6—HOME SCHOOLING	12
4.7—ABSENCES	13
4.8—MAKE-UP WORK	14
4.9—TARDIES	16
4.10—CLOSED CAMPUS	17
4.11—EQUAL EDUCATIONAL OPPORTUNITY	18
4.12—STUDENT ORGANIZATIONS/EQUAL ACCESS	19
4.13—PRIVACY OF STUDENTS' RECORDS/ DIRECTORY INFORMATION	20
4.13F—OBJECTION TO PUBLICATION OF DIRECTORY INFORMATION	25
4.14—STUDENT PUBLICATIONS AND THE DISTRIBUTION OF LITERATURE	26
4.15—CONTACT WITH STUDENTS WHILE AT SCHOOL	28
4.16—STUDENT VISITORS	30
4.17—STUDENT DISCIPLINE	31
4.18—PROHIBITED CONDUCT	33
4.19—CONDUCT TO AND FROM SCHOOL AND TRANSPORTATION ELIGIBILITY	36
4.20—DISRUPTION OF SCHOOL	37
4.21—STUDENT ASSAULT OR BATTERY	38
4.22—WEAPONS AND DANGEROUS INSTRUMENTS	39
4.23—TOBACCO AND TOBACCO PRODUCTS	41
4.24—DRUGS AND ALCOHOL	42
4.25—STUDENT DRESS AND GROOMING	43
4.26—GANGS AND GANG ACTIVITY	45
4.27—STUDENT SEXUAL HARASSMENT	46
4.28—LASER POINTERS	48
4.29—COMPUTER USE POLICY	49
4.29F—STUDENT INTERNET USE AGREEMENT	51
4.30—SUSPENSION FROM SCHOOL	53
4.31—EXPULSION	55
4.32—SEARCH, SEIZURE, AND INTERROGATIONS	57
4.33—STUDENTS' VEHICLES	59
4.34—COMMUNICABLE DISEASES AND PARASITES	60
4.35—STUDENT MEDICATIONS	61
4.35F—MEDICATION ADMINISTRATION CONSENT FORM	64
4.35F2—MEDICATION SELF-ADMINISTRATION CONSENT FORM	65
4.35F3—GLUCAGON ADMINISTRATION AND CARRY CONSENT FORM	66
4.36—STUDENT ILLNESS/ACCIDENT	68
4.37—EMERGENCY DRILLS	69
4.38—PERMANENT RECORDS	70
4.39—CORPORAL PUNISHMENT	71
4.40—HOMELESS STUDENTS	72
4.41—PHYSICAL EXAMINATIONS OR SCREENINGS	74
4.41F—OBJECTION TO PHYSICAL EXAMINATIONS OR SCREENINGS	75
4.42—STUDENT HANDBOOK	76
4.43—BULLYING	77
4.44—ATTENDANCE REQUIREMENTS FOR STUDENTS IN GRADES 9 - 12	81
4.45—SMART CORE CURRICULUM AND GRADUATION REQUIREMENTS FOR THE CLASS OF 2010 AND ALL CLASSES THEREAFTER	84
4.46—PLEDGE OF ALLEGIANCE	83
4.47—POSSESSION AND USE OF CELL PHONES, BEEPERS, ETC.	91
4.48—VIDEO SURVEILLANCE	93
4.49—SPECIAL EDUCATION	98
4.52—STUDENTS WHO ARE FOSTER CHILDREN	99
4.53—PLACEMENT OF MULTIPLE BIRTH SIBLINGS	100
4.54—STUDENT ACCELERATION	101
LOCAL SCHOOL POLICIES	102-108

## **4.0—ATHLETIC AWARDS**

The superintendent may, if gate receipt funds are available, expend up to an average of \$100 per student, per activity, toward the purchase of student awards. All athletic gate receipts will be accounted for in a fund or funds separate from private funds.

Legal References: A.C.A. § 6-20-417

Date Adopted: 11-19-  
2007 Last Revised:



## **RESIDENCE REQUIREMENTS (4.1)**

“Reside” means to be physically present and to maintain a permanent place of abode for an average of no fewer than four (4) calendar days and nights per week for a primary purpose other than school attendance.

“Resident” means a student whose parents, legal guardians, persons having legal, lawful control of the student under order of a court, or persons standing in loco parentis reside in the school district.

“Residential address” means the physical location where the student’s parents, legal guardians, persons having legal, lawful control of the student under order of a court, or persons standing in loco parentis reside. A student may use the residential address of a legal guardian, person having legal, lawful control of the student under order of a court, or person standing in loco parentis only if the student resides at the same residential address and if the guardianship or other legal authority is not granted solely for educational needs or school attendance purposes.

The schools of the District shall be open and free through the completion of the secondary program to all persons between the ages of five (5) and twenty one (21) years whose parents, legal guardians, or other persons having lawful control of the person under an order of a court reside within the District and to all persons between those ages who have been legally transferred to the District for educational purposes.

Any person eighteen (18) years of age or older may establish a residence separate and apart from his or her parents or guardians for school attendance purposes.

In order for a person under the age of eighteen (18) years to establish a residence for the purpose of attending the District’s schools separate and apart from his or her parents, guardians, or other persons having lawful control of him or her under an order of a court, the person must actually reside in the District for a primary purpose other than that of school attendance. However, a student previously enrolled in the district who is placed under the legal guardianship of a noncustodial parent living outside the district by a custodial parent on active military duty may continue to attend district schools. A foster child who was previously enrolled in a District school and who has had a change in placement to a residence outside the District, may continue to remain enrolled in his/her current school unless the presiding court rules otherwise.

Under instances prescribed in A.C.A. § 6-18-203, a child or ward of an employee of the district or of the education coop to which the district belongs may enroll in the district even though the employee and his/her child or ward reside outside the district.

## **ENTRANCE REQUIREMENTS (4.2)**

To enroll in a school in the District, the child must be a resident of the District as defined in District policy (4.1—RESIDENCE REQUIREMENTS), meet the criteria outlined in policy 4.40 (HOMELESS STUDENTS) or in policy 4.52 (STUDENTS WHO ARE FOSTER CHILDREN), be accepted as a transfer student under the provisions of policy 4.4, or participate under a school choice option and submit the required paperwork as required by the choice option.

Students may enter kindergarten if they will attain the age of five (5) on or before August 1 of the year in which they are seeking initial enrollment. Any student who has been enrolled in a state-accredited or state-approved kindergarten program in another state for at least sixty (60) days, who will become five (5) years old during the year in which he/she is enrolled in kindergarten, and who meets the basic residency requirement for school attendance may be enrolled in kindergarten upon written request to the District.

Any child who will be six (6) years of age on or before October 1 of the school year of enrollment and who has not completed a state-accredited kindergarten program shall be evaluated by the district and may be placed in the first grade if the results of the evaluation justify placement in the first grade and the child’s parent or legal guardian agrees with placement in the first grade; otherwise the child shall be placed in kindergarten.

Any child may enter first grade in a District school if the child will attain the age of six (6) years during the school year in which the child is seeking enrollment and the child has successfully completed a

kindergarten program in a public school in Arkansas.

Any child who has been enrolled in the first grade in a state-accredited or state-approved elementary school in another state for a period of at least sixty (60) days, who will become age six (6) years during the school year in which he/she is enrolled in grade one (1), and who meets the basic residency requirements for school attendance may be enrolled in the first grade.

Students who move into the District from an accredited school shall be assigned to the same grade as they were attending in their previous school (mid-year transfers) or as they would have been assigned in their previous school. Home-schooled students shall be evaluated by the District to determine their appropriate grade placement.

The district shall make no attempt to ascertain the immigration status, legal or illegal, of any student or his/her parent or legal guardian presenting for enrollment.

Prior to the child's admission to a District school:

1. The parent, guardian, or other responsible person shall furnish the child's social security number, or if they request, the district will assign the child a nine (9) digit number designated by the department of education.
2. The parent, guardian, or other responsible person shall provide the district with one (1) of the following documents indicating the child's age:
  - a. A birth certificate;
  - b. A statement by the local registrar or a county recorder certifying the child's date of birth;
  - c. An attested baptismal certificate;
  - d. A passport;
  - e. An affidavit of the date and place of birth by the child's parent or guardian;
  - f. United States military identification; or
  - g. Previous school records.
3. The parent, guardian, or other responsible person shall indicate on school registration forms whether the child has been expelled from school in any other school district or is a party to an expulsion proceeding. The Board of Education reserves the right, after a hearing before the Board, not to allow any person who has been expelled from another school district to enroll as a student until the time of the person's expulsion has expired.
4. The child shall be age appropriately immunized from poliomyelitis, diphtheria, tetanus, pertussis, red (rubeola) measles, rubella, and other diseases as designated by the State Board of Health, or have an exemption issued by the Arkansas Department of Health. Proof of immunization shall be by a certificate of a licensed physician or a public health department acknowledging the immunization. Exemptions are also possible on an annual basis for religious reasons from the Arkansas Department of Health.<sup>4</sup> To continue such exemptions, they must be renewed at the beginning of each school year. A child enrolling in a district school and living in the household of a person on active military duty has 30 days to receive his/her initial required immunizations and 12 months to be up to date on the required immunizations for the student's age.

A student enrolled in the District who has an immunization exemption may be removed from school during an outbreak of the disease for which the student is not vaccinated at the discretion of the Arkansas Department of Health. The student may not return to the school until the outbreak has been resolved and the student's return to school is approved by the Arkansas Department of Health.

#### **UNIFORMED SERVICE MEMBER'S CHILDREN**

For the purposes of this policy, "active duty members of the uniformed services" includes members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211; "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services; "veteran" means: a person who served in the uniformed services and who was discharged or released there from under conditions other than dishonorable.

This policy applies to children of: active duty members of the uniformed services; members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one (1) year after medical discharge or retirement; and members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death. An eligible child as defined in this policy shall:

- be allowed to continue his/her enrollment at the grade level commensurate with his/her grade level he/she was in at the time of transition from his/her previous school, regardless of age;
- be eligible for enrollment in the next highest grade level, regardless of age if the student has satisfactorily completed the prerequisite grade level in his/her previous school;
- enter the District's school on the validated level from his/her previous accredited school when transferring into the District after the start of the school year;
- be enrolled in courses and programs the same as or similar to the ones the student was enrolled in his/her previous school to extent that space is available. This does not prohibit the District from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the courses/and/or programs;
- be provided services comparable to those the student with disabilities received in his/her previous school based on his/her previous Individualized Education Program (IEP). This does not preclude the District school from performing subsequent evaluations to ensure appropriate placement of the student;
- make reasonable accommodations and modifications to address the needs of an incoming student with disabilities, subject to an existing 504 or Title II Plan, necessary to provide the student with equal access to education. This does not preclude the District school from performing subsequent evaluations to ensure appropriate placement of the student;
- be enrolled by an individual who has been given the special power of attorney for the student's guardianship. The individual shall have the power to take all other actions requiring parental participation and/or consent;
- be eligible to continue attending District schools if he/she has been placed under the legal guardianship of a noncustodial parent living outside the district by a custodial parent on active military duty.

Date Adopted: 5-19-03

Last Revised: 8-15-05; 6-20-11; June - 2013

### **4.3—COMPULSORY ATTENDANCE REQUIREMENTS**

Every parent, guardian, or other person having custody or charge of any child age five (5) through seventeen

(17) years on or before August 1 of that year who resides, as defined by policy (RESIDENCE REQUIREMENTS), within the District shall enroll and send the child to a District school with the following exceptions.

- 1       The child is enrolled in private or parochial school.
- 2       The child is being home-schooled and the conditions of policy (HOME SCHOOLING) have been met.
- 3       The child will not be age six (6) on or before August 1 of that particular school year and the parent, guardian, or other person having custody or charge of the child elects not to have him/her attend kindergarten. A kindergarten waiver form prescribed by regulation of the Department of Education must be signed and on file with the District administrative office.
- 4       The child has received a high school diploma or its equivalent as determined by the State Board of Education.
- 5       The child is age sixteen (16) or above and is enrolled in a post-secondary vocational-technical institution, a community college, or a two-year or four-year institution of higher education.
- 6       The child is age sixteen (16) or seventeen (17) and has met the requirements to enroll in an adult education program as defined by A.C.A. § 6-18-201 (b).

Legal Reference: A.C.A. § 6-18-201

Date Adopted:  
5-19-03 Last  
Revised: 6/20/11

## **4.4—STUDENT TRANSFERS**

The Bismarck School District shall review and accept or reject requests for transfers, both into and out of the district, on a case by case basis \*\*at the July and December regularly scheduled board meetings.

\*On September 15, 2003 the board voted to not give legal transfers out of the district.

The District may reject a nonresident's application for admission if its acceptance would necessitate the addition of staff or classrooms, exceed the capacity of a program, class, grade level, or school building, or cause the District to provide educational services not currently provided in the affected school.<sup>2</sup> The District shall reject applications that would cause it to be out of compliance with applicable laws and regulations regarding desegregation.

Any student transferring from a school accredited by the Department of Education to a school in this district shall be placed into the same grade the student would have been in had the student remained at the former school.

Any student transferring from home school or a school that is not accredited by the Department of Education to a District school shall be evaluated by District staff to determine the student's appropriate grade placement.

The Board of Education reserves the right, after a hearing before the Board, not to allow any person who has been expelled from another district to enroll as a student until the time of the person's expulsion has expired.

Except as otherwise required or permitted by law, the responsibility for transportation of any nonresident student admitted to a school in this District shall be borne by the student or the student's parents. The District and the resident district may enter into a written agreement with the student or student's parents to provide transportation to or from the District, or both.

Legal References: A.C.A. § 6-18-316

§ 6-18-510

§ 6-15-504 (f)

A.C.A. § 9-28-113(b)(4) State Board of Education Standards of Accreditation

12.05

Date Adopted: 5-19-03

Last Revised: \*9-15-03      \*\*7-19-04 10-15-2007; 6-20-11

## **SCHOOL CHOICE (4.5)**

### **STANDARD SCHOOL CHOICE**

#### **SCHOOL CHOICE TRANSFERS OUT OF THE DISTRICT**

The District shall date and time stamp all applications for school choice transfer out of the District as they are received in the District's central office. By August 1, the District shall approve all such applications unless the approval would cause the District to have a net enrollment loss (students transferring out minus those transferring in) of more than 3% of the previous year's student enrollment. By June 1 of each year, the ADE shall determine and notify the District of the net number of allowable choice transfers. For the purpose of determining the 3% cap, siblings are counted as one student.

If, prior to August 1, the District receives sufficient copies of requests from its students to transfer to other districts to trigger the 3% cap, it may notify each parent from which it has received a school choice application and the district the student applied to transfer to that it has tentatively reached the limitation cap. The District will use confirmations of approved choice applications from receiving districts to make a final determination of what applications it received that exceeded the limitation cap and notify each district that was the recipient of an application to that effect.

Any applications for transfer out of the District which are denied due to the 3% limitation cap may be given priority for a choice transfer the following year in the order in which the District received the original application.

#### **SCHOOL CHOICE TRANSFERS INTO THE DISTRICT**

##### **CAPACITY DETERMINATION AND PUBLIC PRONOUNCEMENT**

The Board of Directors will adopt a resolution containing the capacity standards the District will use in determining whether to accept or deny a school choice application from another district's resident student. The resolution will contain the acceptance determination criteria identified by academic program, class, grade level, and individual school. The school is not obligated to add any teachers, other staff, or classrooms to accommodate choice applications. In determining the capacity of the District to accept choice applications, the Board of Directors shall consider the probable, locally generated growth in student enrollment based on recent District enrollment history.

The District shall advertise in appropriate broadcast media and either print media or on the Internet to inform students and parents in adjoining districts of the range of possible openings available under the School Choice program. The public pronouncements shall state the application deadline and the requirements and procedures for participation in the program. Such pronouncements shall be made in the spring.

##### **APPLICATION PROCESS**

The student's parent shall submit a school choice application on a form approved by the ADE to both the student's resident district and to this district which must be postmarked or hand delivered on or before the June 1 preceding the fall semester the applicant would begin school in the District. The District shall date and time stamp all applications as they are received in the District's central office. Applications postmarked or hand delivered on or after June 2 will not be accepted. Statutorily, preference is required to be given to siblings (as defined in this policy) of students who are already enrolled in the District. Therefore, siblings whose applications fit the capacity standards approved by the Board of Directors may be approved ahead of an otherwise qualified non-sibling applicant who submitted an earlier application as identified by the application's date and time stamp.

The approval of any application for a choice transfer into the District is potentially limited by the applicant's resident district's statutory limitation of losing no more than 3% of its past year's student enrollment due to choice. As such, any District approval of a choice application prior to August 1 is provisional pending a determination that the resident district's 3% cap has not been reached.

The superintendent will consider all properly submitted applications for School Choice. By August 1, the superintendent shall notify the parent and the student's resident district, in writing, of the decision to accept or reject the application.

##### **ACCEPTED APPLICATIONS**

Applications which fit within the District's stated capacity standards shall be provisionally accepted, in writing, with the notification letter stating:

- A reasonable timeline by which the student shall enroll in the District by taking the steps detailed in the letter, including submission of all required documents. If the student fails to enroll within the stated timeline, or if all necessary steps to complete the enrollment are not taken, or examination of the documentation indicates the applicant does not meet the District's stated capacity standards, the acceptance shall be null and void.
- Instructions for the renewal procedure for succeeding school years.

Students whose applications have been accepted and who have enrolled in the District are eligible to continue their enrollment until completing his/her secondary education. Continued enrollment is conditioned upon the student meeting applicable statutory and District policy requirements and the renewal procedure for succeeding school years is followed. Any student who has been accepted under choice and who either fails to initially enroll under the timelines and provisions provided in this policy or who chooses to return to his/her resident district voids the transfer and must reapply if, in the future, the student seeks another school choice transfer. A subsequent transfer application will be subject to the capacity standards applicable to the year in which the application is considered by the District.

A present or future sibling, as defined in this policy, of a student who continues enrollment in this District may enroll in the District until the sibling of the transfer student completes his/her secondary education. Applications of siblings of presently enrolled choice students are subject to the provisions of this policy including the capacity standards applicable to the year in which the sibling's application is considered by the District.

Students whose applications have been accepted and who have enrolled in the district shall not be discriminated against on the basis of gender, national origin, race, ethnicity, religion, or disability.

#### **REJECTED APPLICATIONS**

The District may reject an application for a transfer into the District under school choice if its acceptance would exceed the capacity standards specified by the Board of Director's resolution. However, the decision to accept or reject an application may not be based on the student's previous academic achievement, athletic or other extracurricular ability, English proficiency level, or previous disciplinary proceedings other than a current expulsion.

An application may be provisionally rejected if it is for an opening that was included in the District's capacity resolution, but was provisionally filled by an earlier applicant. If the provisionally approved applicant subsequently does not enroll in the District, the provisionally rejected applicant could be provisionally approved and would have to meet the acceptance requirements to be eligible to enroll in the district.

Rejection of applications shall be in writing and shall state the reason(s) for the rejection. A student whose application was rejected may request a hearing before the State Board of Education to reconsider the application which must be done, in writing to the State Board within 10 days of receiving the rejection letter from the District.

#### **FACILITIES DISTRESS CHOICE APPLICATIONS**

There are a few exceptions from the provisions of the rest of this policy that govern choice transfers triggered by facilities distress. Any student attending a school district that has been identified as being in facilities distress may transfer under the provisions of this policy, but with the three following differences.

- The transfer is only available for the duration of the time the student's resident district remains in distress;
- The student is not required to meet the June 1 application deadline; and
- The student's resident district is responsible for the cost of transporting the student to this District's school.

#### **OPPORTUNITY SCHOOL CHOICE**

Unless there is a lack of capacity at the District's school or the transfer conflicts with the provisions of a federal desegregation order applicable to the District, a student who is enrolled in or assigned to a school classified by the ADE to be in academic distress is eligible to transfer to the school closest to the student's legal residence that is not in academic distress. The student's parent or guardian, or the student if over the age of eighteen (18), must successfully complete the necessary application process by July 30 preceding the initial year of desired enrollment.

Within thirty (30) days from receipt of an application from a student seeking admission under this policy, the Superintendent shall notify in writing the parent or guardian, or the student if the student is over eighteen (18) years of age, whether the Opportunity School Choice application has been accepted or rejected. The notification

shall be sent via First-Class Mail to the address on the application.

If the application is accepted, the notification letter shall state the deadline by which the student must enroll in the receiving school or the transfer will be null and void.

If the District rejects the application, the District shall state in the notification letter the specific reasons for the rejection. A parent or guardian, or the student if the student is over eighteen (18) years of age, may appeal the District's decision to deny the application to the State Board of Education. The appeal must be in writing to the State Board of Education via certified mail, return receipt requested, no later than ten (10) calendar days, excluding weekends and legal holidays, after the notice of rejection was received from the District.

A student's enrollment under Opportunity School Choice is irrevocable for the duration of the school year and is renewable until the student completes high school or is beyond the legal age of enrollment. This provision for continuing eligibility under Opportunity Choice does not negate the student's right to apply for transfer to a district other than the student's assigned school or resident district under the Standard Choice provisions of this policy.

The District may, but is not obligated to provide transportation to and from the transferring district.

#### **TRANSFERS OUT OF, OR WITHIN, THE DISTRICT**

If a District school or the District has been classified by the ADE as being in academic distress the District shall timely notify the parent, guardian, or student, if the student is over eighteen (18) years of age, as soon as practicable after the academic distress designation is made of all options available under Opportunity Choice. The District shall offer the parent or guardian, or the student if the student is over eighteen (18) years of age, an opportunity to enroll the student in any public school or school district that has not been classified by the ADE as a public school or school district in academic distress.

Additionally the District shall request public service announcements to be made over the broadcast media and in the print media at such times and in such a manner as to inform parents or guardians of students in adjoining districts of the availability of the program, the application deadline, and the requirements and procedure for nonresident students to participate in the program.

For the purpose of this policy, "sibling" means each of two (2) or more children having a common parent in common by blood, adoption, marriage, or foster care.

#### **WITHDRAWING FROM SCHOOL**

It shall be the policy of the School Board that any student who intends to leave the district should inform the principal's office of his/her intentions and, if possible, give the address of the new school he/she will attend.

All students who withdraw from school must secure a withdrawal form from the principal's office and secure the required signatures. If this procedure is not followed, no grades will be transferred.

Date Adopted:

Last Revised: 7-20-12

6-2013



## **4.6—HOME SCHOOLING**

Parents or legal guardians desiring to provide a home school for their children must give written notice to the Superintendent of their intent to do so and sign a waiver acknowledging that the State of Arkansas is not liable for the education of their children during the time the parents choose to home school. Notice shall be given:

- 1 At the beginning of each school year, but no later than August 15;
- 2 By December 15 for parents who decide to start home schooling at the beginning of the spring semester; or
- 3 Fourteen (14) calendar days prior to withdrawing the child (provided the student is not currently under disciplinary action for violation of any written school policy, including, but not limited to, excessive absences) and at the beginning of each school year thereafter.

The parents or legal guardians shall deliver written notice in person to the Superintendent the first time such notice is given and the notice must include:

- 1 The name, date of birth, grade level, and the name and address of the school last attended, if any;
- 2 The location of the home school;
- 3 The basic core curriculum to be offered;
- 4 The proposed schedule of instruction; and
- 5 The qualifications of the parent-teacher.

To aid the District in providing a free and appropriate public education to students in need of special education services, the parents or legal guardians home-schooling their children shall provide information which might indicate the need for special education services.

Legal References: A.C.A. § 6-15-503  
A.C.A. § 6-41-206

Date Adopted: 5-19-03

Last Revised: 7-20-12

#### **ABSENCES (4.7)**

Education is more than the grades students receive in their courses. Important as that is, students' regular attendance at school is essential to their social and cultural development and helps prepare them to accept responsibilities they will face as an adult. Interactions with other students and participation in the instruction within the classroom enrich the learning environment and promote a continuity of instruction which results in higher student achievement. In recognition of the need for students to regularly attend school, the district's policy governing student absences is as follows.

Students shall not be absent, as defined in this policy more than 10 days in a semester. When a student has 5 absences, his/her parent, guardian, or person in loco parentis shall be notified that the student has missed half the allowable days for the semester. Notification shall be by telephone by the end of the school day in which such absence occurred or by regular mail with a return address sent no later than the following school day.

***Whenever a student exceeds 10 absences in a semester, the District shall notify the prosecuting authority and the parent, guardian, or person in loco parentis shall be subject to a civil penalty as prescribed by law.***

***Students with 12 absences in a course in a semester shall not receive credit for that course.*** If the student fails to receive credit for a sufficient number of courses and at the discretion of the principal after consultation with persons having knowledge of the circumstances of the absences, ***the student may be denied promotion*** or graduation. Unexcused absences, however, shall not be a reason for expulsion or dismissal of a student.

It is the Arkansas General Assembly's intention that students having absences due to illness, accident, or other unavoidable reason be given assistance in obtaining credit for their courses. Therefore, at any time prior to when a student exceeds the number of allowable absences (unless unable to do so due to unforeseen circumstances), the student, or his/her parent, guardian, or person in loco parentis may petition the school or district's administration for special arrangements to address the student's absences. If formal arrangements are granted, they shall be formalized into a written agreement which will include the conditions of the agreement and the consequences for failing to fulfill the agreement's requirements. The agreement shall be signed by the student, the student's parent, guardian, or person in loco parentis, and the school or district administrator or designee. Unless a student's absence is due to an unforeseen circumstance, the District will not accept a doctor's note for a student's absence.

If any student's Individual Education Program (IEP) or 504 Plan conflicts with this policy, the requirements of the student's IEP or 504 Plan take precedence.

Days missed due to in-school or out-of-school suspension shall not count toward the allowable number of days absent.

Revised: 6/2013

## 4.8—MAKE-UP WORK

Students who miss school due to an excused absence shall be allowed to make up the work they missed during their absence under the following rules.

- 1 Students are responsible for asking the teachers of the classes they missed what assignments they need to make up. Elementary teachers should provide assistance to younger students.
- 2 Teachers are responsible for providing the missed assignments when asked by a returning student.
- 3 Students are required to ask for their assignments on their first day back at school or their first class day after their return.
- 4 Make-up tests are to be rescheduled at the discretion of the teacher, but must be aligned with the schedule of the missed work to be made up.
- 5 Students shall have one class day to make up their work for each class day they are absent.
- 6 Make-up work which is not turned in within the make-up schedule for that assignment shall receive a zero.
- 7 Students are responsible for turning in their make-up work without the teacher having to ask for it.
- 8 Students who are absent on the day their make-up work is due must turn in their work the day they return to school whether or not the class for which the work is due meets the day of their return.
- 9 As required/permitted by the student's Individual Education Program or 504 Plan. Work may not be made up for credit for absences in excess of the number of allowable absences in a semester **unless** the absences are part of a signed agreement as permitted by policy 4.7—ABSENCES.<sup>45</sup>

**Notes:** <sup>1</sup> There are several options for amending this sentence in light of the change to policy 4.7. Here are some suggestions. "Students who miss school due to an additional absence as defined in policy 4.7 shall be allowed..." "Students who miss school shall be allowed..." "Students who miss school due to an absence shall be required..." "Students who miss school shall be required..."

<sup>42</sup> This sentence should be modified for elementary school classes.

<sup>23</sup> Select the number of days your district deems reasonable and feasible.

<sup>34</sup> Your district may choose to adopt a different schedule such as docking the work a certain percentage for each day it is late.

<sup>45</sup> The contents of this paragraph are optional and can be adjusted to the extent it remains aligned with your personalization of policy 4.7. The amended version of 4.7 does not count suspensions toward the number of allowable absences. Your district has the right to allow make up work from students for absences. Requiring all work to be made up could conceivably be seen as a deterrent for suspensions.

Cross Reference: 4.7—ABSENCES

Date Adopted:

Last Revised: 7-20-12

## **4.9—TARDIES**

Promptness is an important character trait that District staff is to encourage to model and help develop in our schools' students. At the same time, promptness is the responsibility of each student. Students who are late to class show a disregard for both the teacher and their classmates which compromises potential student achievement.

Date Adopted: 5-  
19-03 Last Revised:

#### **4.10—CLOSED CAMPUS**

All schools in the District shall operate closed campuses. Students are required to stay on campus from their arrival until dismissal at the end of the regular school day. Unless given permission to leave the campus by a school official. Students must sign out in the office upon their departure.

Date Adopted: 5-19-03

Last Revised: 7-20-12

#### **4.11—EQUAL EDUCATIONAL OPPORTUNITY**

No student in the Bismarck School District shall, on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participation in, or denied the benefits of, or subjected to discrimination under any educational program or activity sponsored by the District.

Date Adopted: 5-19-03 Last Revised:

## **4.12—STUDENT ORGANIZATIONS/EQUAL ACCESS**

Non-curriculum-related secondary school student organizations wishing to conduct meetings on school premises during non-instructional time shall not be denied equal access on the basis of the religious, political, philosophical, or other content of the speech at such meetings. Such meetings must meet the following criteria.

- 1       The meeting is to be voluntary and student initiated;
- 2       There is no sponsorship of the meeting by the school, the government, or its agents or employees;
- 3       The meeting must occur during non-instructional time;
- 4       Employees or agents of the school are present at religious meetings only in a non-participatory capacity;
- 5       The meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and
- 6       Nonschool persons may not direct, conduct, control, or regularly attend activities of student groups.

All meetings held on school premises must be scheduled and approved by the principal. The school, its agents, and employees retain the authority to maintain order and discipline, to protect the well being of students and faculty, and to assure that attendance of students at meetings is voluntary.

Fraternities, sororities, and secret societies are forbidden in the District's schools. Membership to student organizations shall not be by a vote of the organization's members, nor be restricted by the student's race, religion, sex, national origin, or other arbitrary criteria. Hazing, as defined by law, is forbidden in connection with initiation into, or affiliation with, any student organization, extracurricular activity or sport program.

Legal References: A.C.A. § 6-5-201 et seq.

§ 6-21-201 et seq. 20 U.S.C. 4071 Equal Access Act Board of Education of the Westside Community Schools v. Mergens, 496 U.S. 226 (1990)

§ 6-18-601 et seq.

Date Adopted: 5-19-03 Last Revised: 7-19-03; 6-20-11



## 4.13—PRIVACY OF STUDENTS' RECORDS/ DIRECTORY INFORMATION

Except when a court order regarding a student has been presented to the district to the contrary, all students' education records are available for inspection and copying by the parent of his/her student who is under the age of eighteen (18). At the age of eighteen (18), the right to inspect and copy a student's records transfers to the student. A student's parent or the student, if over the age of 18, requesting to review the student's education records will be allowed to do so within no more than forty five (45) days<sup>1</sup> of the request. The district forwards education records, including disciplinary records, to schools that have requested them and in which the student seeks or intends to enroll, or is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.

The district shall receive written permission before releasing education records to any agency or individual not authorized by law to receive and/or view the education records without prior parental permission. The District shall maintain a record of requests by such agencies or individuals for access to, and each disclosure of, personally identifiable information (hereinafter "PII") from the education records of each student. Disclosure of education records is authorized by law to school officials with legitimate educational interests. A personal record kept by a school staff member is **not** considered an education record if it meets the following tests.

- it is in the sole possession of the individual who made it;
- it is used only as a personal memory aid; and
- information contained in it has never been revealed or made available to any other person, except the maker's temporary substitute.

For the purposes of this policy a school official is a person employed by the school as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the school board; a person or company with whom the school has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

For the purposes of this policy a school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility, contracted duty, or duty of elected office.

The District discloses PII from an education record to appropriate parties, including parents, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. The superintendent or designee shall determine who will have access to and the responsibility for disclosing information in emergency situations.

When deciding whether to release PII in a health or safety emergency, the District may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the District determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any

person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.<sup>2</sup>

For purposes of this policy, the Bismarck School District does not distinguish between a custodial and noncustodial parent, or a non-parent such as a person acting in loco parentis or a foster parent with respect to gaining access to a student's records. Unless a court order restricting such access has been presented to the district to the contrary, the fact of a person's status as parent or guardian, alone, enables that parent or guardian to review and copy his child's records.

If there exists a court order which directs that a parent not have access to a student or his records, the parent, guardian, person acting in loco parentis, or an agent of the Department of Human Services must present a file-marked copy of such order to the building principal and the superintendent. The school will make good-faith efforts to act in accordance with such court order, but the failure to do so does not impose legal liability upon the school. The actual responsibility for enforcement of such court orders rests with the parents or guardians, their attorneys and the court which issued the order.

A parent or guardian does not have the right to remove any material from a student's records, but such parent or guardian may challenge the accuracy of a record. The right to challenge the accuracy of a record does not include the right to dispute a grade, which must be done only through the appropriate teacher and/or administrator, the decision of whom is final. A challenge to the accuracy of material contained in a student's file must be initiated with the building principal, with an appeal available to the Superintendent or his designee. The challenge shall clearly identify the part of the student's record the parent wants changed and specify why he/she believes it is inaccurate or misleading. If the school determines not to amend the record as requested, the school will notify the requesting parent or student of the decision and inform them of their right to a hearing regarding the request for amending the record. The parent or eligible student will be provided information regarding the hearing procedure when notified of the right to a hearing.<sup>3</sup>

Unless the parent or guardian of a student (or student, if above the age of eighteen [18]) objects, "directory information" about a student may be made available to the public, military recruiters, post-secondary educational institutions, prospective employers of those students, as well as school publications such as annual yearbooks and graduation announcements.<sup>4</sup> "Directory information" includes, but is not limited to, a student's name, address, telephone number, electronic mail address, photograph, date and place of birth, dates of attendance,<sup>45</sup> his/her placement on the honor role (or the receipt of other types of honors), as well as his/her participation in school clubs and extracurricular activities, among others. If the student participates in inherently public activities (for example, basketball, football, or other interscholastic activities), the publication of such information will be beyond the control of the District. "Directory information" also includes a student identification (ID) number, user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems and a student ID number or other unique personal identifier that is displayed on a student's ID badge, provided the ID cannot be used to gain access to education records

except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password or other factor known or possessed only by the authorized user,

A student's name and photograph will only be displayed on the district or school's web page(s) after receiving the written permission from the student's parent or student if over the age of 18.

The form for objecting to making directory information available is located in the back of the student handbook and must be completed and signed by the parent or age-eligible student and filed with the building principal's office no later than ten (10) school days after the beginning of each school year or the date the student is

enrolled for school. Failure to file an objection by that time is considered a specific grant of permission. The district is required to continue to honor any signed-opt out form for any student no longer in attendance at the district.

The right to opt out of the disclosure of directory information under FERPA does not prevent the District from disclosing or requiring a student to disclose the student's name, identifier, or institutional email address in a class in which the student is enrolled.<sup>6</sup>

Parents and students over the age of 18 who believe the district has failed to comply with the requirements for the lawful release of student records may file a complaint with the U.S. Department of Education at

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

notes: Districts must annually notify parents or students if over the age of 18 of the provisions of this policy and "...shall effectively notify parents who have a primary or home language other than English." (34 CFR 99.7(b)(2))

Districts may release directory information (DI) (as presently defined by the district) of former students to the extent there is not a signed prohibition against such release. As the definition of DI changes over time (for example, the addition of email addresses to the definition of DI), districts may release DI according to the current definition. It also applies to the release of information that is now defined as DI for students who left the district prior to 1974, when there was no such thing as DI.

As stated in this policy, once a student turns 18, the rights to his/her educational records transfers to the student. The release of educational records to a parent becomes permissive and not a right. At that point, the school gets to decide if it wants to release educational records to parents. The student, however, doesn't have the right to object one way or the other. If the parents don't establish dependency, once the student turns 18, the parents don't have an

absolute **right** to see their student's educational records. "Dependency" in this regard is defined according to the IRS; if the student is claimed by either of their parents (regardless of custody issues, or filing jointly or separately) as a dependent, then the rights of the parent once the student turns 18 is as described. Without dependency, the parents have no right to see their student's educational records once the student turns 18.

There are several areas of permissible release of students' PII that are not mentioned in this policy (it's not required and would make the policy very long), but that are listed in 34 CFR 99.31. One of the areas that has been greatly elaborated on in the DOE Rules, released 12/2/11, relates to the district's release of PII to an "authorized representative" for the purpose conducting an audit or evaluation of federal or state education programs. This new area is covered in 34 CFR 99.35. Both documents are available by calling the ASBA office and requesting a copy. They could come in handy when answering parents' questions regarding the release of PII.

<sup>1</sup> You may choose a lesser number of days, but you may not exceed 45 days.

<sup>2</sup> This paragraph along with the preceding paragraph are added (and permitted) due to the amendments in the Code of Federal Regulations resulting from the Virginia Tech shootings in 2007. The paragraph can also apply to the release of PII to state health officials during outbreaks of communicable diseases. This would apply, for example, to immunization records to determine which students need to be removed from the school. (See Policy 4.34).

<sup>3</sup> The requirements for conducting a hearing are addressed in 34 CFR 99.22. The district's obligations regarding the results of the hearing are covered in 34 CFR 99.21. Both are available by calling the ASBA office and requesting a copy.

<sup>4</sup> The 12/2/11 DOE Rules now provide districts with the option of greater specificity in choosing to whom it will release DI. ASBA has not amended the model policy to include this expanded option because we feel it can result in unintentional restrictions for desired release of DI. The following is the language from 34 CFR 99.37 governing this option.

In its public notice to parents and eligible students in attendance, ... an educational agency or institution may specify that disclosure of directory information will be limited to specific parties, for specific purposes, or both. When an educational agency or institution specifies that disclosure of directory information will be limited to specific parties, for specific purposes, or both, the educational agency or institution must limit its directory information disclosures to those specified in its public notice.

<sup>45</sup> Dates of attendance means the period of time during which a student attends or attended your district, e.g. an academic year or semester. It does not mean specific daily records of attendance.

<sup>6</sup> This paragraph is language from the amended 34 CFR 99.37 and is included to help eliminate the potential problem of a student (who is in a class where the student really doesn't want to be - for example JAG), who has opted out of release of DI, refusing to give the information necessary for the class.

Legal References:       A.C.A. § 9-29-113(b)(6)  
                              20 U.S.C. § 1232g  
                              20 U.S.C. § 7908 (NCLB Section 9528)  
                              34 CFR 99.3, 99.7, ~~99.31~~, 99.21, 99.22, 99.30, 99.31, 99.32, 99.33, 99.34, 99.35,  
                              99.36, 99.37, 99.63, 99.64

Cross References:       Policy 4.34—Communicable Diseases and Parasites  
                              Policy 5.20—District Web Site  
                              Policy 5.20.1—Web Site Privacy Policy  
                              Policy 5.20F1—Permission to Display Photo of Student on Web Site

Date Adopted:  
Last Revised: July 2012

## 4.13F—OBJECTION TO PUBLICATION OF DIRECTORY INFORMATION

(Not to be filed if the parent/student has no objection)

I, the undersigned, being a parent of a student, or a student eighteen (18) years of age or older, hereby note my objection to the disclosure or publication by the Bismarck School District of directory information, as defined in Policy No. 4.13 (Privacy of Students' Records), concerning the student named below. The district is required to continue to honor any signed opt-out form for any student no longer in attendance at the district.

I understand that the participation by the below-named student in any interscholastic activity, including athletics and school clubs, may make the publication of some directory information unavoidable, and the publication of such information in other forms, such as telephone directories, church directories, *etc.*, is not within the control of the District.

I understand that this form must be filed with the office of the appropriate building principal within ten (10) school days from the beginning of the current school year or the date the student is enrolled for school in order for the District to be bound by this objection. Failure to file this form within that time is a specific grant of permission to publish such information.

I object and wish to deny the disclosure or publication of directory information as follows:

Deny disclosure to military recruiters \_\_\_\_

Deny disclosure to Institutions of postsecondary education \_\_\_\_

Deny disclosure to Potential employers \_\_\_\_

Deny disclosure to all public and school sources \_\_\_\_ Selecting this option will prohibit the release of directory information to the three categories listed above along with all other public sources (such as newspapers), **AND** result in the student's directory information **not** being included in the school's yearbook and other school publications.

Deny disclosure to all public sources \_\_\_\_ Selecting this option will prohibit the release of directory information to the first three categories listed above along with all other public sources (such as newspapers), but permit the student's directory information **to be included** in the school's yearbook and other school publications.

Name of student (Printed)

Signature of parent (or student, if 18 or older)

Date form was filed (To be filled in by office personnel) Date Adopted: 5-19-03 Last Revised: 10-16-2006; 6-20-11

## **4.14—STUDENT PUBLICATIONS AND THE DISTRIBUTION OF LITERATURE**

### **Student Publications**

All publications that are supported financially by the school or by use of school facilities, or are produced in conjunction with a class shall be considered school-sponsored publications. School publications do not provide a forum for public expression. Such publications, as well as the content of student expression in school-sponsored activities, shall be subject to the editorial control of the District's administration whose actions shall be reasonably related to legitimate pedagogical concerns and adhere to the following limitations.

1 Advertising may be accepted for publications that does not condone or promote products that are inappropriate for the age and maturity of the audience or that endorse such things as tobacco, alcohol, or drugs.

2 Publications may be regulated to prohibit writings which are, in the opinion of the appropriate teacher and/or administrator, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences.

3 Publications may be regulated to refuse to publish material which might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with the shared values of a civilized social order, or to associate the school with any position other than neutrality on matters of political controversy.

4 Prohibited publications include:

- a. Those that are obscene as to minors;
- b. Those that are libelous or slanderous, including material containing defamatory falsehoods about public figures or governmental officials, which are made with knowledge of their falsity or reckless disregard of the truth;
- c. Those that constitute an unwarranted invasion of privacy as defined by state law,
- d. Publications that suggest or urge the commission of unlawful acts on the school premises;
- e. Publications which suggest or urge the violation of lawful school regulations;
- f. Hate literature that scurrilously attacks ethnic, religious, or racial groups.

### **Student Publications on School Web Pages**

Student publications that are displayed on school web pages shall follow the same guidelines as listed above plus they shall

1 Not contain any non-educational advertisements. Additionally, student web publications shall;

2 Adhere to the restrictions regarding use of Directory Information as prescribed in Policy 4.13 including not using a student's photograph when associated with the student's name unless written permission has been received from the student's parent or student if over the age of 18.

3 State that the views expressed are not necessarily those of the School Board or the employees of the district.

## **Student Distribution of Nonschool Literature, Publications, and Materials**

A student or group of students who distribute ten (10) or fewer copies of the same nonschool literature, publications, or materials (hereinafter “nonschool materials”), shall do so in a time, place, and manner that does not cause a substantial disruption of the orderly education environment. A student or group of students wishing to distribute more than ten (10) copies of nonschool materials<sup>1</sup> shall have school authorities<sup>2</sup> review their nonschool materials at least three (3) school days<sup>3</sup> in advance of their desired time of dissemination. School authorities~~2~~ shall review the nonschool materials, prior to their distribution and will bar from distribution those nonschool materials that are obscene, libelous, pervasively indecent, or advertise unlawful products or services. Material may also be barred from distribution if there is evidence that reasonably supports a forecast that a substantial disruption of the orderly operation of the school or educational environment will likely result from the distribution.<sup>4</sup> Concerns related to any denial of distribution by the principal shall be heard by the superintendent, whose decision shall be final.

The school principal or designee shall establish reasonable regulations governing the time, place, and manner of student distribution of nonschool materials.

The regulations shall:

- 1 Be narrowly drawn to promote orderly administration of school activities by preventing disruption and may not be designed to stifle expression;
- 2 Be uniformly applied to all forms of nonschool materials;
- 3 Allow no interference with classes or school activities;
- 4 Specify times, places, and manner where distribution may and may not occur<sup>5</sup>; and
- 5 Not inhibit a person’s right to accept or reject any literature distributed in accordance with the regulations.<sup>6</sup>
- 6 Students shall be responsible for the removal of excess literature that is left at the distribution point for more than 3 days.<sup>7</sup> Students are also responsible for picking up their materials from off of the ground after distribution.

The Superintendent, along with the student publications advisors, shall develop administrative regulations for the implementation of this policy. The regulations shall include definitions of terms and timelines for the review of materials.

Legal References: A.C.A. § 6-18-1202, 1203, & 1204

*Tinker v. Des Moines ISD*, 393 U.S. 503 (1969)

*Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986)

*Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988) Date

Adopted: 5-19-03 Last Revised: 10-15-2007 7-21-08



## **4.15—CONTACT WITH STUDENTS WHILE AT SCHOOL**

### **CONTACT BY PARENTS**

Parents wishing to speak to their children during the school day shall register first with the office.

### **CONTACT BY NON-CUSTODIAL PARENTS**

If there is any question concerning the legal custody of the student, the custodial parent shall present documentation to the principal or his/her designee establishing the parent's custody of the student. It shall be the responsibility of the custodial parent to make any court ordered "no contact" or other restrictions regarding the non-custodial parent known to the principal by presenting a copy of a file-marked court order. Without such a court order on file, the school will release the child to either of his/her parents. Non-custodial parents who file with the principal a date-stamped copy of current court orders granting visitation may eat lunch, volunteer in their child's classroom, or otherwise have contact with their child during school hours and the prior approval of the school's principal. Such contact is subject to the limitations outlined in Policy 4.16, Policy 6.5, and any other policies that may apply.

Unless prior arrangements have been made with the school's principal, Arkansas law provides that the transfer of a child between his/her custodial parent and non-custodial parent, when both parents are present, shall not take place on the school's property on normal school days during normal hours of school operation.

### **CONTACT BY LAW ENFORCEMENT, SOCIAL SERVICES, OR BY COURT ORDER**

State Law requires that Department of Human Services employees, local law enforcement, or agents of the Crimes Against Children Division of the Department of Arkansas State Police, may interview students without a court order for the purpose of investigating suspected child abuse. In instances where the interviewers deem it necessary, they may exercise a "72-hour hold" without first obtaining a court order. Other questioning of students by non-school personnel shall be granted only with a court order directing such questioning, with permission of the parents of a student (or the student if above eighteen [18] years of age), or in response to a subpoena or arrest warrant.

If the District makes a report to any law enforcement agency concerning student misconduct or if access to a student is granted to a law enforcement agency due to a court order, the principal or the principal's designee shall make a good faith effort to contact the student's parent, legal guardian, or other person having lawful control by court order, or person acting in loco parentis identified on student enrollment forms. The principal or the principal's designee shall not attempt to make such contact if presented documentation by the investigator that notification is prohibited because a parent, guardian, custodian, or person standing in loco parentis is named as an alleged offender of the suspected child maltreatment. This exception applies only to interview requests made by a law enforcement officer, an investigator of the Crimes Against Children Division of the Department of Arkansas State Police, or an investigator or employee of the Department of Human Services.

In instances other than those related to cases of suspected child abuse, principals must release a student to either a police officer who presents a subpoena for the student, or a warrant for arrest, or to an agent of state social services or an agent of a court with jurisdiction over a child with a court order signed by a judge. Upon release

of the student, the principal or designee shall give the student's parent, legal guardian, or other person having lawful control by court order, or person acting in loco parentis notice that the student has been taken into custody by law enforcement personnel or a state's social services agency. If the principal or designee is unable to reach the parent, he or she shall make a reasonable, good faith effort to get a message to the parent to call the principal or designee, and leave both a day and an after-hours telephone number.

Legal References: A.C.A. § 6-18-513

§ 9-13-104

§ 12-18-609, 610, 613

§ 12-18-1001, 1005

Date Adopted: 5-19-03

Last Revised: 6-20-11

#### **4.16—STUDENT VISITORS**

Student visitors in the classroom can be disruptive to the educational process. Student visitation is strongly discouraged. Any visitation to the classroom shall be allowed only with the permission of the school principal.

Date Adopted: 5-  
19-03 Last  
Revised:

#### **STUDENT DISCIPLINE (4.17)**

Consequences for disciplinary infractions will range from a minimum of verbal reprimand to a maximum of a recommendation for expulsion. Disciplinary actions will become progressively more severe if rule infractions persist. While a certain degree of consistency must be maintained; individual circumstances will be considered by school administration with each incident. The principal may choose a more severe penalty at any time based on student's past disciplinary record and the circumstances involved in the particular incident.

The Bismarck Board of Education has a responsibility to protect the health, safety, and welfare of the District's students and employees. To help maintain a safe environment conducive to high student achievement, the Board establishes policies necessary to regulate student behavior to promote an orderly school environment that is respectful of the rights of others and ensures the uniform enforcement of student discipline. Students are responsible for their conduct that occurs: at any time on the school grounds; off school grounds at a school sponsored function, activity, or event; going to and from school or a school activity.

The District's administrators or his/her designee may also take disciplinary action against a student for off-campus conduct occurring at any time that would have a detrimental impact on school discipline, the educational environment, or the welfare of the students and/or staff. A student who has committed a criminal act while off campus and whose presence on campus would cause a substantial disruption to school or endanger the welfare of other students or staff is subject to disciplinary action up to and including expulsion. Such acts could include, but are not limited to a felony or an act that would be considered a felony if committed by an adult, an assault or battery, drug law violations, or sexual misconduct of a serious nature. Any disciplinary action pursued by the district shall be in accordance with the student's appropriate due process rights.

The District's licensed personnel policy committee shall review the student discipline policies annually and may recommend changes in the policies to the Bismarck School Board. The Board has the responsibility of determining whether to approve any recommended changes to student discipline policies.

The District's student discipline policies shall be distributed to each student during the first week of school each year and to new students upon their enrollment. Each student's parent or legal guardian shall sign and return to the school an acknowledgement form documenting that they have received the policies.

It is required by law that the principal or the person in charge report to the police any incidents the person has personal knowledge of or has received information leading to a reasonable belief that a person has committed or threatened to commit an act of violence or any crime involving a deadly weapon on school property or while under school supervision. If the person making the report is not the Superintendent, that person shall also inform the Superintendent of the incident. Additionally, the principal shall inform any school employee or other person who initially reported the incident that a

report has been made to the appropriate law enforcement agency. The Superintendent or designee shall inform the Board of Directors of any such report made to law enforcement.

## **4.18—PROHIBITED CONDUCT**

Students and staff require a safe and orderly learning environment that is conducive to high student achievement. Certain student behaviors are unacceptable in such an environment and are hereby prohibited by the Board. Prohibited behaviors include, but shall not be limited to the following.

- 1 Disrespect for school employees and failing to comply with their reasonable directions or otherwise demonstrating insubordination;
- 2 Disruptive behavior that interferes with orderly school operations;
- 3 Willfully and intentionally assaulting or threatening to assault or physically abusing any student or school employee;
- 4 Possession of any weapon that can reasonably be considered capable of causing bodily harm to another individual;
- 5 Possession or use of tobacco in any form on any property owned or leased by any public school;
- 6 Willfully or intentionally damaging, destroying, or stealing school property;
- 7 Possession of any paging device, beeper, or similar electronic communication devices, on the school campus during normal school hours-unless specifically exempted by the administration for health or other compelling reasons;
- 8 Possession, selling, distributing, or being under the influence of an alcoholic beverage, any illegal drug, unauthorized inhalants, or the inappropriate use or sharing of prescription or over the counter drugs, or other intoxicants, or anything represented to be a drug;
- 9 Sharing, diverting, transferring, applying to others (such as needles or lancets), or in any way misusing medication or any medical supplies in their possession;
- 10 Cheating, copying, or claiming another person's work to be his/her own;
- 11 Gambling;
- 12 Inappropriate student dress;
- 13 Use of vulgar, profane, or obscene language or gestures;
- 14 Truancy;
- 15 Excessive tardiness;
- 16 Engaging in behavior designed to taunt, degrade, or ridicule another person on the basis of race, ethnicity, national origin, sex, or disability;
- 17 Hazing, or aiding in the hazing of another student;
- 18 Gangs or gang-related activities, including belonging to secret societies of any kind, are forbidden on school property. Gang insignias, clothing, "throwing signs" or other gestures associated

with gangs are prohibited;

19 Sexual harassment; and 20. Bullying. The Board directs each school in the District to develop implementation regulations for prohibited student conduct consistent with applicable Board policy, State and Federal laws, and judicial decisions.

Legal References: A.C.A. § 6-18-502

§ 6-15-1005  
§ 6-21-609  
§ 6-18-506  
§ 6-18-222  
§ 6-5-201  
§ 6-18-514

Cross-References:

Prohibited Conduct #1—Policy # 3.17  
Prohibited Conduct #2— Policy # 4.20  
Prohibited Conduct #3— Policy # 4.21, 4.26  
Prohibited Conduct #4— Policy # 4.22  
Prohibited Conduct #5— Policy # 4.23  
Prohibited Conduct #7—Policy 4.47  
Prohibited Conduct #8— Policy # 4.24  
Prohibited Conduct #~~12~~ 13— Policy # 4.25  
Prohibited Conduct #~~13~~ 14— Policy # 4.21  
Prohibited Conduct #~~14~~ 15— Policy # 4.7  
Prohibited Conduct #~~15~~ 16 — Policy # 4.9  
Prohibited Conduct #~~16~~ 17— Policy # 4.43  
Prohibited Conduct #~~18~~ 19— Policy # 4.12  
Prohibited Conduct #~~19~~ 20— Policy # 4.26  
Prohibited Conduct #~~20~~ 21—Policy # 4.27  
Prohibited Conduct #~~21~~ 22— Policy # 4.43

Date Adopted: 5-19-03 Last Revised: July 2012



#### **4.19—CONDUCT TO AND FROM SCHOOL AND TRANSPORTATION ELIGIBILITY**

Students are subject to the same rules of conduct while traveling to and from school as they are while on school grounds. Appropriate disciplinary actions may be taken against commuting students who violate student code of conduct rules.

The preceding paragraph also applies to student conduct while on school buses. Students shall be instructed in safe riding practices.<sup>1</sup> The driver of a school bus shall not operate the school bus until every passenger is seated. Disciplinary measures for problems related to bus behavior shall include suspension or expulsion from school, or suspending or terminating the student's bus transportation privileges. Transporting students to and from school who have lost their bus transportation privileges shall become the responsibility of the student's parent or legal guardian.

Legal Reference: A.C.A. § 6-19-119 (b)

Ark. Division of Academic Facilities and Transportation Rules Governing  
Maintenance and Operations of Ark. Public School Buses and Physical  
Examinations of School Bus Drivers 4.0

Date Adopted: 5-19-03 Last  
Revised: 10-16-2006

## **4.20—DISRUPTION OF SCHOOL**

No student shall by the use of violence, force, noise, coercion, threat, intimidation, fear, passive resistance, or any other conduct, intentionally cause the disruption of any lawful mission, process, or function of the school, or engage in any such conduct for the purpose of causing disruption or obstruction of any lawful mission, process, or function. Nor shall any student encourage any other student to engage in such activities.

Disorderly activities by any student or group of students that adversely affect the school's orderly educational environment shall not be tolerated at any time on school grounds. Teachers may remove from class and send to the principal or principal's designee office a student whose behavior is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to teach the students, the class, or with the ability of the student's classmates to learn. Students who refuse to leave the classroom voluntarily will be escorted from the classroom by the school administration.

Legal Reference: A.C.A. § 6-18-511

Date Adopted:  
5-19-03 Last  
Revised:

## **4.21—STUDENT ASSAULT OR BATTERY**

A student shall not threaten, physically abuse, or attempt to physically abuse, or behave in such a way as to be perceived to threaten bodily harm to any other person (student, school employee, or school visitor). Any gestures, vulgar, abusive or insulting language, taunting, threatening, harassing, or intimidating remarks by a student toward another person that threatens their well-being is strictly forbidden. This includes, but is not limited to, fighting, racial, ethnic, religious, or sexual slurs.

Furthermore, it is unlawful, during regular school hours, and in a place where a public school employee is required to be in the course of his or her duties, for any person to address a public school employee using language which, in its common understanding, is calculated to: a) cause a breach of the peace; b) materially and substantially interfere with the operation of the school; c) arouse the person to whom it is addressed to anger, to the extent likely to cause imminent retaliation. Students guilty of such an offense may be subject to legal proceedings in addition to student disciplinary measures.

Legal Reference: A.C.A. § 6-17-106 (a)

Date Adopted:  
5-19-03 Last  
Revised:

## **4.22—WEAPONS AND DANGEROUS INSTRUMENTS**

No student shall possess a weapon, display what appears to be a weapon, or threaten to use a weapon while in school, on or about school property, before or after school, in attendance at school or any school sponsored activity, en route to or from school or any school sponsored activity, off the school grounds at any school bus stop, or at any school sponsored activity or event. Military personnel, such as ROTC cadets, acting in the course of their official duties are excepted.

A weapon is defined as any firearm, knife, razor, ice pick, dirk, box cutter, numchucks, pepper spray or other noxious spray, explosive, or any other instrument or substance capable of causing bodily harm. For the purposes of this policy, "firearm" means any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.

Possession means having a weapon, as defined in this policy, on the student's body or in an area under his/her control. If, prior to any questioning or search by any school personnel, a student discovers that he/she has accidentally brought a weapon, other than a firearm, to school including a weapon, other than a firearm, that is in a vehicle on school grounds, and the student informs the principal or a staff person immediately, the student will not be considered to be in possession of a weapon unless it is a firearm. The weapon shall be confiscated and held in the office until such time as the student's parent/legal guardian shall pick up the weapon from the school's office. Repeated offenses are unacceptable and shall be grounds for disciplinary action against the student as otherwise provided for in this policy.

Except as permitted in this policy, students found to be in possession on the school campus of a firearm<sup>1</sup> shall be recommended for expulsion for a period of not less than one year. The superintendent shall have the discretion to modify such expulsion recommendation for a student on a case-by-case basis.<sup>21</sup> Parents or legal guardians of students expelled under this policy shall be given a copy of the current laws regarding the possibility of parental responsibility for allowing a child to possess a firearm on school property.<sup>32</sup> Parents or legal guardians shall sign a statement acknowledging that they have read and understand said laws prior to readmitting the student. Parents or legal guardians of a student enrolling from another school after the expiration of an expulsion period for a firearm policy violation shall also be given a copy of the current laws regarding the possibility of parental responsibility for allowing a child to possess a firearm on school property. The parents or legal guardians shall sign a statement acknowledging that they have read and understand said laws prior to the student being enrolled in school.

The mandatory expulsion requirement for possession of a firearm does not apply to a firearm brought to school for the purpose of participating in activities approved and authorized by the district that include the use of firearms. Such activities may include ROTC programs, hunting safety or military education, or before or after-school hunting or rifle clubs. Firearms brought to school for such purposes shall be brought to the school employee designated to receive such firearms. The designated employee shall store the firearms in a secure location until they are removed for use in the approved activity.

The district shall report any student who brings a firearm to school to the criminal justice system or juvenile delinquency system by notifying local law enforcement.

Notes: The changes made to this policy were triggered by the research resulting from the passage of Act 7446 of 2013. One of the results is an awareness that A.C.A. § 5-73-119 trumps the more lenient US DOE Guidelines. The net result is that the leniency provisions of the policy for students who inadvertently bring a firearm to school has been deleted.

<sup>21</sup> The exemption is for IDEA purposes where the possession can reasonably be associated with the student's disability. To be eligible for ESEA funds, the federal Department of Education requires an assurance that the district

(1) is in compliance with the State law requiring the one-year expulsion; and

(2) a description of the circumstances surrounding expulsions imposed under the one-year expulsion requirement, including:

(A) the name of the school concerned;

(B) the number of students expelled from the school; and

(C) the type of firearms concerned.

This requirement applies even in the instances where the district exercised its option to modify the expulsion requirement on a case-by-case basis. The DOE Guidance on the Gun Free Schools Act prohibits the use of the case-by-case option to avoid “over-all compliance with the one-year expulsion requirement.

<sup>32</sup> The statute that specifies the parents' penalties is A.C.A. § 5-27-210, but it is also helpful to have A.C.A. § 5-4-201 and A.C.A. § 5-4-401 available which spell out the fines and possible imprisonment for a class B misdemeanor offense.

Cross Reference: Policy 4.31—EXPULSION

Legal References:      A.C.A. § 6-18-502 (c) (2)(A)(B)  
                                 A.C.A. § 6-18-507 (e) (1)(2)  
                                 A.C.A. § 6-21-608  
                                 A.C.A. § 5-4-201  
                                 A.C.A. § 5-4-401  
                                 A.C.A. § 5-27-210  
                                 A.C.A. § 5-73-119(b)(e)(8)(9)(10)  
                                 20 USCS § 7151

Date Adopted: 5-19-03

Last Revised: 8-15-05

7-21-08

June-2013

## **4.23—TOBACCO AND TOBACCO PRODUCTS**

Smoking or use of tobacco or products containing tobacco in any form (including, but not limited to, cigarettes, cigars, chewing tobacco, and snuff) in or on any real property owned or leased by a District school, including school buses owned or leased by the District, is prohibited. Students who violate this policy may be subject to legal proceedings in addition to student disciplinary measures.

With the exception of recognized tobacco cessation products, this policy's prohibition includes any tobacco or nicotine delivery system or product. Specifically, the prohibition includes any product that is manufactured, distributed, marketed, or sold as e-cigarettes, e-cigars, e-pips, or under any other name or descriptor.

Note: The statute requires the statute's posting "...in a conspicuous location at every entrance to each building owned or leased by a public school district and every school bus used to transport students"

Legal Reference: A.C.A. § 6-21-609

Date Adopted: 5/19/03

Last Revised: 6/2013

## **4.24—DRUGS AND ALCOHOL**

An orderly and safe school environment that is conducive to promoting student achievement requires a student population free from the deleterious effects of alcohol and drugs. Their use is illegal, disruptive to the educational environment, and diminishes the capacity of students to learn and function properly in our schools.

Therefore, no student in the Bismarck School District shall possess, attempt to possess, consume, use, distribute, sell, buy, attempt to sell, attempt to buy, give to any person, or be under the influence of any substance as defined in this policy, or what the student represents or believes to be any substance as defined in this policy. This policy applies to any student who; is on or about school property; is in attendance at school or any school sponsored activity; has left the school campus for any reason and returns to the campus; is en route to or from school or any school sponsored activity.

Prohibited substances shall include, but are not limited to, alcohol, or any alcoholic beverage, inhalants or any ingestible matter that alter a student's ability to act, think, or respond, LSD, or any other hallucinogen, marijuana, cocaine, heroin, or any other narcotic drug, PCP, amphetamines, steroids, "designer drugs," look-alike drugs, or any controlled substance.

Selling, distributing, or attempting to sell or distribute, or using over-the-counter or prescription drugs not in accordance with the recommended dosage is prohibited.

Date Adopted:

5-19-03

Last Revised:

July 2012

## **4.25—STUDENT DRESS AND GROOMING**

The Bismarck Board of Education recognizes that dress can be a matter of personal taste and preference. At the same time, the District has a responsibility to promote an environment conducive to student learning. This requires limitations to student dress and grooming that could be disruptive to the educational process because they are immodest, disruptive, unsanitary, unsafe, could cause property damage, or are offensive to common standards of decency.

Students are prohibited from wearing, while on the school grounds during the school day and at school-sponsored events, clothing that exposes underwear, buttocks, or the breast of a female. This prohibition does not apply, however to a costume or uniform worn by a student while participating in a school-sponsored activity or event.

The Superintendent shall establish student dress codes for the District's schools, to be included in the student handbook, and are consistent with the above criteria.

Legal References: A.C.A. § 6-18-502(c)(1)  
A.C.A. § 6-18-503(c)

Date Adopted: 5-19-03

Last Revised: 6-20-11



#### **APPEARANCE AND DRESS CODE (4.25)**

1. Clothing, buttons, pins, jewelry, patches, etc., with messages promoting alcohol, tobacco, drugs, sex, obscenities, words with double messages, violence, or vulgarities are prohibited.
2. Shorts, skirts, skorts, and dress lengths will be knee length.
3. Tank tops, halter tops, string or spaghetti strap tops, and any other similar, shoulder-baring styles will not be allowed. Tops which are low cut in front, sides, or back are not allowed.
4. Uncovered midriffs or shirts with sides that are split are not allowed.
5. See-through clothing is not allowed.
6. Pants worn below the normal waist position will not be permitted. This includes excessively baggy pants or pants that present the illusion of sagging. Holes in pants will be no more than 4 inches above the knee.
7. Pants that are considered excessively tight/revealing will not be permitted. This includes pajama jeans, jeggings, etc. Clothing worn over tights must still meet the dress code length requirements.
8. Clothing generally perceived as pajamas, underwear, such as sports bras, undershirts, boxers, etc. will be covered. Clothing will not be worn in any manner that exposes or gives the illusion of exposing undergarments.
9. Headwear (i.e. caps, hats, kerchiefs, toboggans, etc.) for both sexes are not allowed on campus during the regular school day. Exceptions may be made by the principal for special occasions, cold weather, etc...
10. Tongue and facial piercings, with the exception of earrings, are not allowed.
11. All school uniforms worn during regular class time must meet the school dress code.

Adopted: 5/03

Revised: 6/2013

## **4.26—GANGS AND GANG ACTIVITY**

The Board is committed to ensuring a safe school environment conducive to promoting a learning environment where students and staff can excel. An orderly environment cannot exist where unlawful acts occur causing fear, intimidation, or physical harm to students or school staff. Gangs and their activities create such an atmosphere and shall not be allowed on school grounds or at school functions.

The following actions are prohibited by students on school property or at school functions:

- 1        Wearing or possessing any clothing, bandanas, jewelry, symbol, or other sign associated with membership in, or representative of, any gang;
- 2        Engaging in any verbal or nonverbal act such as throwing signs, gestures, or handshakes representative of membership in any gang;
- 3        Recruiting, soliciting, or encouraging any person through duress or intimidation to become or remain a member of any gang; and/or
- 4        Extorting payment from any individual in return for protection from harm from any gang.
- 5        Students found to be in violation of this policy shall be subject to disciplinary action up to and including expulsion.

Students arrested for gang related activities occurring off school grounds shall be subject to the same disciplinary actions as if they had occurred on school grounds.

Date Adopted:

5-19-03 Last

Revised:

## **4.27—STUDENT SEXUAL HARASSMENT**

The Bismarck School District is committed to having an academic environment in which all students are treated with respect and dignity. Student achievement is best attained in an atmosphere of equal educational opportunity that is free of discrimination. Sexual harassment is a form of discrimination that undermines the integrity of the educational environment and will not be tolerated.

Believing that prevention is the best policy, the District will periodically inform students and employees about the nature of sexual harassment, the procedures for registering a complaint, and the possible redress that is available. The information will stress that the district does not tolerate sexual harassment and that students can report inappropriate behavior of a sexual nature without fear of adverse consequences. The information will take into account and be appropriate to the age of the students.

It shall be a violation of this policy for any student to be subjected to, or to subject another person to, sexual harassment as defined in this policy. Any student found, after an investigation, to have engaged in sexual harassment will be subject to disciplinary action up to, and including, expulsion.

Sexual harassment refers to unwelcome sexual advances, requests for sexual favors, or other personally offensive verbal, visual, or physical conduct of a sexual nature made by someone under any of the following conditions:

- 1 Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's education;
- 2 Submission to, or rejection of, such conduct by an individual is used as the basis for academic decisions affecting that individual; and/or
- 3 Such conduct has the purpose or effect of substantially interfering with an individual's academic performance or creates an intimidating, hostile, or offensive academic environment.

The terms "intimidating," "hostile," and "offensive" include conduct of a sexual nature which has the effect of humiliation or embarrassment and is sufficiently severe, persistent, or pervasive that it limits the student's ability to participate in, or benefit from, an educational program or activity.

Actionable sexual harassment is generally established when an individual is exposed to a pattern of objectionable behaviors or when a single, serious act is committed. What is, or is not, sexual harassment will depend upon all of the surrounding circumstances. Depending upon such circumstances, examples of sexual harassment include, but are not limited to: unwelcome touching; crude jokes or pictures; discussions of sexual experiences; pressure for sexual activity; intimidation by words, actions, insults, or name calling; teasing related to sexual characteristics; and spreading rumors related to a person's alleged sexual activities.

Students who believe they have been subjected to sexual harassment, or parents of a student who believes their child has been subjected to sexual harassment, are encouraged to file a complaint by contacting a counselor, teacher, Title IX coordinator, or administrator who will assist them in the complaint process. Under no circumstances shall a student be required to first report allegations of sexual harassment to a school contact person if that person is the individual who is accused of the harassment.

To the extent possible, complaints will be treated in a confidential manner. Limited disclosure may be necessary in order to complete a thorough investigation. Students who file a complaint of sexual harassment will not be subject to retaliation or reprisal in any form.

Students who knowingly fabricate allegations of sexual harassment shall be subject to disciplinary action up to and including expulsion.

Individuals who withhold information, purposely provide inaccurate facts, or otherwise hinder an investigation of sexual harassment shall be subject to disciplinary action up to and including expulsion.

Legal References: Title IX of the Education Amendments of 1972, 20 USC 1681, et seq.  
A.C.A. § 6-15-1005 (b) (1)

Date Adopted:  
5-19-03 Last  
Revised:

## **4.28—LASER POINTERS**

Students shall not possess any hand held laser pointer while in school; on or about school property, before or after school; in attendance at school or any school-sponsored activity; en route to or from school or any school-sponsored activity; off the school grounds at any school bus stop or at any school-sponsored activity or event. School personnel shall seize any laser pointer from the student possessing it and the student may reclaim it at the close of the school year, or when the student is no longer enrolled in the District.

Legal References: A.C.A. § 6-18-512

A.C.A. § 5-60-122

Date Adopted: 5-

19-03 Last

Revised:

## 4.29—COMPUTER USE POLICY

The Bismarck School District makes computers and/or computer Internet access available to students, to permit students to perform research and to allow students to learn how to use computer technology. Use of district computers is for educational and/or instructional purposes only. It is the policy of this school district to equip each computer with Internet filtering software designed to prevent users from accessing material that is harmful to minors.<sup>1</sup> For the purposes of this policy “harmful to minors” is defined as any picture, image, graphic image file, or other visual depiction that--

- (A) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;
- (B) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
- (C) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

No student will be granted Internet access until and unless a computer-use agreement, signed by both the student and the parent or legal guardian (if the student is under the age of eighteen [18]) is on file. The current version of the computer use agreement is incorporated by reference into board policy and is considered part of the student handbook.

Student use of computers shall only be as directed or assigned by staff or teachers; students are advised that they enjoy no expectation of privacy in any aspect of their computer use, including email, and that monitoring of student computer use is continuous. Students must not disable or bypass security procedures, compromise, attempt to compromise, or defeat the district’s technology network security or Internet filtering software, alter data without authorization, or disclose passwords to other students. Students who misuse district-owned computers or Internet access in any way, including using computers to violate any other policy or contrary to the computer use agreement, or using the computers to access or create sexually explicit or pornographic text or graphics, will face disciplinary action, as specified in the student handbook<sup>2</sup> and/or computer use agreement.

In an effort to help protect student welfare when they navigate the Internet, the district will work to educate students about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.

Notes: <sup>1</sup> The designated District Technology Administrator or designee may authorize the disabling of the filter to enable access by an adult for a bona fide research or other lawful purpose. The FCC’s Rules have been amended to align with the statute’s provision which allow local determination of what material is harmful to minors. 47 CFR 54.520(c)(4) states: “Local determination of content. A determination regarding matter inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may establish criteria for making such determination; review the determination made by the certifying school, school board, school district, local educational agency, library, or other

authority; or consider the criteria employed by the certifying school, school board, school district, local educational agency, library, or other authority in the administration of the schools and libraries universal service support mechanism.” Therefore, districts must decide on their definition of “harmful to minors.” The definition included in the policy is that which is used in the law and Code of Regulations. You may, but you do not have to, change it.

<sup>2</sup> For your student handbook, add progressive discipline – first offense consequence, second offense consequence, etc.

Legal References:       Children’s Internet Protection Act; PL 106-554  
                                  FCC Final Rules 11-125 August 11,2011  
                                  20 USC 6777  
                                  47 USC 254(h)  
                                  47 CFR 520(c)(4)  
                                  A.C.A. § 6-21-107  
                                  A.C.A. § 6-21-111

Date Adopted:  
Last Revised July 2012

## 4.29F—STUDENT INTERNET USE AGREEMENT

Student's Name (Please Print)\_\_\_\_\_ Grade Level\_\_\_\_\_

School\_\_\_\_\_ Date\_\_\_\_\_

The Bismarck School District agrees to allow the student identified above ("Student") to use the district's technology to access the Internet under the following terms and conditions which apply whether the access is through a District or student owned technology device:

1. Conditional Privilege: The Student's use of the district's access to the Internet is a privilege conditioned on the Student's abiding to this agreement. No student may use the district's access to the Internet whether through a District or student owned technology device unless the Student and his/her parent or guardian have read and signed this agreement.
2. Acceptable Use: The Student agrees that he/she will use the District's Internet access for educational purposes only. In using the Internet, the Student agrees to obey all federal and state laws and regulations. The Student also agrees to abide by any Internet use rules instituted at the Student's school or class, whether those rules are written or oral.
3. Penalties for Improper Use: If the Student violates this agreement and misuses the Internet, the Student shall be subject to disciplinary action
4. "Misuse of the District's access to the Internet" includes, but is not limited to, the following:
  - a. using the Internet for other than educational purposes;
  - b. gaining intentional access or maintaining access to materials which are "harmful to minors" as defined by Arkansas law;
  - c. using the Internet for any illegal activity, including computer hacking and copyright or intellectual property law violations;
  - d. making unauthorized copies of computer software;
  - e. accessing "chat lines" unless authorized by the instructor for a class activity directly supervised by a staff member;
  - f. using abusive or profane language in private messages on the system; or using the system to harass, insult, or verbally attack others;
  - g. posting anonymous messages on the system;
  - h. using encryption software;
  - i. wasteful use of limited resources provided by the school including paper;
  - j. causing congestion of the network through lengthy downloads of files;
  - k. vandalizing data of another user;
  - l. obtaining or sending information which could be used to make destructive devices such as guns, weapons, bombs, explosives, or fireworks;
  - m. gaining or attempting to gain unauthorized access to resources or files;
  - n. identifying oneself with another person's name or password or using an account or password of another user without proper authorization;
  - o. invading the privacy of individuals;
  - p. divulging personally identifying information about himself/herself or anyone else either on the Internet or in an email. Personally identifying information includes full names, address, and phone number.
  - q. using the network for financial or commercial gain without district permission;
  - r. theft or vandalism of data, equipment, or intellectual property;
  - s. attempting to gain access or gaining access to student records, grades, or files;



- t. introducing a virus to, or otherwise improperly tampering with the system;
- u. degrading or disrupting equipment or system performance;
- v. creating a web page or associating a web page with the school or school district without proper authorization;
- w. providing access to the District's Internet Access to unauthorized individuals;
- x. failing to obey school or classroom Internet use rules; or
- y. taking part in any activity related to Internet use which creates a clear and present danger of the substantial disruption of the orderly operation of the district or any of its schools.
- z. \*Installing or downloading software on district computers without prior approval of technology director or his/her designee.

5. Liability for debts: Students and their cosigners shall be liable for any and all costs (debts) incurred through the student's use of the computers or access to the Internet including penalties for copyright violations.

6. No Expectation of Privacy: The Student and parent/guardian signing below agree that if the Student uses the Internet through the District's access, that the Student waives any right to privacy the Student may have for such use. The Student and the parent/guardian agree that the district may monitor the Student's use of the District's Internet Access and may also examine all system activities the Student participates in, including but not limited to e-mail, voice, and video transmissions, to ensure proper use of the system. The District may share such transmissions with the Student's parents/guardians.

7. No Guarantees: The District will make good faith efforts to protect children from improper or harmful matter which may be on the Internet. At the same time, in signing this agreement, the parent and Student recognize that the District makes no guarantees about preventing improper access to such materials on the part of the Student.

8. Signatures: We, the persons who have signed below, have read this agreement and agree to be bound by the terms and conditions of this agreement.

Student's Signature: \_\_\_\_\_ Date \_\_\_\_\_

Parent/Legal Guardian Signature: \_\_\_\_\_ Date \_\_\_\_\_

Note: The Neighborhood Children's Internet Protection Act (PL 106-554, 47 USC 254 (h) (I)) requires districts to hold at least one public hearing on its proposed Internet safety policy. The regulations do not require this to be a special meeting and it is allowable for it to be part of a regular school board meeting.

## 4.30—SUSPENSION FROM SCHOOL

Students not present at school cannot benefit from the educational opportunities the school environment affords. Administrators, therefore, shall strive to find ways to keep students in school as participants in the educational process. There are instances, however, when the needs of the other students or the interests of the orderly learning environment require the removal of a student from school. The Board authorizes school principals or their designees to suspend students for disciplinary reasons for a period of time not to exceed ten (10) school days,<sup>1</sup> including the day upon which the suspension is imposed. The suspension may be in school or out of school. Students are responsible for their conduct that occurs: at any time on the school grounds; off school grounds at a school-sponsored function, activity, or event; going to and from school or a school activity. A student may be suspended for behavior including, but not limited to that which:

- 1 Is in violation of school policies, rules, or regulations;
- 2 Substantially interferes with the safe and orderly educational environment;
- 3 School administrators believe will result in the substantial interference with the safe and orderly educational environment; and/or
- 4 Is insubordinate, incorrigible, violent, or involves moral turpitude.

The school principal or designee shall proceed as follows in deciding whether or not to suspend a student.

- 1 the student shall be given written notice or advised orally of the charges against him/her;
- 2 if the student denies the charges, he/she shall be given an explanation of the evidence against him/her and be allowed to present his/her version of the facts;
- 3 if the principal finds the student guilty of the misconduct, he/she may be suspended.

When possible, notice of the suspension, its duration, and any stipulations for the student's readmittance to class will be given to the parent(s), legal guardian(s), or to the student if age 18 or older prior to the suspension. Such notice shall be handed to the parent(s), legal guardian(s), or to the student if age 18 or older or mailed to the last address reflected in the records of the school district.

Generally, notice and hearing should precede the student's removal from school, but if prior notice and hearing are not feasible, as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice and hearing should follow as soon as practicable.

It is the parents' or legal guardians' responsibility to provide current contact information to the district which the school shall use to immediately notify the parent or legal guardian upon the suspension of a student. The notification shall be by one of the following means, listed in order of priority:<sup>2</sup> ☐ A primary call number

- The contact may be by voice, voice mail, or text message

- An email address □ A regular first class letter to the last known mailing address

The district shall keep a log of contacts attempted and made to the parent or legal guardian.

During the period of their suspension, students serving out-of-school suspensions shall not be permitted on campus except to attend a student/parent/administrator conference.<sup>3</sup>

During the period of their suspension, students serving ~~an~~ in-school suspension shall not attend any school-sponsored activities during the imposed suspension nor shall the student participate in any school-sponsored activities.<sup>3</sup>

Suspensions initiated by the principal or his/her designee may be appealed to the Superintendent, but not to the Board.

Suspensions initiated by the Superintendent may be appealed to the Board.

Notes: <sup>1</sup> The ten school days are on a traditional school calendar. If your district uses a 4x4 block schedule, the number of days of suspension will need to be modified accordingly.

<sup>2</sup> Act 159 of 2007 requires attempts at contacting parents be made first by phone. If such contact fails, then contact may be by email, and if that is unsuccessful, contact may be by regular first class mail.

<sup>3</sup> Your final language needs to match the language you have chosen for suspensions in policy 4.7

Cross Reference: 4.7—ABSENCES

Legal References: A.C.A. § 6-18-507  
*Goss v Lopez*, 419 U.S. 565 (1975)

Date Adopted:

Last Revised: July 2012

## **4.31—EXPULSION**

The Board of Education may expel a student for a period longer than ten (10) school days for violation of the District's written discipline policies. The Superintendent may make a recommendation of expulsion to the Board of Education for student conduct deemed to be of such gravity that suspension would be inappropriate, or where the student's continued attendance at school would disrupt the orderly learning environment or would pose an unreasonable danger to the welfare of other students or staff.

The Superintendent or his/her designee shall give written notice to the parents or legal guardians (mailed to the address reflected on the District's records) that he/she will recommend to the Board of Education that the student be expelled for the specified length of time and state the reasons for the recommendation to expel. The notice shall give the date, hour, and place where the Board of Education will consider and dispose of the recommendation.

The hearing shall be conducted not later than ten (10) school days\* following the date of the notice, except that representatives of the Board and student may agree in writing to a date not conforming to this limitation.

The President of the Board, Board Attorney, or other designated Board member shall preside at the hearing. The student may choose to be represented by legal counsel. Both the district administration and School Board also may be represented by legal counsel. The hearing shall be conducted in open session of the Board unless the parent, or student if age 18 or older, requests that the hearing be conducted in executive session. Any action taken by the Board shall be in open session.

During the hearing, the Superintendent, or designee, or representative will present evidence, including the calling of witnesses that gave rise to the recommendation of expulsion. The student, or his/her representative, may then present evidence including statements from persons with personal knowledge of the events or circumstances relevant to the charges against the student. Formal cross-examination will not be permitted. However, any member of the Board, the Superintendent, or designee, the student, or his/her representative may question anyone making a statement and/or the student. The presiding officer shall decide questions concerning the appropriateness or relevance of any questions asked during the hearing.

Except as permitted by policy 4.22, the Superintendent shall recommend the expulsion of any student for a period of not less than one (1) year for possession of any firearm prohibited on school campus by law. The Superintendent shall, however, have the discretion to modify the expulsion recommendation for a student on a case-by-case basis. Parents or legal guardians of a student enrolling from another school after the expiration of an expulsion period for a weapons policy violation shall be given a copy of the current laws regarding the possibility of parental responsibility for allowing a child to possess a weapon on school property. The parents or legal guardians shall sign a statement acknowledging that they have read and understand said laws prior to the student being enrolled in school.

The Superintendent and the Board of Education shall complete the expulsion process of any student that was initiated because the student possessed a firearm or other prohibited weapon on school property regardless of the enrollment status of the

student.

Note: <sup>1</sup> The ten school days are on a traditional school calendar. If your district uses a 4x4 block schedule, the number of days of suspension will need to be modified accordingly.

Cross Reference: Policy 4.22—WEAPONS AND DANGEROUS INSTRUMENTS

Legal Reference: A.C.A. § 6-18-507

Date Adopted: 5-19-03 Last

Revised: 7-19-04 7-21-08

## **4.32—SEARCH, SEIZURE, AND INTERROGATIONS**

The District respects the rights of its students against arbitrary intrusion of their person and property. At the same time, it is the responsibility of school officials to protect the health, safety, and welfare of all students enrolled in the District in order to promote an environment conducive to student learning. The Superintendent, principals, and their designees have the right to inspect and search school property and equipment. They may also search students and their personal property in which the student has a reasonable expectation of privacy, when there is reasonable suspicion to believe such student or property contains illegal items or other items in violation of Board policy or dangerous to the school community. School authorities may seize evidence found in the search and disciplinary action may be taken. Evidence found which appears to be in violation of the law shall be reported to the appropriate authority.

School property shall include, but not be limited to, lockers, desks, and parking lots, as well as personal effects left there by students. When possible, prior notice will be given and the student will be allowed to be present along with an adult witness, however, searches may be done at any time with or without notice or the student's consent. A personal search must not be excessively intrusive in light of the age and sex of the student and the nature of the infraction.

The Superintendent, principals, and their designees may request the assistance of law enforcement officials to help conduct searches. Such searches may include the use of specially trained dogs.

A school official of the same sex shall conduct personal searches with an adult witness of the same sex present.

State Law requires that Department of Human Services employees, local law enforcement, or agents of the Crimes Against Children Division of the Department of Arkansas State Police, may interview students without a court order for the purpose of investigating suspected child abuse. In instances where the interviewers deem it necessary, they may exercise a "72-hour hold" without first obtaining a court order. Other questioning of students by non-school personnel shall be granted only with a court order directing such questioning, with permission of the parents of a student (or the student if above eighteen [18] years of age), or in response to a subpoena or arrest warrant.

If the District makes a report to any law enforcement agency concerning student misconduct or if access to a student is granted to a law enforcement agency due to a court order, the principal or the principal's designee shall make a good faith effort to contact the student's parent, legal guardian, or other person having lawful control by court order, or person acting in loco parentis on student enrollment forms. The principal or the principal's designee shall not attempt to make such contact if presented documentation by the investigator that notification is prohibited because a parent, guardian, custodian, or person standing in loco parentis is named as an alleged offender of the suspected child maltreatment. This exception applies only to interview requests made by a law enforcement officer, an investigator of the Crimes Against Children Division of the Department of Arkansas State Police, or an investigator or employee of the Department of Human Services.

In instances other than those related to cases of suspected child abuse, principals must release a student to either a police officer who presents a subpoena for the student, or a warrant for arrest, or to an agent of state social services or an agent of a court with jurisdiction over a child with a court order signed by a judge. Upon release of the student, the principal or designee shall give the student's parent, legal guardian, or other person having

lawful control by court order, or person acting in loco parentis notice that the student has been taken into custody by law enforcement personnel or a state's social services agency. If the principal or designee is unable to reach the parent, he or she shall make a reasonable, good faith effort to get a message to the parent to call the principal or designee, and leave both a day and an after-hours telephone number.

Legal References: A.C.A. § 6-18-513

§ 9-13-104

§ 12-18-609, 610, 613

§ 12-18-1001, 1005

Date Adopted: 5-19-03 Last Revised: 10-16-2006; 6-20-11

#### **4.33—STUDENTS' VEHICLES**

A student who has presented a valid driver's license and proof of insurance to the appropriate office personnel, may drive his/her vehicle to school. Vehicles driven to school shall be parked in the area designated for student parking. Parking on school property is a privilege which may be denied to a student for any disciplinary violation, at the discretion of the student's building principal.

Students are not permitted to loiter in parking areas and are not to return to their vehicles during the school day for any reason unless given permission to do so by school personnel.

It is understood that there is no expectation of privacy in vehicles in parking areas. Drivers of vehicles parked on a school campus will be held accountable for illegal substances or any other item prohibited by District policy found in their vehicle. The act of a student parking a vehicle on campus is a grant of permission for school or law enforcement authorities to search that vehicle.

Date Adopted: 5-19-03

Last Revised: 7-2012



#### **COMMUNICABLE DISEASES AND PARASITES (4.34)**

Students with communicable diseases or with human host parasites that are transmittable in a school environment shall demonstrate respect for other students by not attending school while they are capable of transmitting their condition to others. Students whom the school nurse determines are unwell or unfit for school attendance or who are believed to have a communicable disease or condition will be required to be picked up by their parent or guardian. Specific examples include, but are not limited to: chicken pox, measles, scabies, conjunctivitis (Pink Eye), impetigo/MRSA (Methicillin-resistant *Staphylococcus aureus*), streptococcal and staphylococcal infections, ringworm, mononucleosis, Hepatitis A, B, or C, mumps, vomiting, diarrhea, and fever (100.4 F when taken orally). A student who has been sent home by the school nurse will be subsequently readmitted, at the discretion of the school nurse, when the student is no longer a transmission risk. In some instances, a letter from a health care provider may be required prior to the student being readmitted to the school.

To help control the possible spread of communicable diseases, school personnel shall follow the District's exposure control plan when dealing with any bloodborne, foodborne, and airborne pathogens exposures. Standard precautions shall be followed relating to the handling, disposal, and cleanup of blood and other potentially infectious materials such as all body fluids, secretions and excretions (except sweat).

The District shall maintain a copy of each student's immunization record and a list of individuals with exemptions from immunization which shall be education records as defined in policy 4.13. That policy provides that an education record may be disclosed to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

A student enrolled in the District who has an immunization exemption may be removed from school at the discretion of the Arkansas Department of Health during an outbreak of the disease for which the student is not vaccinated. The student may not return to the school until the outbreak has been resolved and the student's return to school is approved by the Arkansas Department of Health.

The parents or legal guardians of students found to have live human host parasites and/or un-hatched nits that are transmittable in a school environment will be asked to pick their child up. The parents or legal guardians will be given information concerning the eradication and control of human host parasites. A student may be readmitted after the school nurse or designee has determined the student no longer has live human host parasites and/or un-hatched nits that are transmittable in a school environment.

Each school may conduct screenings of students for human host parasites that are transmittable in a school environment as needed. The screenings shall be conducted in a manner that respects the privacy and confidentiality of each student.

Revised: July-2012;  
June-2013

#### **STUDENT MEDICATIONS (4.35)**

Prior to the administration of any medication to any student under the age of eighteen (18), written parental consent is required. The consent form shall include authorization to administer the medication and relieve the Board and its employees of civil liability for damages or injuries resulting from the administration of medication to students in accordance with this policy. All signed medication consent forms are to be maintained by the school nurse.

Unless authorized to self-administer, students are not allowed to carry any medications, including over-the-counter medications or any perceived health remedy not regulated by the US Food and Drug Administration, while at school. The parent or legal guardian shall bring the student's medication to the school nurse. The student may bring the medication if accompanied by a written authorization from the parent or legal guardian. When medications are brought to the school nurse, the nurse shall document, in the presence of the parent, the quantity and type of the medication(s). If the medications are brought by a student, the school nurse shall ask another school employee to verify, in the presence of the student the quantity of the medication(s). Each person present shall sign a form verifying the quantity and type of the medication(s).

Medications, including those for self-medication, must be in the original container and be properly labeled with the student's name, the ordering health care provider's name, the name of the medication, the dosage, frequency, and instructions for the administration of the medication (including times). Additional information accompanying the medication shall state the purpose for the medication, its possible side effects, and any other pertinent instructions (such as special storage requirements) or warnings. Schedule II medications that are permitted by this policy to be brought to school shall be stored in a double locked cabinet

Students with an individualized health plan (IHP) may be given over-the-counter medications to the extent giving such medications are included in the student's IHP.

The only Schedule II medications that shall be allowed to be brought to the school are methylphenidate (e.g. Ritalin or closely related medications as determined by the school nurse), dextroamphetamine (Dexedrine), and amphetamine sulfate (e.g. Adderall or closely related medications as determined by the school nurse).

For the student's safety, no student will be allowed to attend school if the student is currently taking any other Schedule II medication than permitted by this policy. Students

who are taking Schedule II medications which are not allowed to be brought to school shall be eligible for homebound instruction if provided for in their IEP or 504 plans.

The district's supervising registered nurse shall be responsible for creating both on campus and off campus procedures for administering medications.

Students who have written permission from their parent or guardian and a licensed health care provider to self-administer either an asthma inhaler or auto-injectable epinephrine, or both and who have a current consent form on file shall be allowed to carry and self-administer such medication while in school, at an on-site school sponsored activity, while traveling to or from school, or at an off-site school sponsored activity. Students are prohibited from sharing, transferring, or in any way diverting his/her medications to any other person. The fact that a student with a completed consent form on file is allowed to carry an asthma inhaler or auto-injectable epinephrine, or both does not require him/her to have such on his/her person. The parent or guardian of a student who chooses to not carry an asthma inhaler or auto-injectable epinephrine, or both on his/her person shall provide the school with the appropriate medication which shall be immediately available to the student in an emergency.

Students may be administered Glucagon in emergency situations by the school nurse or, in the absence of the school nurse, a trained volunteer school employee designated as a care provider, provided the student has:

1. an IHP developed under Section 504 of the Rehabilitation Act of 1973 which provides for the administration of Glucagon in emergency situations; and
2. a current, valid consent form on file from their parent or guardian.

The school shall not keep outdated medications or any medications past the end of the school year. By this policy, parents are notified that ten (10) days after the last day of school, all medications will be disposed of that are left at the school. Medications not picked up by the parents or legal guardians within the ten (10) day period shall be disposed of by the school nurse in accordance with current law and regulations

#### **COMMUNICABLE DISEASES AND PARASITES (4.34)**

Students with communicable diseases or with human host parasites that are transmittable in a school environment shall demonstrate respect for other students by not attending school while they are capable of transmitting their condition to others. Students whom the school nurse determines are unwell or unfit for school attendance or who are believed to have a communicable disease or condition will be required to be picked up by their parent or guardian. Specific examples include, but are not limited to: chicken pox, measles,

scabies, conjunctivitis (Pink Eye), impetigo/MRSA (Methicillin-resistant Staphylococcus aureus), streptococcal and staphylococcal infections, ringworm, mononucleosis, Hepatitis A, B, or C, mumps, vomiting, diarrhea, and fever (100.4 F when taken orally). A student who has been sent home by the school nurse will be subsequently readmitted, at the discretion of the school nurse, when the student is no longer a transmission risk. In some instances, a letter from a health care provider may be required prior to the student being readmitted to the school.

To help control the possible spread of communicable diseases, school personnel shall follow the District's exposure control plan when dealing with any bloodborne, foodborne, and airborne pathogens exposures. Standard precautions shall be followed relating to the handling, disposal, and cleanup of blood and other potentially infectious materials such as all body fluids, secretions and excretions (except sweat).

The District shall maintain a copy of each student's immunization record and a list of individuals with exemptions from immunization which shall be education records as defined in policy 4.13. That policy provides that an education record may be disclosed to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

A student enrolled in the District who has an immunization exemption may be removed from school at the discretion of the Arkansas Department of Health during an outbreak of the disease for which the student is not vaccinated. The student may not return to the school until the outbreak has been resolved and the student's return to school is approved by the Arkansas Department of Health.

The parents or legal guardians of students found to have live human host parasites and/or un-hatched nits that are transmittable in a school environment will be asked to pick their child up. The parents or legal guardians will be given information concerning the eradication and control of human host parasites. A student may be readmitted after the school nurse or designee has determined the student no longer has live human host parasites and/or un-hatched nits that are transmittable in a school environment.

Each school may conduct screenings of students for human host parasites that are transmittable in a school environment as needed. The screenings shall be conducted in a manner that respects the privacy and confidentiality of each student.

Revised: 6/2013

#### 4.35F—MEDICATION ADMINISTRATION CONSENT FORM

Student's Name (Please Print) \_\_\_\_\_

This form is good for school year \_\_\_\_\_. This consent form must be updated anytime the student's medication order changes and renewed each year and/or anytime a student changes schools.

Medications, including those for self-administration, must be in the original container and be properly labeled with the student's name, the ordering provider's name, the name of the medication, the dosage, frequency, and instructions for the administration of the medication (including times). Additional information accompanying the medication shall state the purpose for the medication, its possible side effects, and any other pertinent instructions (such as special storage requirements) or warnings.

I hereby authorize the school nurse or his/her designee to administer the following medications to my child.

Name(s) of medication(s) \_\_\_\_\_

Name of physician or dentist (if applicable) \_\_\_\_\_

Dosage \_\_\_\_\_

Instructions for administering the medication \_\_\_\_\_

\_\_\_\_\_

Other instructions \_\_\_\_\_

\_\_\_\_\_

I acknowledge that the District, its Board of Directors, and its employees shall be immune from civil liability for damages resulting from the administration of medications in accordance with this consent form.

Parent or legal guardian signature \_\_\_\_\_

Date \_\_\_\_\_

Date Adopted:

Last Revised: 6/2013

#### 4.35F2—MEDICATION SELF-ADMINISTRATION CONSENT FORM

Student's Name (Please Print) \_\_\_\_\_

This form is good for school year \_\_\_\_\_. This consent form must be updated anytime the student's medication order changes and renewed each year and/or anytime a student changes schools.

The following must be provided for the student to be eligible to self-administer rescue inhalers and/or auto-injectable epinephrine. Eligibility is **only** valid for this school for the current academic year.

- a written statement from licensed a health-care provider who has prescriptive privileges that he//she has prescribed the rescue inhaler and/or auto-injectable epinephrine for the student and that the student needs to carry the medication on his/her person due to a medical condition;
- the specific medications prescribed for the student;
- an individualized health care plan developed by the prescribing health-care provider containing the treatment plan for managing asthma and/or anaphylaxis episodes of the student and for medication use by the student during school hours; and
- a statement from the prescribing health-care provider that the student possesses the skill and responsibility necessary to use and administer the asthma inhaler and/or auto-injectable epinephrine.

If the school nurse is available, the student shall demonstrate his/her skill level in using the rescue inhalers and/or auto-injectable epinephrine to the nurse.

Rescue inhalers and/or auto-injectable epinephrine for a student's self-administration shall be supplied by the student's parent or guardian and be in the original container properly labeled with the student's name, the ordering provider's name, the name of the medication, the dosage, frequency, and instructions for the administration of the medication (including times). Additional information accompanying the medication shall state the purpose for the medication, its possible side effects, and any other pertinent instructions (such as special storage requirements) or warnings. Students who self-carry a rescue inhaler or an epinephrine auto-injector shall also provide the school nurse with a rescue inhaler or an epinephrine auto-injector to be used in emergency situations.

My signature below is an acknowledgment that I understand that the District, its Board of Directors, and its employees shall be immune from civil liability for injury resulting from the self-administration of medications by the student named above.

Parent or legal guardian signature \_\_\_\_\_

Date \_\_\_\_\_

Date Adopted:

Last Revised:

#### **4.35F3—GLUCAGON ADMINISTRATION CONSENT FORM**

Student's Name (Please Print) \_\_\_\_\_

This form is good for school year \_\_\_\_\_. This consent form must be updated anytime the student's medication order changes and renewed each year and/or anytime a student changes schools.

The school has developed a Section 504 plan acknowledging that my child has been diagnosed as suffering from diabetes. The 504 plan authorizes the school nurse or, in the absence of the nurse, trained volunteer district personnel, to administer Glucagon in an emergency situation to my child.

I hereby authorize the school nurse or, in the absence of the nurse, trained volunteer district personnel designated as care providers, to administer Glucagon to my child in an emergency situation. Glucagon shall be supplied to the school nurse by the student's parent or guardian and be in the original container properly labeled with the student's name, the ordering provider's name, the name of the medication, the dosage, frequency, and instructions for the administration of the medication (including times). Additional information accompanying the medication shall state the purpose for the medication, its possible side effects, and any other pertinent instructions (such as special storage requirements) or warnings..

I acknowledge that the District, its Board of Directors, its employees, or an agent of the District, including a healthcare professional who trained volunteer school personnel designated as care providers shall not be liable for any damages resulting from his/her actions or inactions in the administration of Glucagon in accordance with this consent form and the 504 plan.

Parent or legal guardian signature \_\_\_\_\_

Date \_\_\_\_\_

Date Adopted:

Last Revised:

#### **4.35F4—EPINEPHRINE EMERGENCY ADMINISTRATION CONSENT FORM**

Student's Name (Please Print) \_\_\_\_\_

This form is good for school year \_\_\_\_\_. This consent form must be updated anytime the student's medication order changes and renewed each year and/or anytime a student changes schools.

My child has an IHP developed under Section 504 of the Rehabilitation Act of 1973 which provides for the administration of epinephrine in emergency situations. I hereby authorize the school nurse or other school employee certified to administer auto-injectable epinephrine in emergency situations when he/she believes my child is having a life-threatening anaphylactic reaction.

The medication must be in the original container and be properly labeled with the student's name, the ordering provider's name, the name of the medication, the dosage, frequency, and instructions for the administration of the medication (including times). Additional information accompanying the medication shall state the purpose for the medication, its possible side effects, and any other pertinent instructions (such as special storage requirements) or warnings.

Date of physician's order \_\_\_\_\_

Circumstances under which Epinephrine may be administered \_\_\_\_\_

\_\_\_\_\_

Other instructions \_\_\_\_\_

\_\_\_\_\_

I acknowledge that the District, its Board of Directors, and its employees shall be immune from civil liability for damages resulting from the administration of auto-injector epinephrine in accordance with this consent form, District policy, and Arkansas law.

Parent or legal guardian signature \_\_\_\_\_

Date \_\_\_\_\_

Date Adopted:

Last Revised: 6/2013



#### **4.36—STUDENT ILLNESS/ACCIDENT**

If a student becomes too ill to remain in class and/or could be contagious to other students, the principal or designee will attempt to notify the student's parent or legal guardian.\* The student will remain in the school's health room or a place where he/she can be supervised until the end of the school day or until the parent/legal guardian can check the student out of school.

If a student becomes seriously ill or is injured while at school and the parent/legal guardian cannot be contacted, the failure to make such contact shall not unreasonably delay the school's expeditious transport of the student to an appropriate medical care facility. The school assumes no responsibility for treatment of the student. When available, current, and applicable, the student's emergency contact numbers and medical information will be utilized. Parents are strongly encouraged to keep this information up to date.

Date Adopted:  
5-19-03 Last  
Revised: \*7-19-  
04

#### **4.37—EMERGENCY DRILLS**

All schools in the District shall conduct fire drills at least monthly. Tornado drills shall also be conducted not fewer than three (3) times per year with at least one each in the months of September, October, January, and February. Students who ride school buses,<sup>1</sup> shall also participate in emergency evacuation drills at least twice each school year.

For school-year 2013-14, an annual active shooter drill and school safety assessment may be conducted for all District schools in collaboration, when possible, with local law enforcement and emergency management personnel.<sup>2</sup> Students will be included in the drills to the extent that is developmentally appropriate to the age of both the students and grade configuration of the school. Drills may be conducted during the instructional day or during non-instructional time periods.

Other types of emergency drills may also be conducted to test the implementation of the District's emergency plans in the event of an earthquake or terrorist attack that might include the use of biological or chemical agents. Students shall be included in the drills to the extent practicable.

Notes: <sup>1</sup> Students who only ride buses occasionally, such as to go to and/or from a field trip will also have to participate in the evacuation drills.

<sup>2</sup> Act 484 of 2013 requires the drills beginning next school-year. However, there was supposed to be funding appropriated to help pay for the training of school personnel, but the funding didn't happen. There is no provision in the act, however, that removes the requirement if funding is not appropriated. Consequently, next year, the drills will be mandatory.

<sup>3</sup> Student involvement will need to be worked out school by school and determined relative to grade and age considerations in conjunction with the actual content of the drill. There may be a drill conducted that don't include any students due to the explicit nature of the drill and the age of the students while a drill in another school would include students.

Legal References: A.C.A. § 12-13-109

A.C.A. § 6-10-110

A.C.A. § 6-10-121

A.C.A. § 6-15-1302

A.C.A. § 6-15-1303

Ark. Division of Academic Facilities and Transportation Rules Governing Maintenance and Operations of

Date Adopted: :5-19-03

Last Revised: 10-16-2006

10-15-2007

6/2013

## 4.38—PERMANENT RECORDS

Permanent school records, as required by the Arkansas Department of Education, shall be maintained for each student enrolled in the District until the student receives a high school diploma or its equivalent or is beyond the age of compulsory school attendance<sup>1</sup>. A copy of the student's permanent record shall be provided to the receiving school district within ten (10) school days after the date a request from the receiving school district is received<sup>2</sup>.

Notes: <sup>1</sup> The legal requirement for retention of student records is as written. ASBA strongly advises districts, however, to retain the records of graduates indefinitely due to the potential for future need of the records by students for college admissions, security clearances, background checks, etc..<sup>2</sup> The law prohibits districts from refusing to provide the records to receiving schools due to a student owing money to the district.

Legal References: A.C.A. § 6-18-901    ADE Rule *Student Permanent Records*

Date Adopted: 5-19-03

Last Revised: 7-21-08

#### **4.39—CORPORAL PUNISHMENT**

The Bismarck School Board authorizes the use of corporal punishment to be administered in accordance with this policy by the Superintendent or his/her designated staff members who are required to have a state-issued license as a condition of their employment.

Prior to the administration of corporal punishment, the student receiving the corporal punishment shall be given an explanation of the reasons for the punishment and be given an opportunity to refute the charges.

All corporal punishment shall be administered privately, i.e. out of the sight and hearing of other students, shall not be excessive, or administered with malice, and shall be administered in the presence of another school administrator or designee who shall be a licensed staff member employed by the District.

Legal Reference: A.C.A. § 6-18-503 (b) A.C.A. § 6-18-505 (c) (1)

Date Adopted:

5-19-03

Last Revised:

July 2012

## 4.40—HOMELESS STUDENTS

The Bismarck School District will afford the same services and educational opportunities to homeless children as are afforded to non-homeless children. The Superintendent or his/her designee shall appoint an appropriate staff person to be the local educational liaison for homeless children and youth whose responsibilities shall include coordinating with the state educational liaison for homeless children and youth to ensure that homeless children are not stigmatized or segregated on the basis of their status as homeless and such other duties as are prescribed by law and this policy.

Notwithstanding Policy 4.1, homeless students living in the district are entitled to enroll in the district's school that non-homeless students who live in the same attendance area are eligible to attend. If there is a question concerning the enrollment of a homeless child due to a conflict with Policy 4.1 or 4.2, the child shall be immediately admitted to the school in which enrollment is sought pending resolution of the dispute. It is the responsibility of the District's local educational liaison for homeless children and youth to carry out the dispute resolution process.

To the extent feasible, the District shall do one of the following according to what is in the best interests of a homeless child. (For the purposes of this policy "school of origin" means the school the child attended when permanently housed or the school in which the child was last enrolled.)

- 1 continue educating the child who becomes homeless between academic years or during an academic year in their school of origin for the duration of their homelessness;
- 2 continue educating the child in his/her school of origin who becomes permanently housed during an academic year for the remainder of the academic year; or
- 3 enroll the homeless child in the school appropriate for the attendance zone where the child lives.

If the District elects to enroll a homeless child in a school other than their school of origin and such action is against the wishes of the child's parent or guardian, the District shall provide the parent or guardian with a written explanation of their reason for so doing which shall include a statement of the parent/guardian's right to appeal.

In any instance where the child is unaccompanied by a parent or guardian, the District's local educational liaison for homeless children and youth shall assist the child in determining his/her place of enrollment. The Liaison shall provide the child with a notice of his/her right to appeal the enrollment decision.

The District shall be responsible for providing transportation for a homeless child, at the request of the parent or guardian (or in the case of an unaccompanied youth, the Liaison), to and from the child's school of origin.\*

For the purposes of this policy, students shall be considered homeless if they lack a fixed, regular, and adequate nighttime residence and

- (a) are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
- (b) have a primary nighttime residence that is a public or private place not designed for or ordinarily

used as a regular sleeping accommodation for human beings;  
(c) are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and includes  
(d) are migratory children who are living in circumstances described in clauses (a) through (c).

Legal References\*\*: 42 U.S.C. § 11431 et seq.

42 U.S.C. § 11431 (2)

42 U.S.C. § 11432(g)(1)(H)(I)

42 U.S.C. § 11432 (g)(1)(J)(i), (ii), (iii), (iii)(I), (iii)(II)

42 U.S.C. § 11432 (g)(3)(A), (A)(i), (A)(i)(I), (A)(i)(II), (A)(ii)

42 U.S.C. § 11432 (g)(3)(B)(i), (ii), (iii)

42 U.S.C. § 11432 (g)(3)(C)(i), (ii), (iii)

42 U.S.C. § 11432 (g)(3)(E)(i), (ii), (iii)

42 U.S.C. § 11432 (g)(3)(G)

42 U.S.C. § 11432 (g)(4) (A), (B), (C), (D), (E)

42 U.S.C. § 11434a

Date Adopted: 5-

19-03 Last

Revised:

## **4.41—PHYSICAL EXAMINATIONS OR SCREENINGS**

The Bismarck School District may provide from time to time for the administration of physical exams or screenings of its students. The intent of the exams or screenings shall be to detect contagious or infectious diseases or defects in hearing, vision, or other elements of health that would adversely affect the student's ability to achieve to his/her full potential.

The district shall notify parents, at least annually, of the specific or approximate dates of any non-emergency, invasive physical examination or screening that is:

1. required as a condition of attendance;
2. administered by the school and scheduled by the school in advance; and
3. not necessary to protect the immediate health and safety of the student, or of other students.

For the purposes of this policy, "Invasive Physical Examination" is defined as any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision, or scoliosis screening.

Except in instances where a student is suspected of having a contagious or infectious disease, parents shall have the right to opt their student out of the exams or screenings by using form 4.41F or by providing certification from a physician that he/she has recently examined the student.

A student may be required to pass a physical exam before being allowed to participate in certain extracurricular activities to help ensure they are physically capable of withstanding the rigors of the activity. It is understood that students who refuse to take such an exam will not be allowed to participate in the desired activity.

The rights provided to parents under this policy transfer to the student when he/she turns 18 years old.

Legal Reference: A.C.A. § 6-18-701 (b), (c), (f)

20 USC § 1232h (c) [NCLB Act of 2001, Part F, Section 1061 (c) (1)(D),  
(2)(A)(i)(ii)(B)(C)(iii)(I)(II)(III), (4)(B)(ii), (5)(B), (6)(B)(C)]

Date Adopted:

5-19-03 Last

Revised:

#### **4.41F—OBJECTION TO PHYSICAL EXAMINATIONS OR SCREENINGS**

I, the undersigned, being a parent or guardian of a student, or a student eighteen (18) years of age or older, hereby note my objection to the physical examination or screening of the student named below. Physical examination or screening being objected to: \_\_\_\_ Vision test \_\_\_\_ Hearing test \_\_\_\_ Scoliosis test \_\_\_\_ Other, please specify

\_\_\_\_ Non-emergency, invasive physical examination as defined in Policy 4.41 Comments:

Name of student (Printed)

Signature of parent (or student, if 18 or older)

Date form was filed (To be filled in by office personnel)



## **4.42—STUDENT HANDBOOK**

It shall be the policy of the Bismarck School District that the most recently adopted version of the Student Handbook be incorporated by reference into the policies of this district. In the event that there is a conflict between the student handbook and a general board policy or policies, and the student handbook is more recently adopted than the general board policy, the student handbook will be considered binding and controlling on the matter. Principals shall review all changes to student policies and ensure that such changes are provided to students and parents, either in the Handbook or, if changes are made after the handbook is printed, as an addendum to the handbook.

Principals and counselors shall also review Policies 4.45—SMART CORE CURRICULUM AND GRADUATION REQUIREMENTS FOR THE CLASSES OF 2010-11, 2011-12, AND 2012-13 and 4.45.1—SMART CORE CURRICULUM AND GRADUATION REQUIREMENTS FOR THE CLASS OF 2013-14 AND ALL CLASSES THEREAFTER and the current ADE Standards for Accreditation Rules to ensure that there is no conflict. If a conflict exists, the Principal and/or Counselor shall notify the Superintendent and Curriculum Coordinator immediately, so that corrections may be made and notice of the requirements given to students and parents.

**Notes:** ASBA recommends making this page a “pocket” page and inserting your student handbook into the pocket.

The ADE Standards Assurance unit has said there has been a problem with some committees making changes out of alignment with board policy which can make them out of alignment with statutory and/or ADE Rule which creates a probationary cite in a Standards review. They suggest districts should make sure Handbook Committees’ changes align with the student board policy changes. We have not changed the policy regarding the resolution of a conflict between a policy and the handbook because that is accepted legal prioritization.

Date Adopted:

Last Revised: July 2012

## 4.43—BULLYING

Respect for the dignity of others is a cornerstone of civil society. Bullying creates an atmosphere of fear and intimidation, robs a person of his/her dignity, detracts from the safe environment necessary to promote student learning, and will not be tolerated by the Board of Directors. Students who bully another person shall be held accountable for their actions whether they occur on school equipment or property; off school property at a school sponsored or approved function, activity, or event; going to or from school or a school activity in a school vehicle or school bus; or at designated school bus stops.

A school principal or his or her designee who receives a credible report or complaint of bullying shall promptly investigate the complaint or report and make a record of the investigation and any action taken as a result of the investigation.

### **Definitions:**

**Attribute** means an actual or perceived personal characteristic including without limitation race, color, religion, ancestry, national origin, socioeconomic status, academic status, disability, gender, gender identity, physical appearance, health condition, or sexual orientation;

**Bullying** means the intentional harassment, intimidation, humiliation, ridicule, defamation, or threat or incitement of violence by a student against another student or public school employee by a written, verbal, electronic, or physical act that may address an attribute of the other student, public school employee, or person with whom the other student or public school employee is associated and that causes or creates actual or reasonably foreseeable:

- Physical harm to a public school employee or student or damage to the public school employee's or student's property;
- Substantial interference with a student's education or with a public school employee's role in education;
- A hostile educational environment for one (1) or more students or public school employees due to the severity, persistence, or pervasiveness of the act; or
- Substantial disruption of the orderly operation of the school or educational environment;

**Electronic act** means without limitation a communication or image transmitted by means of an electronic device, including without limitation a telephone, wireless phone or other wireless communications device, computer, or pager that results in the substantial disruption of the orderly operation of the school or educational environment.

Electronic acts of bullying are prohibited whether or not the electronic act originated on school property or with school equipment, if the electronic act is directed specifically at students or school personnel and maliciously intended for the purpose of disrupting school, and has a high likelihood of succeeding in that purpose;

**Harassment** means a pattern of unwelcome verbal or physical conduct relating to another person's constitutionally or statutorily protected status that causes, or reasonably should be expected to cause, substantial interference with the other's performance in the school environment; and

**Substantial disruption** means without limitation that any one or more of the following occur as a result of the bullying:

- Necessary cessation of instruction or educational activities;
- Inability of students or educational staff to focus on learning or function as an educational unit because of a hostile environment;
- Severe or repetitive disciplinary measures are needed in the classroom or during educational activities; or
- Exhibition of other behaviors by students or educational staff that substantially interfere with the learning environment.

**Cyberbullying of School Employees** is expressly prohibited and includes, but is not limited to:

- a. Building a fake profile or website of the employee;
- b. Posting or encouraging others to post on the Internet private, personal, or sexual information pertaining to a school employee;
- c. Posting an original or edited image of the school employee on the Internet;
- d. Accessing, altering, or erasing any computer network, computer data program, or computer software, including breaking into a password-protected account or stealing or otherwise accessing passwords of a school employee; making repeated, continuing, or sustained electronic communications, including electronic mail or transmission, to a school employee;
- e. Making, or causing to be made, and disseminating an unauthorized copy of data pertaining to a school employee in any form, including without limitation the printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network;
- f. Signing up a school employee for a pornographic Internet site; or
- g. Without authorization of the school employee, signing up a school employee for electronic mailing lists or to receive junk electronic messages and instant messages.

Examples of "Bullying" may also include but are not limited to a pattern of behavior involving one or more of the following:

1. Sarcastic comments "compliments" about another student's personal appearance or actual or perceived attributes,
2. Pointed questions intended to embarrass or humiliate,
3. Mocking, taunting or belittling,
4. Non-verbal threats and/or intimidation such as "fronting" or "chesting" a person,
5. Demeaning humor relating to a student's race, gender, ethnicity or actual or perceived attributes,
6. Blackmail, extortion, demands for protection money or other involuntary donations or loans,
7. Blocking access to school property or facilities,
8. Deliberate physical contact or injury to person or property,
9. Stealing or hiding books or belongings,
10. Threats of harm to student(s), possessions, or others,
11. Sexual harassment, as governed by policy 4.27, is also a form of bullying, and/or
12. Teasing or name-calling based on the belief or perception that an individual is not conforming to expected gender roles (Example: "Slut") or conduct or is homosexual, regardless of whether the student self-identifies as homosexual (Examples: "You are so gay." "Fag" "Queer").

Students are encouraged to report behavior they consider to be bullying, including a single action which if allowed to continue would constitute bullying, to their teacher or the building principal. The report may be made anonymously. Teachers and other school employees who have witnessed, or are reliably informed that, a student has been a victim of behavior they consider to be bullying, including a single action which if allowed to continue would constitute bullying, shall report the incident(s) to the principal. Parents or legal guardians may submit written reports of incidents they feel constitute bullying, or if allowed to continue would constitute bullying, to the principal. The principal shall be responsible for investigating the incident(s) to determine if disciplinary action is warranted.

The person or persons reporting behavior they consider to be bullying shall not be subject to retaliation or reprisal in any form.

Students found to be in violation of this policy shall be subject to disciplinary action up to and including expulsion. In determining the appropriate disciplinary action, consideration may be given to other violations of the student handbook which may have simultaneously occurred.<sup>1</sup>

Notice of what constitutes bullying, the District's prohibition against bullying, and the consequences for students who bully shall be conspicuously posted in every classroom, cafeteria, restroom, gymnasium,

auditorium, and school bus. Parents, students, school volunteers, and employees shall be given copies of the notice.

Copies of this policy shall be available upon request.<sup>2</sup>

**Notes:** Different consequences are permitted depending on the age or grade of the bullying student.

<sup>1</sup>Example: a student might be disciplined both for bullying and sexual harassment, in an appropriate situation, or bullying and assault.

<sup>2</sup> There should be a statement in the Student Handbook to this effect.

Suggestion for the posted notice: Create a circle with a line through it over the word Bullying (similar to a non-smoking logo). Beside the logo write: Mean talk or hurting other people is called bullying.

Bullying is against the rules and can get you in trouble, suspended, or expelled. If someone bullies you, or you see someone being bullied, get help by telling an adult.

Legal Reference:       A.C.A. § 6-18-514  
                              A.C.A. § 5-71-217

Date Adopted: 7-19-04  
Last Revised: 10-16-2006  
10-15-2007; 6-20-11; 6-2013

#### **4.44— ATTENDANCE REQUIREMENTS FOR STUDENTS IN GRADES 9 - 12**

Students in grades nine through twelve (9-12) are required to schedule and attend at least 350 minutes of regularly scheduled class time daily. Part of this requirement may be met by students taking post-secondary courses. Eligible students' enrollment and attendance at a post-secondary institution shall count toward the required weekly time of school attendance. Each credit hour shall count as three (3) hours of attendance time. This means a three (3) hour course shall count as nine (9) hours of the weekly required time of attendance.

Study Halls Students may be assigned to no more than one (1) class period each day for a study hall that the student shall be required to attend and participate in for the full period. Such study halls are to be used for the purposes of self-study or for organized tutoring which is to take place in the school building.

Extracurricular Classes Students may be assigned to no more than one (1) class period each day for organized and scheduled student extracurricular classes that the student shall be required to attend and participate in for the full class period. Extracurricular classes related to a seasonal activity shall meet for an entire semester whether or not the season ends prior to the end of the semester. Students must attend and participate in the class for the entire semester in order to receive credit for the course. For the purpose of this policy, extracurricular classes is defined as school sponsored activities which are not an Arkansas Department of Education approved course counting toward graduation requirements or classes that have not been approved by the Arkansas Department of Education for academic credit. Such classes may include special interest, fine arts, technical, scholastic, intramural, and interscholastic opportunities.

Course Enrollment Outside of District Enrollment and attendance in vocational-educational training courses, college courses, school work programs, and other department-sanctioned educational programs may be used to satisfy the student attendance requirement even if the programs are not located at the public schools. Attendance in such alternative programs must be pre-approved by the school's administration. The district shall strive to assign students who have been dropped from a course of study or removed from a school work program job during the semester into another placement or course of study. In the instances where a subsequent placement is unable to be made, the district may grant a wavier for the student for the duration of the semester in which the placement is unable to be made.

In rare instances, students may be granted waivers from the mandatory attendance requirement if they would experience proven financial hardships if required to attend a full day of school. For the purpose of this policy, proven financial hardships is defined as harm or suffering caused by a student's inability to obtain or provide basic life necessities of food, clothing, and shelter for the student or the student's family. The superintendent shall have the authority to grant such a waiver, on a case-by-case basis, only when convinced the student meets the definition of proven financial hardships.

In any instance where a provision of a student's Individual Education Plan (IEP) conflicts with a portion(s) of this policy, the IEP shall prevail.

Legal References: A.C.A. § 6-18-210, 211 Arkansas Department of Education Rules Governing the  
Mandatory Attendance Requirements for Students in Grades Nine through  
Twelve

Date Adopted: 8-16-04  
Last Revised:

#### **4.46—PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance shall be recited during the first class period of each school day. Those students choosing to participate shall do so by facing the flag with their right hands over their hearts, or in an appropriate salute if in uniform, while reciting the Pledge. Students choosing not to participate shall be quiet while either standing or sitting at their desks.

Students shall not be compelled to recite the Pledge, but students who choose not to recite the Pledge shall not disrupt those students choosing to recite the Pledge.

Students choosing not to recite the Pledge shall not be subject to any comments, retaliation, or disciplinary action.

Legal Reference: A.C.A. § 6-16-108

Date Adopted:  
8-15-05 Last  
Revised:



## 4.45—SMART CORE CURRICULUM AND GRADUATION REQUIREMENTS

All students are required to participate in the Smart Core curriculum unless their parents or guardians, or the students if they are 18 years of age or older, sign a *Smart Core Waiver Form* to not participate. While Smart Core is the default option, both a *Smart Core Informed Consent Form* and a *Smart Core Waiver Form* will be sent home with students prior to their enrolling in seventh grade, or when a 7-12 grade student enrolls in the district for the first time and there is not a signed form in the student's permanent record. Parents must sign one of the forms and return it to the school so it can be placed in the students' permanent records.<sup>1</sup> This policy is to be included in student handbooks for grades 6-12 and both students and parents must sign an acknowledgement they have received the policy. Those students not participating in the Smart Core curriculum will be required to fulfill the Core curriculum or the requirements of their IEP (when applicable) to be eligible for graduation. Counseling by trained personnel shall be available to students and their parents or legal guardians prior to the time they are required to sign the consent forms.

While there are similarities between the two curriculums, following the Core curriculum may not qualify students for some scholarships and admission to certain colleges could be jeopardized. Students initially choosing the Core curriculum may subsequently change to the Smart Core curriculum **providing** they would be able to complete the required course of study by the end of their senior year.<sup>2</sup> Students wishing to change their choice of curriculums must consult with their counselor to determine the feasibility of changing.

This policy, the Smart Core curriculum, and the courses necessary for graduation shall be reviewed by staff, students, and parents at least every other year<sup>3</sup> to determine if changes need to be made to better serve the needs of the district's students. The superintendent, or his/her designee, shall select the composition of the review panel.

Sufficient information relating to Smart Core and the district's graduation requirements shall be communicated to parents and students to ensure their informed understanding of each. This may be accomplished through any or all of the following means.<sup>4</sup>

- Inclusion in the student handbook of the Smart Core curriculum and graduation requirements;
- Discussion of the Smart Core curriculum and graduation requirements at the school's annual public meeting, PTA meetings, or a meeting held specifically for the purpose of informing the public on this matter;
- Discussions held by the school's counselors with students and their parents; and/or
- Distribution of a newsletter(s) to parents or guardians of the district's students.

The first year of this policy's implementation all employees required to be licensed as a condition of their employment shall receive training regarding this policy so that they will be able to help successfully implement it. In subsequent years, administrators, or their designees, shall train newly hired employees, required to be licensed as a condition of their employment, regarding this policy. The district's annual professional development shall include the training required by this paragraph.<sup>5</sup>

### GRADUATION REQUIREMENTS

The number of units students must earn to be eligible for high school graduation is to be earned from the categories listed below. A minimum of 22 units is required for graduation for a student participating in either

the Smart Core or Core curriculum. In addition to the 22 units required for graduation by the Arkansas Department of Education, the district requires an additional \_\_ units to graduate for a total of \_\_ units. The additional required units may be taken from any electives offered by the district.<sup>6</sup> There are some distinctions made between Smart Core units and Graduation units. Not all units earned toward graduation necessarily apply to Smart Core requirements.

### **SMART CORE: Sixteen (16) units**

English: four (4) units – 9th, 10th, 11th, and 12th

Oral Communications: one-half (1/2) unit

Mathematics: four (4) units (all students under Smart Core must take a mathematics course in grade 11 or 12 and complete Algebra II.)

- Algebra I or Algebra A & B\* which may be taken in grades 7-8 or 8-9
  - Geometry or Investigating Geometry or Geometry A & B\* which may be taken in grades 8-9 or 9-10
- \*A two-year algebra equivalent or a two-year geometry equivalent may each be counted as two units of the four-unit requirement for the purpose of meeting the **graduation** requirement, but only serve as one unit each toward fulfilling the **Smart Core** requirement.
- Algebra II
  - Beyond Algebra II: this can include Pre-Calculus, Calculus, AP Statistics, Algebra III, Advanced Topic and Modeling in Mathematics, Mathematical Applications and Algorithms, Linear Systems and Statistics, or any of several IB or Advanced Placement math courses

(Comparable concurrent credit college courses may be substituted where applicable)

Natural Science: a total of three (3) units with lab experience chosen from

One unit of Biology; and

Two units chosen from the following three categories (there are acceptable options listed by the ADE for each)

- Physical Science
- Chemistry
- Physics or Principles of Technology I & II or PIC Physics

Social Studies: three (3) units

- Civics one-half (1/2) unit
- World History - one unit
- American History - one unit

Physical Education: one-half (1/2) unit

**Note:** While one-half (1/2) unit is required for graduation, no more than one (1) unit may be applied toward fulfilling the necessary units to graduate.

Health and Safety: one-half (1/2) unit

Economics – one half ( $\frac{1}{2}$ ) unit – dependent upon the licensure of the teacher teaching the course, this can count toward the required three (3) social studies credits or the six (6) required Career Focus elective credits.<sup>8</sup>

Fine Arts: one-half ( $\frac{1}{2}$ ) unit

### **CAREER FOCUS: - Six (6) units**

All career focus unit requirements shall be established through guidance and counseling based on the student's contemplated work aspirations. Career focus courses shall conform to the curriculum policy of the district and reflect state curriculum frameworks through course sequencing and career course concentrations where appropriate.

The Smart Core and career focus units must total at least twenty-two (22) units to graduate. Additionally, the district requires \_\_\_ units for a total of \_\_\_ units to graduate which may be taken from any electives offered by the district.<sup>6</sup>

### **CORE: Sixteen (16) units**

English: four (4) units – 9, 10, 11, and 12

Oral Communications: one-half ( $\frac{1}{2}$ ) unit

Mathematics: four (4) units

- Algebra or its equivalent\* - 1 unit
- Geometry or its equivalent\* - 1 unit
- All math units must build on the base of algebra and geometry knowledge and skills.
- (Comparable concurrent credit college courses may be substituted where applicable)

\*A two-year algebra equivalent or a two-year geometry equivalent may each be counted as two units of the four (4) unit requirement.

Science: three (3) units

- at least one (1) unit of biology or its equivalent
- one (1) unit of a physical science

Social Studies: three (3) units

- Civics one-half ( $\frac{1}{2}$ ) unit
- World history, one (1) unit
- American History, one (1) unit

Physical Education: one-half ( $\frac{1}{2}$ ) unit

**Note:** While one-half ( $\frac{1}{2}$ ) unit is required for graduation, no more than one (1) unit may be applied toward fulfilling the necessary units to graduate.

Health and Safety: one-half ( $\frac{1}{2}$ ) unit

Economics – one half (½) unit – dependent upon the licensure of the teacher teaching the course, this can count toward the required three (3) social studies credits or the six (6) required Career Focus elective credits.<sup>8</sup>

Fine Arts: one-half (1/2) unit

### **CAREER FOCUS: - Six (6) units**

All career focus unit requirements shall be established through guidance and counseling based on the student's contemplated work aspirations. Career focus courses shall conform to the curriculum policy of the district and reflect state curriculum frameworks through course sequencing and career course concentrations where appropriate.

The Core and career focus units must total at least twenty-two (22) units to graduate. Additionally, the district requires 2 units for a total of 24 units to graduate which may be taken from any electives offered by the district.<sup>6</sup>

Notes: <sup>1</sup> New Smart Core Consent and Smart Core Waiver Forms will become effective in July 2013. They are available on the ADE website and on the ASBA policy update website. While 9.03.1.8 of the Standards and the Smart Core Guidance both require parents to sign one of the forms, there's not much you can do if they don't. Either way, the default option is Smart Core.

<sup>2</sup> The Department's Guidelines stipulate completion by the end of the senior year. We believe this is not in agreement with Arkansas code 6-18-202(b)(1) which requires public schools to be open through the completion of the secondary program to students between the ages of 5 and 21. Therefore, we suggest that students be allowed to switch from Core to Smart Core if they could successfully complete its requirements by the time they attained their twenty first birthday. Acceptance of a diploma negates a student's right to switch programs.

<sup>3</sup> The Standards require a review, but do not stipulate its frequency. Select an interval to insert here (never is not an option). Standards require the inclusion of students, parents, and staff in the formulation and review of this policy.

<sup>4</sup> Schools are required to retain documentation procedures and methods used.

<sup>5</sup> The Guidelines require the policy to include the training "procedure." If you prefer a different procedure than inclusion in your district's annual professional development process, change this sentence accordingly.

<sup>6</sup> The Standards of Accreditation Unit has objected to the policy's previous implication (if you substituted a number greater than 22) that the ADE was requiring more than 22 units to graduate. Therefore, this sentence is necessary if your district requires more than 22 units. If you have specific requirements for the additional units, change the new sentence's wording to reflect those requirements.

<sup>87</sup> The Rules specify the option is dependent upon the licensure of the teacher. Specifically, if the course is taught by a licensed social studies teacher, both options exist. If the course is taught by a licensed business education teacher, the credit must be applied toward the career focus requirement.

Cross References: Policy 5.16.4—GRADUATION REQUIREMENTS  
5.11—PROMOTION/RETENTION/COURSE CREDIT FOR 9-12 SCHOOLS  
5.12—PROMOTION/RETENTION/COURSE CREDIT FOR K-9 SCHOOLS

Legal References: Standards of Accreditation 9.03 – 9.03.1.9, 14.02  
ADE Guidelines for the Development of Smart Core Curriculum Policy  
Smart Core Informed Consent Form 2014  
Smart Core Waiver Form 2014

Date Adopted:  
Last Revised: 6-2013

## SMART CORE INFORMED CONSENT FORM (GRADUATING CLASS OF 2014 AND AFTER)

Name of Student: \_\_\_\_\_

Name of Parent/Guardian: \_\_\_\_\_

Name of District: \_\_\_\_\_

Name of School: \_\_\_\_\_

Smart Core is Arkansas's college- and career-ready curriculum for high school students.

College- and career-readiness in Arkansas means that students are prepared for success in entry-level, credit-bearing courses at two-year and four-year colleges and universities, in technical postsecondary training, and in well-paid jobs that support families and have pathways to advancement. To be college- and career ready, students need to be adept problem solvers and critical thinkers who can contribute and apply their knowledge in novel contexts and unforeseen situations. Smart Core *is the foundation* for college- and career-readiness. All students should supplement with additional rigorous coursework within their career focus.

Successful completion of the Smart Core curriculum is one of the eligibility requirements for the Arkansas Academic Challenge Scholarship. Failure to complete the Smart Core curriculum for graduation *may* result in negative consequences such as conditional admission to college and ineligibility for scholarship programs.

Parents or guardians may waive the right for a student to participate in Smart Core and to instead participate in the Core curriculum. The parent must sign the separate Smart Core Waiver Form to do so.

### SMART CORE CURRICULUM

#### English – 4 units

- English 9th grade
- English 10th grade
- English 11th grade
- English 12th grade

#### Mathematics – 4 units; One unit must be taken at 11<sup>th</sup> or 12<sup>th</sup> grade

- Algebra I or First Part and Second Part Algebra I (Grades 7-8 or 8-9)
- Geometry or First Part and Second Part Geometry (Grades 8-9 or 9-10)
- Algebra II
- Fourth Math--Choice of: Advanced Topics and Modeling in Mathematics, Algebra III, Calculus, Linear Systems and Statistics, Mathematical Applications and Algorithms, Pre-Calculus, or an Advanced Placement mathematics

#### Natural Science – 3 units with lab experience chosen from:

- Biology (1 unit)
- Two units from the following three options:
- Physical Science
  - Chemistry
  - Physics or Principles of Technology I & II or PIC Physics

#### Social Studies – 3 units (see note beside economics)

- Civics – ½ unit
- World History – 1 unit
- American History – 1 unit

#### Oral Communication – ½ unit

#### Physical Education – ½ unit

#### Health and Safety – ½ unit

#### Economics – ½ unit (may be counted toward Social Studies or Career Focus)

#### Fine Arts – ½ unit

#### Career Focus – 6 units

(Comparable concurrent credit may be substituted where applicable.)

By signing this form, I acknowledge that I have been informed of the requirements and implementation of the Smart Core curriculum and am choosing the Smart Core curriculum for my child.

\_\_\_\_\_  
Parent/Guardian Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
School Official Signature

\_\_\_\_\_  
Date

## SMART CORE WAIVER FORM (GRADUATING CLASS OF 2014 AND AFTER)

**Name of Student:** \_\_\_\_\_

**Name of Parent/Guardian:** \_\_\_\_\_

**Name of District:** \_\_\_\_\_

**Name of School:** \_\_\_\_\_

Smart Core is Arkansas's college- and career-ready curriculum for high school students.

College- and career-readiness in Arkansas means that students are prepared for success in entry-level, credit-bearing courses at two-year and four-year colleges and universities, in technical postsecondary training, and in well-paid jobs that support families and have pathways to advancement. To be college- and career ready, students need to be adept problem solvers and critical thinkers who can contribute and apply their knowledge in novel contexts and unforeseen situations. Smart Core *is* the foundation for college- and career-readiness. All students should supplement with additional rigorous coursework within their career focus.

Successful completion of the Smart Core curriculum is one of the eligibility requirements for the Arkansas Academic Challenge Scholarship. Failure to complete the Smart Core curriculum for graduation *may* result in negative consequences such as conditional admission to college and ineligibility for scholarship programs.

Parents or guardians may waive the right for a student to participate in Smart Core. By signing this Smart Core Waiver Form, you are waiving your student's right to Smart Core and are placing him or her in the Core Curriculum.

### CORE CURRICULUM

**English – 4 units**

- English 9th grade
- English 10th grade
- English 11th grade
- English 12th grade

**Mathematics – 4 units**

- Algebra I or its equivalent
- Geometry or its equivalent
- All math units must build on the base of algebra and geometry knowledge and skills.

**\*\*** A two-year algebra equivalent or a two-year geometry equivalent may each be counted as two units of the 4 unit requirement.

**Science – 3 units**

- At least one unit of Biology
- At least one unit of a physical science

**Social Studies – 3 units (see note beside economics)**

- Civics – ½ unit
- World History – 1 unit
- American History – 1 unit

**Oral Communication – ½ unit**

**Physical Education – ½ unit**

**Health and Safety – ½ unit**

**Economics – ½ unit** (may be counted toward Social Studies or Career Focus)

**Fine Arts – ½ unit**

**Career Focus – 6 units**

*(Comparable concurrent credit may be substituted where applicable.)*

By signing this form, I acknowledge that I have been informed of the requirements and implementation of the Smart Core curriculum and am choosing to waive the Smart Core curriculum for my child. I understand the potential negative consequences of this action as outlined on this form.

**Parent/Guardian Signature**

**Date**

**School Official Signature**

**Date**

## **4.47— POSSESSION AND USE OF CELL PHONES AND OTHER ELECTRONIC DEVICES**

Students are responsible for conducting themselves in a manner that respects the rights of others. Possession and use of any electronic device, whether district or student owned, that interferes with a positive, orderly classroom environment does not respect the rights of others and is expressly forbidden.

To protect the security of state originated tests that are administered as part of the Arkansas Comprehensive, Testing, Assessment and Accountability Program (ACTAAP), no electronic device as defined in this policy shall be accessible by a student at any time during test administration unless specifically permitted by a student's IEP or individual health plan.<sup>1</sup> This means that when a student is taking an ACTAAP assessment, the student shall not have his/her electronic device in his/her possession. Any student violating this provision shall be subject to this policy's disciplinary provisions.

As used in this policy, “electronic devices” means anything that can be used to transmit or capture images, sound, or data.

Misuse of electronic devices includes, but is not limited to:

1. Using electronic devices during class time in any manner other than specifically permitted by the classroom instructor;
2. Permitting any audible sound to come from the device when not being used for reason #1 above;
3. Engaging in academic dishonesty, including cheating, intentionally plagiarizing, wrongfully giving or receiving help during an academic examination, or wrongfully obtaining test copies or scores;
4. Using the device to take photographs in locker rooms or bathrooms;
5. Creating, sending, sharing, viewing, receiving, or possessing an indecent visual depiction of oneself or another person.

Use of an electronic device is permitted to the extent it is approved in a student's individualized education program (IEP) or it is needed in an emergency that threatens the safety of students, staff, or other individuals.

Before and after normal school hours, possession of electronic devices is permitted on the school campus. The use of such devices at school sponsored functions outside the regular school day is permitted to the extent and within the limitations allowed by the event or activity the student is attending.

The student and/or the student's parents or guardians expressly assume any risk associated with students owning or possessing electronic devices. Students misusing electronic devices shall have them confiscated. Confiscated devices may be picked up at the school's administration office by the student's parents or guardians.<sup>2</sup> Students have no right of privacy as to the content contained on any electronic devices that have been confiscated.<sup>3</sup>

Students who use a school issued cell phones and/or computers for non-school purposes, except as permitted by the district's Internet/computer use policy, shall be subject to discipline, up to and including suspension or expulsion. Students are forbidden from using school issued cell phones while driving any vehicle at any time. Violation may result in disciplinary action up to and including expulsion.<sup>4</sup>



Notes: As districts move toward one-to-one computing and other options for integrating technology into classroom instruction and student learning, ASBA advises that in changing this policy (or any other locally generated policy), districts be mindful of the potential concerns relating to equitable access to the technology. When classroom instruction involves technology devices, it is important to make sure all students have reasonably the same access and are not hampered by their socio-economic status. Permitting or requiring students who own laptops, iPads or any other such device to use them as part of the instructional/learning environment without providing similar devices to those who don't own or have access to such devices is unfair to those students.

<sup>1</sup> The ADE Testing Administration Manual requires this language. Our interpretation is that on testing days students will not be allowed to have their cell phones in their possession during any test they take.

<sup>2</sup> ASBA suggests adding another sentence that specifies the increasing severity of the penalty for repeat offenders. Given the severity of a breach of test security, you might consider separate penalties for such action. If you choose to do so, don't forget to amend the last sentence of the second paragraph.

<sup>3</sup> To perform a search of an electronic device, an administrator would have to possess individualized suspicion that an examination of the device would reveal evidence of student misconduct, **and** the search itself would have to be tailored to the suspicion. For instance, if there were an allegation that harassing text messages had been sent from Student A to Student B during lunch, individualized suspicion would exist as to the text message history contained on Student A's phone. However, viewing pictures or files unrelated to the suspected misconduct would be inappropriate and a violation of the student's rights under the 4<sup>th</sup> Amendment of the US Constitution. Merely confiscating a cell phone because the student received a call on it, does not give individualized suspicion to justify a search.

<sup>4</sup> This sentence is included because insurance companies have ruled that injuries occurring while driving and talking on school issued cell phones are subject to workers comp awards.

Legal References:       A.C.A. § 6-18-515  
ADE Test Administration Manual

Date Adopted:  
Last Revised: June 2012

## 4.48—VIDEO SURVEILLANCE

The board has a responsibility to maintain discipline, protect the safety, security, and welfare of its students, staff, and visitors while at the same time safeguarding district facilities, vehicles, and equipment. As part of fulfilling this responsibility, the board authorizes the use of video/audio surveillance cameras. The placement of video/audio surveillance cameras shall be based on the presumption and belief that students, staff and visitors have no reasonable expectation of privacy anywhere on or near school property, facilities, vehicles, or equipment, with the exception of places such as rest rooms or dressing areas where an expectation of privacy is reasonable and customary.

Signs shall be posted on campus buildings and in district vehicles to notify students, staff, and visitors that video cameras may be in use. Parents and students shall also be notified through the student handbook that cameras may be in use in school buildings, on school grounds and in school vehicles. Students will be held responsible for any violations of school discipline rules caught by the cameras.

The district shall retain copies of video recordings until they are erased<sup>1</sup> which may be accomplished by either deletion or copying over with a new recording.

Videos containing evidence of a violation of student conduct rules and/or state or federal law shall be retained until the issue of the misconduct is no longer subject to review or appeal as determined by board policy or student handbook;<sup>2</sup> any release or viewing of such records shall be in accordance with current law.

Students who vandalize, damage, disable, or render inoperable (temporarily or permanently) surveillance cameras and equipment shall be subject to appropriate disciplinary action and referral to appropriate law enforcement authorities.

Notes: This policy is similar to policies 3.41 and 8.29. If you change this policy, review 3.41 and 8.29

at the same time to ensure applicable consistency between the policies.

While 34 CFR 99.3 exempts records of law enforcement units (which for the purposes of this policy would include SROs, 34 CFR 99.8(b) effectively negates that exemption in relation to this policy with the following language.

(2) *Records of a law enforcement unit does not mean-*

- (i) *Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or*
- (ii) *Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.*

The law goes on to say that education records retain their status as such even when in the possession of a law enforcement unit and thus remain subject to the restrictions on the release

of education records

contained in FERPA. In short, you cannot deny access to the video recordings that may be used for student or staff disciplinary purposes by “hiding” them in your school’s law enforcement unit.

<sup>1</sup> You may recycle your videos on whatever schedule works for your district, but you may not destroy any recordings as long as there is an outstanding request to inspect and review them (34 CFR 99.10). The right to inspect is triggered only for those parents whose students are the cause for the retention of the video recordings. Parents of students “inadvertently” caught in the video do not have the right to inspect then. **Please note, however**, that if a student was not “involved” in the altercation prompting the disciplinary action, but happened to get pushed by one of the students in the fight, the pushed student’s parents have the right to review the video. You must permit viewing of education records within a “reasonable” period of time, but in no case may it be longer than 45 days. (34 CFR 99.10)

<sup>2</sup> The issues involved in parental rights to viewing videos are complicated, but the Family Policy Compliance Office (FPCO) of the Family Educational and Right Act (FERPA), has recently simplified the matter. A video of, for example, a fight between two (or even several) students in which other students happen to have been incidentally included in the background of the video generates the following viewing conditions.

- a. Either or both of the students’ parents may view the video **without** first having to receive permission from the other student’s parent(s). None of the parents of the “incidental” students have to give their permission for the viewing of the video by the “involved” students’ parents.
- b. If a student’s parent lives beyond a reasonable distance to physically come to view the video, the your district may mail the video to a “receiving” school near to the parent, where the parent may view the video and then the receiving school will mail the video back to your district. The personnel at the receiving school should not view the video, but merely arrange for the parent to view it by himself/herself.
- c. The district is **not** obligated to give a copy of the video to the parent or their lawyer. If, however, you choose to give the parent a video, you are obligated to go through all of the hoops that used to be the case for simple viewing of the video. Specifically, faces of the “involved” students other than that of the parent’s student must be redacted or else you will have to receive written permission from the parents of the other involved students.
- d. Remember that the rights of the parents transfer to the students once the student turns 18.
- e. Once the video has been viewed by the parties requesting to view it, the law does not require you to keep the video. Common sense would suggest, however, retaining the video at least until the disciplinary process is completed.

Legal References: 20 USC 1232(g) 34 CFR 99.3, 4, 5, 7, 8, 10, 12, 31

Date Adopted: 10-15-2007 Last Revised: 7-21-08

## **4.49—SPECIAL EDUCATION**

The district shall provide a free appropriate public education and necessary related services to all children with disabilities residing within the district, required under the Individuals With Disabilities Education Act (“IDEA”), Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, and Arkansas Statutes.

It is the intent of the district to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated and provided with appropriate educational services. Students may be disabled within the meaning of Section 504 of the Rehabilitation Act even though they do not require services pursuant to the IDEA.

For students eligible for services under IDEA, the District shall follow procedures for identification, evaluation, placement, and delivery of services to children with disabilities provided in state and federal statutes which govern special education. Implementation of an Individualized Education Program (IEP) in accordance with the IDEA satisfies the district's obligation to provide a free and appropriate education under Section 504.

The Board directs the superintendent to ensure procedures are in place for the implementation of special education services and that programs are developed to conform to the requirements of state and federal legislation. The superintendent is responsible for appointing a district coordinator for overseeing district fulfillment of its responsibilities regarding handicapped students.<sup>1</sup> Among the coordinator’s responsibilities shall be ensuring district enforcement of the due process rights of handicapped students and their parents.

Note: <sup>1</sup> The Office of Civil Rights prefers that the name of the coordinator, or at least a contact person or phone number to call to get the name of the coordinator, is made readily available to the public. 34CFR104.32 stipulates that as part of “child find” responsibilities, districts take appropriate steps to notify handicapped persons and their parents or guardians of the district’s child find duty.

Legal References: 34 C.F.R. 300 et seq.

42 U.S.C. §12101 et seq. American with Disabilities Act

29 U.S.C. § 794 Rehabilitation Act of 1973, Section 504,

20 U.S.C. §1400 et seq. Individuals with Disabilities Education Act,

P.L. 108-446 The 2004 Reauthorization of the Individuals with Disabilities Act

A.C.A. § 6-41-201 et seq.

Date Adopted: 7-21-08

Last Revised:

## 4.52—STUDENTS WHO ARE FOSTER CHILDREN

The District will afford the same services and educational opportunities to foster children that are afforded other children and youth. The District shall work with the Department of Human Services (“DHS”), the ADE, and individuals involved with each foster child to ensure that he/she is able to maintain his/her continuity of educational services to the fullest extent that is practical and reasonable.

The Superintendent or his/her designee shall appoint an appropriate staff person to be the local educational liaison for foster children and youth whose responsibilities shall include ensuring the timely school enrollment of each foster child and assisting foster children who transfer between schools by expediting the transfer of relevant educational records.<sup>1</sup>

The District, working with other individuals and agencies shall, unless the presiding court rules otherwise, ensure that the foster child remains in his/her current school, even if a change in the foster child’s placement results in a residency that is outside the district. In such a situation, the District will work to arrange for transportation to and from school for the foster child to the extent it is reasonable and practical.<sup>2</sup>

Upon notification to the District’s foster care liaison by a foster child’s caseworker that a foster child’s school enrollment is being changed to one of the District’s schools, the school receiving the child must immediately enroll him/her. Immediate enrollment is required even if a child lacks the required clothing, academic or medical records, or proof of residency.<sup>3</sup>

A foster child’s grades shall not be lowered due to absence from school that is caused by a change in the child’s school enrollment, the child’s attendance at dependency-neglect court proceedings, or other court-ordered counseling or treatment.

Any course work completed by the foster child prior to a school enrollment change shall be accepted as academic credit so long as the child has satisfactorily completed the appropriate academic placement assessment.

If a foster child was enrolled in a District school immediately prior to completing his/her graduation requirements while detained in a juvenile detention facility or while committed to the Division of Youth Services of DHS, the District shall issue the child a diploma.

Notes: <sup>1</sup> The name and contact information of the liaison must be sent to the Special Education Section of the ADE at the beginning of each school year. A.C.A. § 9-28-113(c)(d) specify additional requirements/duties of the liaison.

<sup>2</sup> While 9-28-113(b)(4) encourages districts to “arrange for transportation,” there is no explanation of costs or methods.

<sup>3</sup> A.C.A. § 9-28-113 does not address a district’s right to refuse enrollment for a student that has been expelled from another school, but we believe that right is retained even in this circumstance.

Cross References: Policies 4.1—RESIDENCE REQUIREMENTS, 4.2—ENTRANCE REQUIREMENTS, 4.7—ABSENCES

Legal Reference: A.C.A. § 9-28-113

Date Adopted: 6-20-11 Last

Revised:

#### **4.53— PLACEMENT OF MULTIPLE BIRTH SIBLINGS**

The parent, guardian or other person having charge or custody of multiple birth siblings in grades pre-K through 6 may request that the multiple birth siblings are placed in either the same or separate classrooms. The request shall be in writing not later than the 14<sup>th</sup> calendar day prior to the first day of classes at the beginning of the academic year. The school shall honor the request unless it would require the school to add an additional class to the sibling's grade level. If one parent of multiple birth siblings requests a placement that differs from that of the other parent of the same multiple birth siblings, the school shall determine the appropriate placement of the siblings.

The school may change the classroom placement of one or more of the multiple birth siblings if: ☐ There have been a minimum of 30 instructional days since the start of the school year; and

- After consulting with each classroom teacher in which the siblings were placed, the school determines the parent's classroom placement request is:
  - Detrimental to the educational achievement of one or more of the siblings;
  - Disruptive to the siblings' assigned classroom learning environment; or
  - Disruptive to the school's educational or disciplinary environment.

If a parent believes the school has not followed the requirements of this policy, the parent may appeal the multiple birth siblings' classroom placement to the Superintendent. The Superintendent's decision regarding the appeal shall be final.

Legal Reference: A.C.A. § 6-18-106

Date Adopted: 6-20-11

Last Revised:

#### **STUDENT ACCELERATION (4.54)**

The Board believes that acceleration is an effective and research-based intervention for the academic growth of students who are ready for an advanced or faster-paced curriculum. It can allow a student to move through the traditional educational setting more rapidly, based on assessed readiness, capability and motivation. At the same time, the Board understands that acceleration is not a replacement for gifted education services or programs.

Generally, acceleration can occur through one of two broad categories: content based and grade based. Grade based acceleration shortens the number of years a student would otherwise spend in K-12 education, while content based acceleration occurs within the normal K-12 time span. Either form of acceleration can be triggered by either a parent/guardian, student, or community member's request or by the referral of school personnel. In either case, the process of determining the appropriateness of the request shall be under the direction of the district/school Gifted and Talented Program Coordinator who shall convene the individuals necessary to make an informed decision which shall include the student's parents or guardians.

While the needs of the student should dictate when acceleration decisions are considered, the Board believes the optimal time for referrals is in the spring which gives adequate time for working through the determination process and for preparing those concerned for a smooth transition to the acceleration beginning in the following school-year.

The District's Gifted and Talented Program Coordinator will create a written format to govern the referral and determination process which shall be made available to any parent or staff member upon request.

The parents/guardians of any student whose request for acceleration has been denied may appeal the decision, in writing, to the District's GT Coordinator. The District's GT Coordinator<sup>1</sup> and the Acceleration Placement Committee will again thoroughly review the case study that was completed on the student. Upon completion of the review, the Committee will either request additional new testing be conducted to help the Committee make its determination or it will uphold the initial decision. The Committee's decision may not be further appealed.

**Adopted: 6/2013**



# **LOCAL STUDENT POLICIES FORMULATED AND SUBMITTED BY THE SCHOOL HANDBOOK COMMITTEES**

## **BISMARCK ELEMENTARY LOCAL POLICIES**

APPROVED: July 2012

### **ELEMENTARY SCHOOL DELIVERY OF FLOWERS/BALLOONS**

The practice of sending flowers, balloons, and other such remembrances to friends and family at school is allowed at Bismarck Elementary. Due to health related allergy issues 'LATEX' balloons will not be allowed. However, in the event that such remembrances are delivered at school, they will be held in the office until the end of the school day. Students may claim their delivery at the close of school. Glass containers and balloons will not be permitted on school buses.

### **ELEMENTARY DISCIPLINARY CATEGORIES**

While a certain degree of consistency must be maintained; individual circumstances will be considered by school administration with each incident. Serious offenses may result in disciplinary action becoming more severe. Principal may choose a more severe penalty at any time based on the circumstances of the offense.

#### **ELEMENTARY CATEGORY 1**

First referral: Intervention with teacher and parent contact/warning

Second referral: Intervention with principal and/or counselor or designee. One day Principal Detention/parent contact

Third referral: Principal/counselor intervention and up to 3 days Principal detention and parent conference

Fourth referral: Up to 5 days principal detention/parent conference

Fifth referral: Saturday School or ISS

Sixth referral: OSS

**ELEMENTARY CATEGORIES 2, 3, and 4** - Disciplinary actions will move progressively through a defined schedule for each rule violation. However, the principal may move to a more severe penalty at any time based on the circumstances involved in the particular incident. While a certain degree of consistency must be maintained; individual circumstances will be considered by school administration with each incident. Serious offenses may result in disciplinary action becoming more severe. Principal may choose a more severe penalty at any time based on the circumstances of the offense.

#### **ELEMENTARY CATEGORY 2:**

For Category 2 infractions, the following consequences may be applied:

First Offense - Up to 2 days Principal Detention/parent contact

Second Offense - Up to 5 days Principal Detention/parent conference

Third Offense - Up to 2 days out-of-school suspension or Saturday School

Fourth Offense - Up to 5 days out-of-school suspension

### **ELEMENTARY CATEGORY 3:**

For Category 3 infractions, the following consequences may be applied:

First Offense- Up to 5 days Principal Detention or Saturday  
School

Second Offense - Up to 2 days out-of-school suspension

Third Offense - Up to 5 days out-of-school suspension

Fourth Offense - Up to 10 days out-of-school suspension

Beyond Fourth Offense- Expulsion recommendation

### **ELEMENTARY CATEGORY 4**

For Category 4 infractions, the following consequences may be applied:

First Offense - Up to 2 days out-of-school suspension

Second Offense - Up to 5 days out-of-school suspension

Third Offense - Up to 5 days out-of-school suspension

Fourth Offense - Expulsion recommendation

### **PARTICIPATION IN EXTRA CURRICULAR ACTIVITIES NOTICE**

The district is not responsible for accidents and injuries that may occur during practices/games or any extra-curricular activity. The parent/guardian assumes all responsibility and payment for such injuries.

### **GRADING**

A minimum of 9 grades will be taken per 9 week grading period in each class/subject. These can be for oral/written assessments, in-class assignments/homework, class participation, special projects, quizzes/tests, etc...

### **SCHOOL DAYS**

Office hours are 7:35 A.M. to 4:00 P.M. on student attendance days. School begins at 7:55 A.M. and is dismissed at 3:15 P.M. Children should not arrive before 7:35 A.M. and should leave the school grounds as soon as school is dismissed.

Students who remain on campus after 3:15 for any school-sponsored activities will write their name and reason for staying on sheet in the office on the day they stay after school.

If a student is to change their normal routine and/or destination when school is out, the office must be notified in writing or by phone on any day a change is necessary.

Students who must leave before the school day ends must be signed out in the office by whomever picks them up. Parents must notify the office of all persons who have permission to remove their child from campus during the school day. Enrollment forms have space for this information.

**VISITORS (LOCAL POLICY ADDED to 4.16)**

Students are not to bring nor arrange for visitors to campus. Any visitation to the classroom shall be allowed only with the permission of the school principal. All visitors to campus must report directly to the principal's office to sign in and state the nature of his/her business. Authorized visitors must wear/display visitor's badge at all times while they are on campus. Unauthorized visitors must leave campus immediately. No visitors (including parents) are allowed to participate in recess or other general assemblies/gatherings of the student body, or interact with children other than their own, unless specifically permitted by the principal.

## **BISMARCK MIDDLE SCHOOL LOCAL POLICIES**

APPROVED: July 2012

### **SCHOOL DAYS**

Office hours are 7:35 A.M. to 4:00 P.M. on student attendance days. School begins at 7:55 A.M. and is dismissed at 3:15 P.M. Children should not arrive before 7:35 A.M. and should leave the school grounds as soon as school is dismissed.

Students who remain on campus after 3:15 for any school-sponsored activities will write their name and reason for staying on sheet in the office on the day they stay after school.

If a student is to change their normal routine and/or destination when school is out, the office must be notified in writing or by phone on any day a change is necessary.

Students who must leave before the school day ends must be signed out in the office by whomever picks them up. Parents must notify the office of all persons who have permission to remove their child from campus during the school day. Enrollment forms have space for this information.

### **VISITORS (LOCAL POLICY ADDED to 4.16)**

Students are not to bring nor arrange for visitors to campus. Any visitation to the classroom shall be allowed only with the permission of the school principal. All visitors to campus must report directly to the principal's office to sign in and state the nature of his/her business. Authorized visitors must wear/display visitor's badge at all times while they are on campus. Unauthorized visitors must leave campus immediately. No visitors (including parents) are allowed to participate in recess or other general assemblies/gatherings of the student body, or interact with children other than their own, unless specifically permitted by the principal.

### **PARTICIPATION IN EXTRA CURRICULAR ACTIVITIES NOTICE**

The district is not responsible for accidents and injuries that may occur during practices/games or any extra-curricular activity. The parent/guardian assumes all responsibility and payment for such injuries.

### **GRADING**

A minimum of 9 grades will be taken per 9 week grading period in each class/subject. These can be for oral/written assessments, in-class assignments/homework, class participation, special projects, quizzes/tests, etc...

### **MIDDLE/ELEMENTARY SCHOOL PROMOTION/RETENTION/COURSE CREDIT FOR 5-12 SCHOOLS (LOCAL addition to policy 5.12)**

A disservice is done to students through social promotion and is prohibited by state law. The District shall, at a minimum, evaluate

each student annually in an effort to help each student who is not performing at grade level. Each school in the Bismarck School District shall include in the student handbook, the criteria for promotion of students to the next grade. Parents or guardians shall be kept informed concerning the progress of their student(s). Notice of a student's possible retention shall be included with the student's grades sent home to each parent/guardian. Parent-teacher conferences are encouraged and may be held as necessary in an effort to improve a student's academic success.

Promotion or retention of students shall be considered on a case-by-case basis taking into account: the student's performance and effort in the classroom, diagnostic and summative assessment results, social history and individual circumstances, response to intervention (RTI), and other criteria pertaining to individual academic needs and abilities. If there is doubt concerning the promotion or retention of a student, before a final decision is made, a conference between the parents/guardians, teacher(s), other pertinent personnel, and principal shall be held. The conference shall be held at a time and place that best accommodates those participating in the conference. The school shall document participation or non-participation in required conferences. If the conference attendees fail to agree concerning the student's placement, the final decision to promote or retain shall rest with the principal.

Students who do not score proficient or above on their grade level Benchmark Exams shall be required to participate in an Academic Improvement Plan (AIP). Each AIP shall be developed by school personnel and the student's parents and shall be designed to assist the student in attaining the expected achievement level. The AIP shall also state the parent's role as well as the consequences for the student's failure to participate in the plan, which shall include the student's retention in their present grade. Note: *Students who fail to participate in the AIP shall be retained in their current grade.*

In addition to the Benchmark Exam requirements, students who take a course requiring a general end-of-course (EOC) assessment must receive a score of proficient on the initial assessment or successfully participate in an Individualized Academic Improvement Plan AIP created for them to receive academic credit for the course and to be able to graduate. If the course is Algebra I, the student must take the high stakes EOC assessment and receive a score of passing on the original or subsequent assessment or receive a passing score on an alternative assessment as provided by law to be able to receive academic credit for the course and to be able to graduate.

Promotion/retention or graduation of students with an Individual Educational Plan (IEP) shall be based on their successful attainment of the goals set forth in their IEP.

**MIDDLE SCHOOL CATEGORY 1**

Based on severity and reoccurrence, any of the following consequences may be applied: Detention Hall, Corporal Punishment, Student/Principal conference, 1 to 10 days Out-of-School or In-School Suspension, and/or other appropriate disciplinary options as assigned by the principal.

**Hitting/Rough Housing**

Escalation of "just playing around" is the most common cause of fights among middle school students. Students will not "horseplay" by making physical contact (grabbing, hitting etc...) with other students.

**POSSESSION AND USE OF CELL PHONES AND OTHER ELECTRONIC DEVICES (4.47)**

**Specific consequences for cell phone violation include phone confiscation and:**

First offence - 1 day ISS

Second offence - 3 days ISS, cell phone rights revoked 89 days

Third offence - 5 days ISS, cell phone rights revoked 178 days

Beyond the third offence in a school year is considered insubordinate behavior, and will result in Out-of-school suspension up to expulsion.

**MIDDLE SCHOOL CATEGORY 4:**

For Category 4 infractions, the following consequences be applied:

First Offense - 3 days out-of-school suspension

Second Offense - 5 days out-of-school suspension

Third Offense - 5 days out-of-school suspension

Fourth Offense - Expulsion recommendation

## **BISMARCK HIGH SCHOOL LOCAL POLICIES**

APPROVED: July 2012

### **PARTICIPATION IN EXTRA CURRICULAR ACTIVITIES NOTICE**

The district is not responsible for accidents and injuries that may occur during practices/games or any extra-curricular activity. The parent/guardian assumes all responsibility and payment for such injuries.

### **GRADING**

A minimum of 9 grades will be taken per 9 week grading period in each class/subject. These can be for oral/written assessments, in-class assignments/homework, class participation, special projects, quizzes/tests, etc...

**4.33—STUDENTS' VEHICLES** - A sentence was added to the first paragraph clarifying that student parking on campus is a privilege and thus can be revoked. Also, the second and third paragraphs were tweaked to clarify their meanings.

Parking on school property is a privilege which may be denied to a student for any disciplinary violation, at the discretion of the student's building principal.

### **4.2—ENTRANCE REQUIREMENTS**

Students may enter kindergarten if they will attain the age of five (5) on or before August 1<sup>st</sup> of the year in which they are seeking initial enrollment

Changed date (OSR Violation)

### ***Withdrawing From School***

It shall be the policy of the School Board that any student who intends to transfer from the school district should inform the principal's office of his intentions, and, if possible, give the address of the new school he/she will attend. All students who withdraw from school must secure a withdrawal form from the principal's office and secure the required signatures. All books, uniforms, and supplies must be returned or paid for. If this procedure is not followed, no grades/records will be transferred. Added stipulations for having grades transferred.

### ***Exchange Students***

Bismarck high school will consider and upon approval of the administration except Foreign exchange students. The administration does have the right to deny exchange students for any reason deemed necessary. Any other considerations will be on a case-by-case basis. Exchange students cannot be classified as seniors. A requirement for enrollment for any exchange student will be knowledge of the English language. Foreign Exchange students will not be eligible to receive a diploma.

# TABLE OF CONTENTS

## SECTION 5—CURRICULUM AND INSTRUCTION

EDUCATIONAL PHILOSOPHY _____	5.1
PLANNING FOR EDUCATIONAL IMPROVEMENT _____	5.2
CURRICULUM DEVELOPMENT _____	5.3
STAFF DEVELOPMENT PROGRAM _____	5.4
SELECTION/INSPECTION OF INSTRUCTIONAL MATERIALS _____	5.5
CHALLENGE OF INSTRUCTIONAL/SUPPLEMENTAL MATERIALS _____	5.6
REQUEST TO RECONSIDERATION OF INSTRUCTIONAL OR SUPPLEMENTAL MATERIALS _____	5.6F
SELECTION OF LIBRARY/MEDIA CENTER MATERIALS _____	5.7
REQUEST FOR FORMAL RECONSIDERATION FORM _____	5.7F
USE OF COPYRIGHTED MATERIALS _____	5.8
COMPUTER SOFTWARE COPYRIGHT _____	5.9
RELIGION IN THE SCHOOLS _____	5.10
PROMOTION/RETENTION-SECONDARY _____	5.11
PROMOTION/RETENTION – ELEMENTARY SCHOOLS _____	5.12
SUMMER SCHOOL _____	5.13
HOMEWORK _____	5.14
GRADING _____	5.15



GRADUATION REQUIREMENTS	5.16
HONOR GRADUATES	5.17
HONOR ROLL AND GRADUATE OPT OUT FORM	5.17F
HEALTH SERVICES	5.18
EXTRACURRICULAR ACTIVITIES – SECONDARY SCHOOLS	5.19
EXTRACURRICULAR ACTIVITIES - ELEMENTARY	5.19.1
EXTRACURRICULAR ACTIVITIES ELIGIBILITY FOR HOME SCHOOLED STUDENTS	5.19.2
HOME SCHOOLED STUDENTS’ LETTER OF INTENT TO PARTICIPATE IN AN EXTRACURRICULAR ACTIVITY	5.19.2F
DISTRICT WEB SITE	5.20
PERMISSION TO DISPLAY PHOTO OF STUDENT ON WEB SITE	5.20 F1
WEB SITE PRIVACY POLICY	5.20.1
ADVANCED PLACEMENT	5.21
CONCURRENT CREDIT	5.22
STUDENT PARTICIPATION IN SURVEYS	5.24
OBJECTION TO PARTICIPATION IN SURVEYS, ANALYSIS, OR EVALUATIONS	5.24F1
PERMISSION TO PARTICIPATE IN A SURVEY, ANALYSIS, OR EVALUATION	5.24F2
MARKETING OF PERSONAL INFORMATION	5.25
ALTERNATIVE LEARNING ENVIRONMENTS	5.26
ALE PROGRAM EVALUATION	5.26.1
ENGLISH LANGUAGE LEARNERS	5.27
NATIONAL SCHOOL LUNCH ACT FUNDING EXPENDITURES	5.28
WELLNESS POLICY	5.29

# **CURRICULUM AND INSTRUCTION**

## **5.1—EDUCATIONAL PHILOSOPHY**

The Bismarck School District assumes the responsibility of providing students attending its schools a high quality education that challenges each student to achieve to their maximum potential. The District shall endeavor to create the environment within the schools necessary to attain this goal. The creation of the necessary climate shall be based on the following core beliefs:

1. The District's vision statement will be developed with input from students, parents, business leaders, and other community members.
2. All students can be successful learners.
3. Students learn at different rates and in different ways.
4. A primary goal shall be to give students the skills they need to be life-long learners.
5. The education of all citizens is basic to our community's well-being.
6. Student achievement is affected positively by the involvement of parents and the community in the schools.
7. The District is responsible for helping cultivate good citizenship skills in its students.
8. Students reflect the moral and ethical values of their environment.
9. All people have a right to a safe environment.
10. Each person is responsible for his/her own actions.
11. Innovation involves taking risks.
12. Schools are responsible for creating the conditions that promote success.
13. Each person is entitled to retain his/her dignity.
14. All people have the right to be treated with respect and the responsibility to treat others respectfully.
15. For teachers to succeed in cultivating high student achievement, they need to be given the materials, training, and environment necessary to produce such results.

Date Adopted: 5-19-03

Last Revised:

## 5.2—PLANNING FOR EDUCATIONAL IMPROVEMENT

Each school in the district shall develop a comprehensive school improvement plan to address deficiencies in student performance based on analysis of students' grade-level benchmark assessments and other relevant data. The purpose of each plan shall be to ensure that all students meet the state assessment standards established by the State Board of Education, as well as student achievement goals established by the District.<sup>1</sup> A cumulative review of all academic improvement plans shall also be part of the data used to develop the comprehensive school improvement plan. Each plan shall be developed with administrator, teacher, other school staff, parent, community, and student (when appropriate) input and shall have as one of its components a plan for a parental involvement program.<sup>2</sup> Professional development activities are to be designed to meet the needs identified in each schools' plan. Each plan is to be reviewed annually and revised to meet the changing needs reflected in student data.

Any school in the district identified by the Arkansas Department of Education as failing to meet the established levels of academic achievement on the state's criterion-referenced tests shall revise its school improvement plan.<sup>3</sup>

The district shall develop, with appropriate staff and community input, a comprehensive district improvement plan. The plan shall coordinate the actions of the various comprehensive school improvement plans within the district. The district plan shall align district resources to help ensure all of its students attain proficiency on the Benchmark exams.<sup>4</sup>

### Legal References:

A.C.A. § 6-15-404 (i)(1)

A.C.A. § 6-15-404 (i)(2)(B)

A.C.A. § 6-15-404 (i) (2)(A)(i)(ii)

A.C.A. § 6-15-419(2)(B)(iii)

A.C.A. § 6-15-419(9)

A.C.A. § 6-15-419(12)

ADE Rules Governing the ACTAAP and the Academic Distress Program ~~3.08, 3.14-3.10, 3.16, 9.0—9.04~~ 8.0 – 8.04, 9.04 ~~10.01-1~~

Arkansas Department of Education Rules for Governing Standards for Accreditation of Arkansas Public Schools and School Districts 7.0, 8.01, and 16.0 – 16.03.5 (The old Standards required the Student Services Plan be included in the ACSIP. While the new Standards do not specifically require it to be included in your ACSIP, prudence would still recommend it.)

Date Adopted: 5-19-03

Last Revised: 10-16-2006

## 5.3—CURRICULUM DEVELOPMENT

Sequential curricula should be developed for each subject area. Curricula are to be aligned with the curriculum frameworks and used to plan instruction leading to student proficiency on Arkansas' content standards. Curricula should be in alignment with the District's vision, mission, goals, and educational philosophy. Student achievement is increased through an integrated curriculum that promotes continuity and a growth in skills and knowledge from grade to grade and from school to school. Therefore, the Board desires that unnecessary duplication of work among the various grades and schools be eliminated and that courses of study and their corresponding content guides be coordinated effectively.

The Board of Education is responsible for reviewing and approving all instructional programs offered by the District as well as approving significant changes to courses or course materials before they are implemented. The Superintendent is responsible for making curriculum recommendations.

Each school shall review each curriculum area annually to address the continued relevancy, adequacy, and cost effectiveness of individual courses and instructional programs and to ensure each area is aligned with the current curriculum frameworks and course content standards approved by the State Board of Education. Each school's administration shall implement a monitoring process to ensure that the instructional content of each course offered is consistent with the content standards and curriculum frameworks approved by the State Board of Education.

In addition to the requirements listed above, the district's Curriculum Coordinator shall work with staff as may be appropriate to ensure a successful transition to the implementation of the Common Core State Standards.

Legal References:     Standards of Accreditation 9.01.2, 7.04.2  
                             ADE Rules Governing the ACTAAP and the Academic Distress  
Program 4.05  
                             A.C.A. § 6-15-101  
                             A.C.A. § 6-15-1505(a)

Date Adopted: 5-19-03  
Last Revised: 10-18-04; 6-20-11

## 5.4—STAFF DEVELOPMENT PROGRAM

For the purposes of this policy, professional development means a set of coordinated, planned learning activities for teachers and administrators that:

- Is required by statute or the Arkansas Department of Education; or
- Meets the following criteria:
  - Improves the knowledge, skills, and effectiveness of teachers;
  - Improves the knowledge and skills of administrators and paraprofessionals concerning effective instructional strategies and methods;
  - Leads to improved student academic achievement; and
  - Is researched-based and standards-based.

The District shall develop and implement a plan for the professional development of its licensed employees. The District's plan shall, in part, align District resources to address the professional development activities identified in each school's ACSIP. The plan shall describe how the District's categorical funds will be used to address deficiencies in student performance and any identified academic achievement gaps between groups of students. At the end of each school year, the District shall evaluate the professional development activities' effectiveness in improving student performance and closing achievement gaps.

Each licensed employee shall receive a minimum of sixty (60) hours of professional development annually to be fulfilled between July 1 and June 30 or June 1 and May 31.<sup>1</sup> Licensed employees are required to obtain their sixty (60) hours of approved professional development each year over a five-year period as part of licensure renewal requirements. Professional development hours earned in excess of sixty (60) in the designated year cannot be carried over to the next year.

Licensed employees who are prevented from obtaining the required professional development hours due to their illness or the illness of an immediate family member as defined in A.C.A. § 6-17-1202 have until the end of the following school year to make up the deficient hours. Missed hours of professional development shall be made up with professional development that is substantially similar to that which was missed. This time extension does not absolve the employee from also obtaining the following year's required 60 hours of professional development. Failure to obtain required professional development or to make up missed professional development could lead to disciplinary consequences, up to termination or nonrenewal of the contract of employment.

The goal of all professional development activities shall be improved student achievement and academic performance that results in individual, school-wide, and system-wide improvement designed to ensure that all students demonstrate proficiency on the state's assessments. The District's professional development plan shall demonstrate scientifically research-based best practice, and shall be based on student achievement data and in alignment with applicable ADE Rules and/or Arkansas code.

Teachers and administrators shall be involved in the design, implementation, and evaluation of the plan for their own professional development. The results of the evaluation made by the participants in each program shall be used to continuously improve the District's professional development offerings and to revise the school improvement plan.

Flexible professional development hours (flex hours) are those hours which an employee is allowed to substitute professional development activities, different than those offered by the District, but which still meet criteria of either the employee's Individual Improvement Plan, Professional Growth Plan, the school's ACSIP, or both. The District shall determine on an annual basis how many, if any, flex hours of professional development it will allow to be substituted for District scheduled professional development offerings. The determination may be made at an individual building, a grade, or by subject basis. The District administration and the building principal have the authority to require attendance at specific professional development activities. Employees must receive advance approval from the building principal for activities they wish to have qualify for flex professional development hours. To the fullest extent possible, professional development activities are to be scheduled and attended such that teachers do not miss their regular teaching assignments. Six (6) approved flex hours credited toward fulfilling the sixty (60) hour requirement shall equal one contract day. Hours of professional development earned by an employee that is not at the request of the District and is in excess of sixty (60) or not pre-approved by the building principal shall not be credited toward fulfilling the required number of contract days for that employee.<sup>2</sup> Hours earned that count toward the required sixty (60) also count toward the required number of contract days for that employee. Employees shall be paid their daily rate of pay for professional development hours earned at the request of the District that necessitate the employee work more than the number of days required by their contract.

Teachers and administrators who, for any reason, miss part or all of any scheduled professional development activity they were required to attend, must make up the required hours in comparable activities which are to be pre-approved by the building principal.

To receive credit for his/her professional development activity each employee is responsible for obtaining and submitting documents of attendance, or completion for each professional development activity he/she attends. Documentation is to be submitted to the Superintendent or designee. The District shall maintain all documents submitted by its employees which reflect completion of professional development programs, whether such programs were provided by the District or an outside organization.

To the extent required by ADE Rules, employees will receive up to six (6) hours of educational technology professional development which is to be integrated within other professional development offerings.

Beginning in the 2013-14 school-year and every fourth year thereafter, all mandated reporters and licensed personnel shall receive the training related to child maltreatment required under A.C.A. § 6-61-133(d)(e)(2).

For the purposes of this training, "mandated reporters" includes school social workers, psychologists, and nurses.

Beginning in school-year 2014-15 and every fourth year thereafter, teachers shall receive two (2) hours of professional development designed to enhance their understanding of effective parental involvement strategies.

Beginning in school-year 2014-15 and every fourth year thereafter, administrators shall receive two (2) hours of professional development designed to enhance their understanding of effective parental involvement strategies-and the importance of administrative leadership in setting expectations and creating a climate conducive to parental participation.

Beginning in the 2015-16 school-year and every fourth year thereafter, all licensed personnel shall receive two (2) hours of professional development in teen suicide awareness and prevention which may be obtained by self-review of suitable suicide prevention materials approved by ADE.

Beginning in the 2016-17 school-year and every fourth year thereafter, teachers who provide instruction in Arkansas history shall receive at least two (2) hours of professional development in Arkansas history as part of the teacher's sixty (60) hours annual requirement.

Anticipated rescuers shall receive training in cardiopulmonary resuscitation and the use of automated external defibrillators as required by ADE Rule. Such training shall count toward the required annual hours of professional development.

At least once every three (3) years, persons employed as athletics coaches, shall receive training related to concussions, dehydration, or other health emergencies as well as students' health and safety issues related to environmental issues and communicable diseases.

All licensed personnel shall receive training related to compliance with the District's antibullying policies.

For each administrator, the sixty (60) hour professional development requirement shall include training in data disaggregation, instructional leadership, and fiscal management. Superintendents and other District designees shall receive the Initial, Tier 1, and Tier 2 training required by ADE's Rules Governing the Arkansas Financial Accounting and Reporting System and Annual Training Requirements.

Teachers' professional development shall meet the requirements prescribed under the Teacher Evaluation Support System (TESS).<sup>3</sup>

Teachers required by the superintendent, building principal, or their designee to take approved training related to teaching an advance placement class for a subject covered by the College Board and Educational Testing Service shall receive up to thirty (30) hours of credit toward the sixty (60) hours of professional development required annually.

Licensed personnel may earn up to twelve (12) hours of professional development for time they are required to spend in their instructional classroom, office or media center prior to the first day of student/teacher interaction **provided** the time is spent in accordance with the state law and current ADE rules that deal with professional development. The hours may be earned through online professional development approved by the ADE provided the professional development relates to the district's ASCIP and the teacher's professional growth plan.

Teachers are eligible to receive fifteen (15) professional development hours for a three-hour graduate level college course that meets the criteria identified in law and the applicable ADE rules. The ~~b~~Board shall determine if the hours earned apply toward the required sixty (60). A maximum of thirty (30) such hours may be applied toward the sixty (60) hours of professional development required annually.

Employees who do not receive or furnish documentation of the required annual professional development jeopardize the accreditation of their school and academic achievement of their students. Failure of an employee to receive sixty (60) hours of professional development in any given year, unless due to illness as permitted by law, ADE Rule, and this policy, shall be grounds for disciplinary action up to and



including termination.

Approved professional development activities may include conferences, workshops, institutes, individual learning, mentoring, peer coaching, study groups, National Board for Professional Teaching Standards Certification, distance learning, internships, District /school programs, and approved college/university course work.

Professional development activities shall relate to the following areas: content (K-12); instructional strategies; assessment; advocacy/leadership; systemic change process; standards, frameworks, and curriculum alignment; supervision; mentoring/coaching; educational technology; principles of learning/developmental stages; cognitive research; parent involvement; building a collaborative learning community; and student health and wellness.

Notes: A.C.A. § 6-17-704(e) lists two categories of possible professional development that **may count** toward the required 60 hours of PD, but that **isn't required**, **and consequently** have not been added to the body of this policy. The two categories are; skills needed to teach students with disabilities, including autism, and teaching culturally and linguistically diverse students.

<sup>1</sup> The Rules Governing Professional Development 4.02 require the District to choose the option it will follow and “document” its choice. The documentation may be noted by the selection chosen for this policy and also in the district’s “plan” for professional development required by A.C.A. § 6-17-704(c)(1).

<sup>2</sup> The number of contract days may vary between employees, but the concern here is with the number of contract days specified in each individual employee’s contract.

<sup>3</sup> TESS includes different requirements and restrictions on PD that is not otherwise prescribed by law or rule and that varies by whether the teacher has a summative evaluation and/or is on Intensive Support Status. Consult A.C.A. § 6-17-2806 for specifics.

Cross-Reference: Policy 3.6—LICENSED PERSONNEL EMPLOYEE TRAINING

Legal References: Arkansas State Board of Education: Standards of Accreditation 15.04  
ADE Rules Governing Professional Development  
ADE Rules Governing the Arkansas Financial Accounting and Reporting System  
and Annual Training Requirements  
A. C.A. § 6-10-122, 123  
A.C.A. § 6-15-404(f)(2)  
A.C.A. § 6-15-1004(c)  
A.C.A. § 6-15-1703  
A.C.A. § 6-16-1203  
A.C.A. § 6-17-703  
A.C.A. § 6-17-704  
A.C.A. § 6-17-708

A.C.A. § 6-17-709

A.C.A. § 6-17-2806

A.C.A. § 6-17-2808

A.C.A. § 6-20-2204

A.C.A. § 6-20-2303 (15)

A.C.A. § 6-61-133

Date Adopted: 5-19-03

Last Revised: 10-16-2006; 10-15-2007; 6-20-11; 6/25/12; 7/15/13

## **5.5—SELECTION/INSPECTION OF INSTRUCTIONAL MATERIALS**

The use of instructional materials beyond those approved as part of the curriculum/textbook program must be compatible with school and district policies. If there is uncertainty concerning the appropriateness of supplemental materials, the personnel desiring to use the materials shall get approval from the school's principal prior to putting the materials into use.

All instructional materials used as part of the educational curriculum of a student shall be available for inspection by the parents or guardians of the student. For the purposes of this policy, instructional materials is defined as instructional content provided to the student regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats. The term does not include academic tests or academic assessments.

Parents or guardians wishing to inspect instructional materials used as part of the educational curriculum for their child may schedule an appointment with the student's teacher at a mutually agreeable time. Parents/guardians wishing to challenge the appropriateness of any instructional materials shall follow the procedures outlined in Policy 5.6—CHALLENGE OF INSTRUCTIONAL/SUPPLEMENTAL MATERIALS.

The rights provided to parents under this policy transfer to the student when he/she turns 18 years old.

Legal Reference: 20 USC § 1232h (a), (b), (c) [NCLB Act of 2001, Part F, Section 1061 (c) (1)(C)(i)(ii), (2)(A)(i), (5)(B), (6)(A)(C)]

Date Adopted: 5-19-03

Last Revised:

## 5.6—CHALLENGE TO INSTRUCTIONAL/SUPPLEMENTAL MATERIALS

Instructional and supplemental materials are selected for their compatibility with the District's educational program and their ability to help fulfill the District's educational goals and objectives. Individuals wishing to challenge or express concerns about instructional or supplemental materials may do so by filling out a *Challenge to Instructional Material* form available in the school's office.

The contesting individual may present a copy of the form to the principal and request a conference be held at a time of mutual convenience. Prior to the conference, the principal shall consult with the teacher regarding the contested material. In the conference, the principal shall explain to the contesting individual the criteria used for the selection of the material and its relevancy to the educational program as well as any other pertinent information in support of the use of the material.

Following the conclusion of the meeting, the principal shall have five (5) working days to submit a summary of the concerns expressed by the individual and the principal's response to those concerns to the curriculum director and then to the Superintendent.

If the contesting individual is not satisfied with the principal's response, the individual may, after the five (5) working day period, request a meeting with the Superintendent where the individual shall present the same *Challenge to Instructional Material* form previously presented to the principal. The Superintendent shall explain to the contesting individual the criteria used for the selection of the material and its relevancy to the educational program as well as any other pertinent information in support of the use of the material.

Following the conclusion of the meeting, the Superintendent shall have five (5) working days to write a summary of the concerns expressed by the individual and the Superintendent's response to those concerns. The Superintendent shall create a file of his/her response along with a copy of the principal's response and a copy of the contesting individual's *Challenge to Instructional Material* form.

If, after meeting with the Superintendent, the contesting individual is not satisfied with the Superintendent's response regarding the appropriateness of the instructional or supplemental material, he/she may appeal the Superintendent's decision to the Board. The Superintendent shall present the contesting individual's *Challenge to Instructional Material* form to the Board at the next regularly scheduled meeting along with the written responses to the challenge. The Board may elect, if it so chooses, to hear brief verbal presentations from the parties involved in the challenge.

The Board shall decide at that meeting or their next regularly scheduled meeting whether to retain the material, limit the availability of the material, or remove the material from the school. The Board's primary consideration in reaching its decision shall be the appropriateness of the material for its intended educational use.

Date Adopted: 5-19-03

Last Revised:

**5.6F—REQUEST FOR RECONSIDERATION OF INSTRUCTIONAL OR SUPPLEMENTAL MATERIALS**

Name: \_\_\_\_\_

Date submitted: level one \_\_\_\_\_ level two \_\_\_\_\_ level three \_\_\_\_\_

Instructional material being contested:

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Reasons for contesting the material (be specific):

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What is your proposed resolution? \_\_\_\_\_

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Signature of receiving principal \_\_\_\_\_

Signature of curriculum coordinator \_\_\_\_\_

Signature of Superintendent \_\_\_\_\_

Date Adopted: 5-19-03

Last Revised:

## **5.7—SELECTION OF LIBRARY/MEDIA CENTER MATERIALS**

The ultimate authority for the selection and retention of materials for the schools' media centers rests with the Board of Education which shall serve as a final arbiter in resolving a challenge to any media center materials. Licensed media center personnel shall make the initial selections in consultation with school and district licensed staff. Materials selected shall be in accordance with the guidelines of this policy.

The purpose of the schools' libraries/media centers is to supplement and enrich the curriculum and instruction offered by the District. Promoting the dialogue characteristic of a healthy democracy necessitates the maintenance of a broad range of materials and information representing varied points of view on current and historical issues. In the selection of the materials and resources to be available in each library/media center consideration will be given to their age appropriateness. Materials should be available to challenge the different interests, learning styles, and reading levels of the school's students and that will help them attain the District's educational goals.

### **Selection Criteria**

The criteria used in the selection of media center materials shall be that the materials:

1. Support and enhance the curricular and educational goals of the district;
2. Are appropriate for the ages, learning styles, interests, and maturity of the schools' students, or parents in the case of parenting literature;
3. Contribute to the examination of issues from varying points of view and help to broaden students understanding of their rights and responsibilities in our society;
4. Help develop critical thinking skills;
5. Are factually and/or historically accurate, in the case of non-fiction works and/or serve a pedagogical purpose;
6. Have literary merit as perceived by the educational community; and
7. Are technically well produced, physically sound (to the extent appropriate), and represent a reasonably sound economic value.

### **Retention and Continuous Evaluation**

Media center materials shall be reviewed regularly to ensure the continued appropriateness of the center's collection to the school's curriculum and to maintain the collection in good repair. Those materials no longer meeting the selection criteria, have not been used for a long period of time, or are too worn to be economically repaired shall be withdrawn from the collection and disposed of. A record of withdrawn media materials including the manner of their disposal shall be maintained for a period of three years.

### **Gifts**

Gifts to the media centers shall be evaluated to determine their appropriateness before they are placed in any media center. The evaluation shall use the same criteria as for all other materials considered for inclusion in the media centers. Any items determined to be unacceptable shall be returned to the donor or disposed of at the discretion of the media specialist. The media centers shall have a list of desired items to give to prospective donors to aid them in their selection of materials to donate.

## Challenges:

The parent of a student affected by a media selection, or a District employee may formally challenge the appropriateness of a media center selection by following the procedure outlined in this policy. The challenged material shall remain available throughout the challenge process.

Before any formal challenge can be filed, the individual contesting (hereinafter complainant) the appropriateness of the specified item shall request a conference through the principal's office with a licensed media center employee. The complainant shall be given a copy of this policy and the *Request for Formal Reconsideration Form* prior to the conference. The meeting shall take place at the earliest possible time of mutual convenience, but in no case later than five (5) working days from the date of the request unless it is by the choice of the complainant.

In the meeting, the media specialist shall explain the selection criteria and how the challenged material fits the criteria. The complainant shall explain his/her reasons for objecting to the selected material. If, at the completion of the meeting, the complainant wishes to make a formal challenge to the selected material, he/she may do so by completing the *Request for Formal Reconsideration Form* and submitting it to the principal's office.

To review the contested media, the principal shall select a committee of five (5) or seven (7) licensed personnel consisting of the principal as chair and at least one media specialist. The remaining committee members shall be personnel with curriculum knowledge appropriate for the material being contested and representative of diverse viewpoints. The task of the committee shall be to determine if the challenged material meets the criteria of selection. No material shall be withdrawn solely for the viewpoints expressed within it and shall be reviewed in its entirety and not selected portions taken out of context.

The principal shall convene a meeting after a reasonable time for the committee members to adequately review the contested material and the *Request for Formal Reconsideration Form* submitted by the complainant. The complainant shall be allowed to present the complaint to the committee after which time the committee shall meet privately to discuss the material. The committee shall vote by secret ballot to determine whether the contested material shall be removed from the media center's collection. A member from the voting majority shall write a summary of the reasons for their decision. A notice of the committee's decision and the summary shall be given (by hand or certified mail) to the complainant.

If the decision is to not remove the material, the complainant may appeal the committee's decision to the district Board of Directors by filing a written appeal to the Superintendent within 5 working days of the committee's decision or of written receipt of the decision. The Superintendent shall present the original complaint and the committee's decision along with the summary of its reasons for its position plus a recommendation of the administration, if so desired, to the Board within 15 days of the committee's decision. The Board shall review the material submitted to them by the Superintendent and make a decision within thirty (30) days of receipt of the information. The Board's decision is final.

Legal Reference: A.C.A. § 6-25-101 et seq.

Date Adopted: 5-19-03

Last Revised: 10-18-04

7-21-08

Name: \_\_\_\_\_

Media Center material being contested:

[illegible]

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Signature of Superintendent (if appealed)

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## **5.8—USE OF COPYRIGHTED MATERIALS**

The Board of Education encourages the enrichment of the instructional program through the proper use of supplementary materials. To help ensure the appropriate use of copyrighted materials, the Superintendent, or his designee, will provide district personnel with information regarding the “fair use” doctrine of the U.S. Copyright Code as detailed in the “Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals” and “Guidelines for Educational Uses of Music.”

The District will not be responsible for any employee violations of the use of copyrighted materials.

Legal Reference: 17 USCS § 101 to 1010 (Federal Copyright Law of 1976)

Date Adopted: 5-19-03

Last Revised:

## **5.9—COMPUTER SOFTWARE COPYRIGHT**

The District shall observe copyright laws governing computer software reproduction. Unless specifically allowed by the software purchase agreement, the Copyright Act allows the purchaser of software to:

1. Make one copy of software for archival purposes in case the original is destroyed or damaged through mechanical failure of a computer. However, if the original is sold or given away, the archival copy must be destroyed;
2. Make necessary adaptations to use the program; and/or
3. Add features to the program for specific applications. These improvements may not be sold or given away without the copyright owner's permission.

The District shall abide by applicable licensing agreements before using computer software on local-area or wide-area networks.

Legal Reference:        17 USC § 117   Amended Dec. 12, 1980

Date Adopted: 5-19-03

Last Revised:

## 5.10—RELIGION IN THE SCHOOLS

The First Amendment of the Constitution states that “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof...” As the Supreme Court has stated (*Abington School District v. Schempp*, 374 U.S. 203) the Amendment thus, “embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.” Therefore, it is the Board’s policy that the school system, as an agency of the government, shall be neutral in matters regarding religion and will not engage in any activity that either advocates or disparages religion. The District shall assume no role or responsibility for the religious training of any student.

The need for neutrality does not diminish our school system’s educational responsibility to address the historical role of religion in the development of our culture. Since we live in a diverse society, the District’s goal shall be to address the subject of religion objectively in such a way that it promotes an understanding of, and tolerance for, each other’s religious or non-religious views.

Discussions concerning religious concepts, practices, or disciplines are permissible when presented in a secular context in their relation to an inclusive study of religion or to the study of a particular region or country. The discussions shall be such that they are objective and academically informational and do not advocate nor denigrate any particular form of religious practice

The teacher in charge of each classroom may, at the opening of school each day, conduct a brief period of silence with the participation of all students in the classroom who desire to participate.

Students and employees may engage in personal religious practices, such as prayer, at any time, and shall do so in a manner and at a time so that the educational process is not disrupted.

Legal Reference:      A.C.A. § 6-10-115

Date Adopted: 5-19-03

Last Revised: 6/25/12

## **5.11—PROMOTION/RETENTION/COURSE CREDIT FOR 5-12 SCHOOLS**

A disservice is done to students through social promotion and is prohibited by state law. The District shall, at a minimum, evaluate each student annually in an effort to help each student who is not performing at grade level. Each school in the Bismarck School District shall include in the student handbook, the criteria for promotion of students to the next grade as well as the criteria for being required to retake a course, if applicable. Parents or guardians shall be kept informed concerning the progress of their student(s). Notice of a student's possible retention or required retaking of a course shall be included with the student's grades sent home to each parent/guardian or the student if 18 or older. Parent-teacher conferences are encouraged and may be held as necessary in an effort to improve a student's academic success.

Promotion or retention of students, or their required retaking of a course shall be primarily based on the criteria outlined in the student handbook. If there is doubt concerning the promotion or retention of a student, or their required retaking of a course, a conference between the parents/guardians, teacher(s), other pertinent personnel, and principal shall be held before a final decision is made. The conference shall be held at a time and place that best accommodates those participating in the conference. The school shall document participation or non-participation in required conferences. If the conference attendees fail to agree concerning the student's placement, the final decision to promote or retain shall rest with the principal or his/her designee.

Students who do not score proficient or above on their grade level Benchmark Exams shall be required to participate in an Academic Improvement Plan (AIP). Each AIP shall be developed by school personnel and the student's parents and shall be designed to assist the student in attaining the expected achievement level. The AIP shall also state the parent's role as well as the consequences for the student's failure to participate in the plan, which shall include the student's retention in their present grade.

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All students must successfully pass all end-of-course (EOC) assessments they are required to take; unless exempted by the student's individualized education program (IEP). To receive academic credit on his/her transcript in a course requiring a student to take a EOC assessment, the student must either receive a passing score on the initial assessment or successfully participate in the remediation program identified in his/her Individualized Academic Improvement Plan (IAIP) which shall focus on the areas in which the student failed to meet the necessary passing score. Additionally, the lack of credit could jeopardize the student's grade promotion or classification.

To the extent required by the State Board of Education, students in grade eleven (11) and below who do not meet the required score on a college and career readiness measurement shall participate in the remediation activities prescribed in his/her IAIP which may include additional opportunities to retake the measurement.

Promotion/retention or graduation of students with an Individual Educational Plan (IEP) shall be based on their successful attainment of the goals set forth in their IEP.

Cross References: 3.30—PARENT-TEACHER COMMUNICATION  
4.45—SMART CORE CURRICULUM AND GRADUATION  
REQUIREMENTS

Legal References: A.C.A. § 6-15-402  
A.C.A. § 6-15-404  
[A.C.A. § 6-15-419\(3\)](#)  
[A.C.A. § 6-15-433](#)  
A.C.A. § 6-15-1602  
A.C.A. § 6-15-2001  
A.C.A. § 6-15-2005  
A.C.A. § 6-15-2009  
State Board of Education: Standards of Accreditation 12.04.3  
ADE Rules Governing the ACTAAP and the Academic Distress Program  
Arkansas Department of Education Rules Governing Public School End-Of-  
Course Assessments and Remediation

Date Adopted: 5-19-03

Last Revised: 10-16-2006; 6-20-11; 6/25/12; 7/15/13

## 5.12—PROMOTION/RETENTION/COURSE CREDIT FOR K-4 SCHOOLS

A disservice is done to students through social promotion and is prohibited by state law. The District shall, at a minimum, evaluate each student annually in an effort to help each student who is not performing at grade level. Each school in the Bismarck School District shall include in the student handbook, the criteria for promotion of students to the next grade. Parents or guardians shall be kept informed concerning the progress of their student(s). Notice of a student's possible retention shall be included with the student's grades sent home to each parent/guardian. Parent-teacher conferences are encouraged and may be held as necessary in an effort to improve a student's academic success.

Promotion or retention of students shall be primarily based on the criteria outlined in the student handbook. If there is doubt concerning the promotion or retention of a student, before a final decision is made, a conference between the parents/guardians, teacher(s), other pertinent personnel, and principal shall be held. The conference shall be held at a time and place that best accommodates those participating in the conference. The school shall document participation or non-participation in required conferences. If the conference attendees fail to agree concerning the student's placement, the final decision to promote or retain shall rest with the principal.

Students who do not score proficient or above on their grade level Benchmark Exams shall be required to participate in an Academic Improvement Plan (AIP). Each AIP shall be developed by school personnel and the student's parents and shall be designed to assist the student in attaining the expected achievement level. The AIP shall also state the parent's role as well as the consequences for the student's failure to participate in the plan, which shall include the student's retention in their present grade.

In addition to the Benchmark Exam requirements and unless exempted by the student's individualized education program (IEP), students who take a course requiring an end-of-course (EOC) assessment must either receive a passing score on the initial assessment or successfully participate in an Individualized Academic Improvement Plan (IAIP) created for them to receive academic credit for the course.<sup>2</sup>

Promotion/retention or graduation of students with an Individual Educational Plan (IEP) shall be based on their successful attainment of the goals set forth in their IEP.

Notes: This policy is designed for lower level grades, but depending how your district's grades are configured, it may or may not include grades 7 and 8 and thus trigger the EOC requirements. You will need to select the grades this policy covers and state that in the title.

<sup>1</sup> Insert the criteria your district uses for promotion/retention.

<sup>2</sup> If your grade configuration does not include grade 7 or above, delete this paragraph.

## 5.11—PROMOTION/RETENTION/COURSE CREDIT FOR 5-12

### SCHOOLS

Legal References:     A.C.A. § 6-15-402  
                              A.C.A. § 6-15-404  
                              A.C.A. § 6-15-419(3)  
                              A.C.A. § 6-15-433  
                              A.C.A. § 6-15-1602  
                              A.C.A. § 6-15-2001  
                              A.C.A. § 6-15-2005  
                              A.C.A. § 6-15-2009  
                              State Board of Education: Standards of Accreditation 12.04.3  
                              ADE Rules Governing the ACTAAP and the Academic Distress Program  
                              7.02-7.02.9, 7.03-7.03.7.3  
                              Arkansas Department of Education Rules Governing Public School End-Of-  
Course                    Assessments and Remediation 4.0 and 5.0

Date Adopted: 6/25/12

Last Revised: 7/15/13

## **5.11—SUMMER SCHOOL**

The Bismarck School District shall offer remediation programs during the school year to those students in kindergarten through third grade (K-3) not performing at grade level.

Legal Reference:       A.C.A. § 6-16-704

Date Adopted: 5-19-03  
Last Revised: 8-15-05



## **5.14—HOMEWORK**

Homework is considered to be part of the educational program of the District. Assignments shall be an extension of the teaching/learning experience that promotes the student's educational development. As an extension of the classroom, homework must be planned and organized and should be viewed by the students as purposeful.

Teachers should be aware of the potential problem students may have completing assignments from multiple teachers and vary the amount of homework they give from day to day.

Legal Reference:        State Board of Education Rules & Regulations: Accreditation Standards \*10.07

Date Adopted: 5-19-03

Last Revised: 10-18-04

## 5.15—GRADING

Parents or guardians shall be kept informed concerning the progress of their student. Parent-teacher conferences are encouraged and may be requested by parents, guardians, or teachers. If the progress of a student is unsatisfactory in a subject, the teacher shall attempt to schedule a parent-teacher conference. In the conference, the teacher shall explain the reasons for difficulties and shall develop, cooperatively with the parents, a plan for remediation which may enhance the probability of the student succeeding. The school shall also send timely progress reports and issue grades for each nine-week grading period to keep parents/guardians informed of their student's progress.

The evaluation of each student's performance on a regular basis serves to give the parents/guardians, students, and the school necessary information to help effect academic improvement. Students' grades shall reflect only the extent to which a student has achieved the expressed educational objectives of the course.

The grades of a child in foster care shall not be lowered due to an absence from school due to:<sup>2</sup>

- (1) A change in the child's school enrollment;
- (2) The child's attendance at a dependency-neglect court proceeding; or
- (3) The child's attendance at court-ordered counseling or treatment.

The grading scale for all schools in the district shall be as follows.

A = 100 – 90  
B = 89 – 80  
C = 79 – 70  
D = 69-60  
F = 59 and below

For the purpose of determining grade point averages, the numeric value of each letter grade shall be

A = 4 points  
B = 3 points  
C = 2 points  
D = 1 point  
F = 0 points

The grade point values for Advanced Placement (AP), International Baccalaureate (IB), and approved honor courses shall be one point greater than for regular courses with the exception that an F shall still be worth 0 points.

The final grades of students who transfer in for part of a semester will be determined by blending the grades earned in the district with those earned outside the district. Each final grade will be the sum of the percentage of days in the grading period transferred from outside

the district times the transferred grade from outside the district plus the percentage of days in the grading period while in the district times the grade earned in the district.

For example: The grading period had 40 days. A student transferred in with a grade of 83% earned in 10 days at the previous school. The student had a grade of 75% in our district's school earned in the remaining 30 days of the grading period. 10 days is 25% of 40 days while 30 days is 75% of 40 days. Thus the final grade would be  $.25 (83) + .75 (73) = 75.5\%$ .

Notes:

<sup>2</sup>A.C.A. § 9-28-113(f) makes this requirement, but does not offer any statutory solution. Presumably, class work missed due to a foster child's absence for the listed reasons would fall under the same parameters for making up missed assignments or tests as any other absence. As such, a foster child's grades could be affected by how well the child does in making up their missed assignments or tests, but not merely because the child missed school for cause.

Legal References:     A.C.A. § 6-15-902  
                              A.C.A. § 9-28-113(f)  
                              State Board of Education: Standards of Accreditation 12.02  
                              Arkansas Department of Education Rules and Regulations Governing  
                              Uniform Grading Scales for Public Secondary Schools

Date Adopted: 5-19-03

Last Revised: 10-18-04; 6-20-11; 6/25/12

## 5.16—GRADUATION REQUIREMENTS

The number of units students must earn to be eligible for high school graduation are to be earned from the categories listed below. A minimum of 22 units is required for graduation for a student participating in either the Smart Core or Core curriculum. In addition to the 22 units required for graduation by the Arkansas Department of Education, the district requires an additional 2 units to graduate for a total of 24 units. The additional required units may be taken from any electives offered by the district.<sup>1</sup> There are some distinctions made between Smart Core units and Graduation units. Not all units earned toward graduation necessarily apply to Smart Core requirements. The provisions of a student's Individualized Education Plan (IEP) serve as his/her graduation plan.

### **SMART CORE: Sixteen (16) units**

English: four (4) units – 9th, 10th, 11th, and 12th

Oral Communications: one-half (1/2) unit

Mathematics: four (4) units (all students under Smart Core must take a mathematics course in grade 11 or 12 and complete Algebra II.)

- Algebra I or Algebra A & B\* which may be taken in grades 7-8 or 8-9
- Geometry or Investigating Geometry or Geometry A & B\* which may be taken in grades 8-9 or 9-10

\*A two-year algebra equivalent or a two-year geometry equivalent may each be counted as two units of the four-unit requirement for the purpose of meeting the **graduation** requirement, but only serve as one unit each toward fulfilling the **Smart Core** requirement.

- Algebra II
- Beyond Algebra II: this can include Pre-Calculus, Calculus, AP Algebra III, Advanced Topic and Modeling in Mathematics, Mathematical Applications and Algorithms, Linear Systems and Statistics, or any of several IB or Advanced Placement math courses

(Comparable concurrent credit college courses may be substituted where applicable)

Natural Science: a total of three (3) units with lab experience chosen from

One unit of Biology; and

Two units chosen from the following three categories (there are acceptable options listed by the ADE for each)

- Physical Science
- Chemistry
- Physics or Principles of Technology I & II or PIC Physics

Social Studies: three (3) units

- Civics one-half (1/2) unit
- World History - one unit
- American History - one unit

Physical Education: one-half (1/2) unit

**Note:** While one-half (1/2) unit is required for graduation, no more than one (1) unit may be applied toward fulfilling the necessary units to graduate.

Health and Safety: one-half (1/2) unit

Economics – one half (1/2) unit – dependent upon the licensure of the teacher teaching the course, this can count toward the required three (3) social studies credits or the six (6) required Career Focus elective credits.

Fine Arts: one-half (1/2) unit

### **CAREER FOCUS: - Six (6) units**

All career focus unit requirements shall be established through guidance and counseling based on the student's contemplated work aspirations. Career focus courses shall conform to the curriculum policy of the district and reflect state curriculum frameworks through course sequencing and career course concentrations where appropriate.

The Smart Core and career focus units must total at least twenty-two (22) units to graduate. Additionally, the district requires 2 units for a total of 24 units to graduate which may be taken from any electives offered by the district.

### **CORE: Sixteen (16) units**

English: four (4) units – 9, 10, 11, and 12

Oral Communications: one-half (1/2) unit

Mathematics: four (4) units

- Algebra or its equivalent\* - 1 unit
- Geometry or its equivalent\* - 1 unit
- All math units must build on the base of algebra and geometry knowledge and skills.
- (Comparable concurrent credit college courses may be substituted where applicable)

\*A two-year algebra equivalent or a two-year geometry equivalent may each be counted as two units of the four (4) unit requirement.

Science: three (3) units

- at least one (1) unit of biology or its equivalent
- one (1) unit of a physical science

Social Studies: three (3) units

- Civics one-half (1/2) unit
- World history, one (1) unit
- American History, one (1) unit

Physical Education: one-half (1/2) unit

**Note:** While one-half (1/2) unit is required for graduation, no more than one (1) unit may be applied toward fulfilling the necessary units to graduate.

Health and Safety: one-half (1/2) unit

Economics – one half (1/2) unit – dependent upon the licensure of the teacher teaching the course, this can count toward the required three (3) social studies credits or the six (6) required Career Focus elective credits.

Fine Arts: one-half (1/2) unit

**CAREER FOCUS: - Six (6) units**

All career focus unit requirements shall be established through guidance and counseling based on the student's contemplated work aspirations. Career focus courses shall conform to the curriculum policy of the district and reflect state curriculum frameworks through course sequencing and career course concentrations where appropriate.

The Core and career focus units must total at least twenty-two (22) units to graduate. Additionally, the district requires 2 units for a total of 24 units to graduate which may be taken from any electives offered by the district.<sup>1</sup>

Notes: <sup>1</sup> The Standards of Accreditation Unit has objected to the policy's previous implication (if you substituted a number greater than 22) that the ADE was requiring more than 22 units to graduate. Therefore, this sentence is necessary if your district requires more than 22 units. If you have specific requirements for the additional units, change the new sentence's wording to reflect those requirements.

<sup>2</sup> The Rules specify the option is dependent upon the licensure of the teacher. Specifically, if the course is taught by a licensed social studies teacher, both options exist. If the course is taught by a licensed business education teacher, the credit must be applied toward the career focus requirement.

Cross Reference: Policy 4.45 SMART CORE CURRICULUM AND GRADUATION REQUIREMENTS

Legal Reference: State Board of Education; Standards of Accreditation 14.02

Date Adopted: 6-17-13

Last Revised: 7/15/13







## **5.17—HONOR ROLL AND HONOR GRADUATES**

### **HONOR ROLL**

Students in grades K-6 who maintain all A's and/or B's for the grading period will be recognized as honor roll students for that grading period. Semester grades will determine the honor roll at the end of each semester.

Students in grades 7-12 who participate in the Smart Core Curriculum<sup>1</sup> and maintain a 3.5 GPA for the grading period will be recognized as honor roll students for that grading period. Semester grades will determine the honor roll at the end of each semester.

### **HONOR GRADUATES**

Students who have successfully completed the minimum core of courses recommended for preparation for college as defined by the State Board of Higher Education and the State Board of Education and have a cumulative GPA of 3.5 will be designated as honor students.<sup>2</sup> The GPA shall be derived from courses taken in public schools in grades nine (9) through twelve (12).

### **VALEDICTORIAN AND SALUTATORIAN**

The honor student with the highest GPA and who has been enrolled in public school in grades 9 through 12 and in Bismarck High School for his/her entire senior year shall serve as the valedictorian of his/her graduating class.

The honor student with the second highest GPA and who has been enrolled in public school in grades 9 through 12 and in Bismarck High School for his/her entire senior year shall serve as the salutatorian of his/her graduating class.

Parents or guardians of a student, or a student eighteen (18) years of age or older, who choose to not have the student publicly identified as an honor roll or honor graduate student must submit a written request that the student not be so identified.

Legal References:      A.C.A. § 6-18-101 (a) (1)  
                                 A.C.A. § 6-18-101 (a) (2)  
                                 A.C.A. § 6-18-101 (b)  
                                 A.C.A. § 6-18-101(e)  
                                 A.C.A. § 6-61-217(a)

Date Adopted: 5-19-2003

Last Revised: 10-16-2006

## **5.17F— HONOR ROLL AND GRADUATE OPT OUT FORM**

I, the undersigned, being a parent or guardian of a student, or a student eighteen (18) years of age or older, hereby note my objection to having the student named below publicly identified as an honor roll or honor graduate student.

---

Name of student (Printed)

---

Signature of parent (or student, if 18 or older)

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Date form was filed (To be filled in by office personnel)

Date Adopted: 5-19-2003

Last Revised: 10-16-2006

## **5.18 —HEALTH SERVICES**

The Board believes that healthy children promote a better learning environment, are more capable of high student achievement, and will result in healthier, more productive adults. Therefore, the goal of the District's health services is to promote a healthy student body. This requires both the education of students concerning healthy behaviors, as well as providing health care services to pupils.

While the school nurse is under the supervision of the school principal, the delegation of health care duties shall be in accordance with the Arkansas Nurse Practice Act and the Arkansas State Board of Nursing Rules and Regulations Chapter Five: Delegation of Nursing Care.

Date Adopted: 5-19-03

Last Revised:

## 5.19 —EXTRACURRICULAR ACTIVITIES – SECONDARY SCHOOLS

Each school in the District shall post on its website its schedule of interscholastic activities, including sign-up, tryout, and participation deadlines, at least one semester in advance of those activities. A hard copy of the schedule shall be available upon request.

The Board believes in providing opportunities for students to participate in extracurricular activities that can help enrich the student's educational experience. At the same time, the Board believes that a student's participation in extracurricular activities cannot come at the expense of his/her classroom academic achievement. Interruptions of activities shall not be excessive in any one semester. Activities must be approved by the principal. The principal has the right to limit the number of activities if and when it begins to conflict with the students' academic achievement. Additionally, a student's participation in, and the District's operation of, extracurricular activities shall be subject to the following policy. All students meeting this policy's criteria are eligible for extracurricular activities.

### **Definitions:**

Extracurricular activities are defined as: any school sponsored program where students from one or more schools meet, work, perform, practice under supervision outside of regular classtime, or are competing for the purpose of receiving an award, rating, recognition, or criticism, or qualification for additional competition. Examples include, but are not limited to, interscholastic athletics, cheerleading, band, choral, math, or science competitions, and club activities.

Academic Courses are those courses for which class time is scheduled, which can be credited to meet the minimum requirements for graduation, which is taught by a teacher required to have State certification in the course, and has a course content guide which has been approved by the Arkansas Department of Education. Any of the courses for which concurrent high school credit is earned may be from an institution of higher education recognized by the Arkansas Department of Education. If a student passes an academic course offered on a block schedule, the course can be counted twice toward meeting the requirement for students to pass four (4) academic courses per semester as required by this policy.

Supplemental Improvement Program is an additional instructional opportunity for identified students outside of their regular classroom and meets the criteria outlined in the current Arkansas Activities Association Handbook.

### **ACADEMIC REQUIREMENTS: Junior High**

A student promoted from the sixth to the seventh grade automatically meets scholarship requirements. A student promoted from the seventh to the eighth grade automatically meets scholarship requirements for the first semester. The second semester eighth-grade student meets the scholarship requirements for junior high if he/she has successfully passed four (4) academic courses the previous semester, three (3) of which shall be in the core curriculum areas specified by the Arkansas Department of Education's Standards of Accreditation of Arkansas Public Schools.

The first semester ninth-grade student meets the scholarship requirements for junior high if he/she has successfully passed four (4) academic courses the previous semester, three (3) of which shall be in the core curriculum areas specified by the Arkansas Department of Education's Standards of Accreditation of Arkansas Public Schools.

The second semester ninth-grade student meets the scholarship requirements for junior high if he/she has successfully passed (4) academic courses the previous semester which count toward his/her graduation requirements.

Ninth-grade students must meet the requirements of the senior high scholarship rule by the end of the second semester in the ninth grade in order to be eligible to participate the fall semester of their tenth-grade year.

### **ACADEMIC REQUIREMENTS: Senior High**

In order to remain eligible for competitive interscholastic activity, a student must have passed (4) academic courses the previous semester and either:

- 1) Have earned a minimum Grade Point Average of 2.0 from all academic courses the previous semester; or
- 2) If the student has passed four (4) academic courses the previous semester but does not have a 2.0 GPA the student must be enrolled and successfully participating in a supplemental instruction program to maintain their competitive interscholastic extracurricular eligibility.

### **STUDENTS WITH AN INDIVIDUAL EDUCATION PROGRAM**

In order to be considered eligible to participate in competitive interscholastic activities, students with disabilities must pass at least four (4) courses per semester as required by their individual education program (IEP).

### **ARKANSAS ACTIVITIES ASSOCIATION**

In addition to the foregoing rules, the district shall abide by the rules and regulations of the Arkansas Activities Association (AAA) governing interscholastic activities. AAA provides catastrophic insurance coverage for students participating in AAA governed extracurricular activities who are enrolled in school. As a matter of District policy, no student may participate in a AAA governed extracurricular activity unless he or she is enrolled in a district school, to ensure all students are eligible for AAA catastrophic insurance.

### **NOTES:**

The Arkansas Activities Association's standards allow a student to participate in an SIP for a maximum of two consecutive semesters and require the student to improve his/her GPA by at least 10% by the end of the first semester to remain eligible for the second semester. By the end of the second semester, the student must have attained a 2.0 GPA to be eligible for competitive interscholastic activities. Following one or more semesters where the student has attained a 2.0 GPA, this cycle may be repeated.

State Board of Education Standards for Accreditation 10.05 require a policy that "shall limit and control interruptions of instructional time in the classroom and the number of absences for such activities." You could replace "one per week per extracurricular activity" with a specific number of days per semester that could also allow the student to "bank" or accumulate days in anticipation of a major event.

Legal References:        State Board of Education Standards for Accreditation 10.05 and 10.06  
                                 Arkansas Activities Association Handbook

Date Adopted: 5-19-03  
Last Revised: 8-15-05; 6/26/13

### **5.19.1—EXTRACURRICULAR ACTIVITIES - ELEMENTARY**

The Board believes in providing opportunities for students to participate in extracurricular activities that can help enrich the student's educational experience. At the same time, the Board believes that a student's participation in extracurricular activities cannot come at the expense of his/her classroom academic achievement. Interruptions of instructional time in the classroom are to be minimal and absences from class to participate in extracurricular activities shall not exceed one per week per extracurricular activity<sup>1</sup> (tournaments or other similar events excepted with approval of the Principal.<sup>2</sup> All students are eligible for extracurricular activities unless specifically denied eligibility on the basis of criteria outlined in this policy.

A student may lose his/her eligibility to participate in extracurricular activities when, in the opinion of the school's administration, the student's participation in such an activity may adversely jeopardize his/her academic achievement. Students may also be denied permission to participate in extracurricular activities as a consequence of disciplinary action taken by the administration for inappropriate behavior.<sup>3</sup>

For the purposes of this policy, extracurricular activities are defined as: any school sponsored program where students from one or more schools meet, work, perform, practice under supervision outside of regular classtime, or are competing for the purpose of receiving an award, rating, recognition, or criticism, or qualification for additional competition. Examples include, but are not limited to, interscholastic athletics, cheerleading, band, choral, math, or science competitions, and club activities.

Legal References:        State Board of Education Standards for Accreditation 10.05 and 10.06

Date Adopted: 10-18-04  
Last Revised: 8-15-05

### **5.19.2—EXTRACURRICULAR ACTIVITY ELIGIBILITY FOR HOME SCHOOLED STUDENTS**

Each school in the District shall post on its website its schedule of interscholastic activities, including sign-up, tryout, and participation deadlines, at least one semester in advance of those activities. A hard copy of the schedule shall be available upon request.<sup>1</sup>

Home-schooled students whose parents or guardians are legal residents of the school district will be permitted to pursue participation in an interscholastic activity in the student's resident school as permitted by this policy. Although not guaranteed participation in an interscholastic activity home-school students who meet the provisions of this policy, AAA Rules, and applicable Arkansas statutes shall have an equal opportunity to try out and participate in an interscholastic activities without discrimination.

The District shall abide by this policy and by the rules contained in the Arkansas Activities Association (AAA) Handbook governing interscholastic activity participation of students who are home-schooled . Areas of eligibility criteria, such as a student's age and semesters of eligibility, are the same for home-schooled and traditional students and are governed by the current AAA Handbook.

Home-schooled student means a student legally enrolled in an Arkansas home school and who meet or have met the criteria for being a home-schooled student, as established by A.C.A. 6-15-503.

Interscholastic activity means an activity between schools subject to regulations of the Arkansas Activities Association that is outside the regular curriculum of the school district, such as an athletic activity, fine arts program, or a special interest group or club.

The parent of any student wishing to participate in an interscholastic activity shall mail or hand deliver a completed application form 5.19.2F to his/her child's school's principal before the signup, tryout or participation deadline established for traditional students. The Superintendent shall approve those applications which meet the enrollment application requirements identified in this policy and AAA Rules and shall deny those that don't meet the requirements.

Approved applications shall apply only for the semester in which the student enrolls in the student's resident school. The student shall regularly attend the class in which the student is enrolled beginning no later than the eleventh (11) day of the semester in which the student's interscholastic activity participation is desired. If the student's desired interscholastic activity begins prior to the first day of the semester in which the student is enrolled, to maintain eligibility, the student must attend the practices for the interscholastic activity to the same extent as is required of traditional students.

A home-schooled student whose application has been approved; who has met the try out criteria; and who has been selected to participate in the interscholastic activity shall meet the following criteria that also apply to traditional students enrolled in the school:

- standards of behavior and codes of conduct;



- attend the practices for the interscholastic activity to the same extent as is required of traditional students;
- required drug testing;
- permission slips, waivers, physical exams; and
- participation or activity fees.-

A student whose application for eligibility to participate in an interscholastic activity is accepted is required to enroll in no more than one course in the District's school where the student is intending to participate in an interscholastic activity. Home-schooled students shall meet the same enrollment criteria as are required for traditional students in policies 4.1—RESIDENCE REQUIREMENTS and 4.2—ENTRANCE REQUIREMENTS and the parent or guardian's shall sign a form acknowledging receipt and understanding of the school's student handbook and to be bound by the applicable portions thereof.

If the student's desired interscholastic activity is associated with a specific class or course that meets during the school-day that the traditional students of the district are required to take, the home-schooled student shall take the required class or course to be eligible for the interscholastic activity.

If the student's desired interscholastic activity is **not** associated with a specific class or course that meets during the school-day, to be eligible to participate in the student's desired interscholastic activity, the home-schooled student shall enroll in a class or course that is age and grade appropriate for the student.

Students who participate in extracurricular or athletic activities under this policy will be transported to and from interscholastic activities on the same basis as other students are transported.

A student who withdraws from an Arkansas Activities Association member school to be home-schooled shall not participate in an interscholastic activity in the resident school district for a minimum of three hundred sixty-five days after the student withdraws from the member school.

## **ARKANSAS ACTIVITIES ASSOCIATION**

In addition to the foregoing rules, the district shall abide by the rules and regulations of the Arkansas Activities Association (AAA) governing interscholastic activities. AAA provides catastrophic insurance coverage for students participating in extracurricular activities who are enrolled in school. As a matter of District policy, no student may participate in an extracurricular activity unless he or she is enrolled in a district school, to ensure all students are eligible for AAA catastrophic insurance.

Notes: Here is a short Q & A to help with the policy's implementation.

Q. How would students enrolled under this policy affect our student count?

A. You can count students enrolled under the provisions of this policy by prorating them based on how many classes they enroll in.

Q. Do we give grades to students enrolled for the courses they take?

A. They receive grades if they are academic courses or have course content guidelines approved by the ADE.

Q. What if a home-schooled student transfers from another district?

A. Act 1469 of 2013 uses "resident" rather than the preferred AAA use of "domicile." A student who resides in the district (as defined in policy 4.1) qualifies for extracurricular activity participation under the law.

The semester requirement is triggered by Act 1469 of 2013 which requires the participating student to "report to the resident district within the first eleven (11) days of the fall or spring semester..."

Include "drug testing" only if your district conducts such tests.

You can only **require** one course, but a district may permit a student to enroll in more than one course. Note that beyond three courses, under AAA Rules, the student is no longer home-schooled and so the issue of applying for extracurricular activities under this policy is moot.

For an athletic extracurricular activity, the AAA allows, but does not require, the student to enroll in the corresponding athletic course. For a non-athletic, competitive activity, the AAA requires the course to align with the area of the extracurricular activity and for the student to meet all the academic and co-curricular requirements of the course.

Legal References:      A.C.A. § 6-15-509  
Arkansas Activities Association Handbook

Date Adopted: 4/22/13

Last Revised: 6/26/13

### **5.19.2F— HOME SCHOOLED STUDENTS' LETTER OF INTENT TO PARTICIPATE IN AN EXTRACURRICULAR ACTIVITY**

Student's Name (Please Print) \_\_\_\_\_

Parent or Guardian's Resident Address

Street \_\_\_\_\_ Apartment \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Student's date of birth    /    /                      Last grade level the student completed \_\_\_\_\_

Student has demonstrated academic eligibility by obtaining a verifiable minimum test score of the 30<sup>th</sup> percentile or better in the previous 12 months on the Stanford Achievement Test Series, Tenth Edition,

or another nationally recognized norm-referenced test approved by the State Board of Education.

Name of test, Date taken, and score achieved

Extracurricular activity the student requests to participate in

Course(s) the student requests to take at the school

Proof of required immunizations/vaccinations or an exemption issued by the Arkansas Department of Health

Proof of identity

Date Submitted    /    /

Parent's Signature

Date Adopted: 4/22/13

Last Revised: 6/26/13

## **5.20—DISTRICT WEB SITE**

The Bismarck School District shall maintain a web page to provide information about its schools, students, and activities to the community. This policy is adopted to promote continuity between the different pages on the district web site by establishing guidelines for their construction and operation.

The Bismarck School District web site shall be used for educational purposes only. It shall not create either a public or a limited public forum. Any link from any page on the District's site may only be to another educational site.<sup>1</sup> The web site shall not use "cookies" to collect or retain identifying information about visitors to its web site nor shall any such information be given to "third parties." Any data collected shall be used solely for the purpose of monitoring site activity to help the district improve the usefulness of the site to its visitors.<sup>2</sup>

Each school's web page shall be under the supervision of the school's Web Master and the District's web site shall be under the supervision of the District's Web Master. They shall have the responsibility for ensuring that web pages meet appropriate levels of academic standards and are in compliance with these guidelines and any additional administrative regulations. To this end the District and School Web Masters shall have the authority to

review and edit any proposed changes to web pages to ensure their compliance with this policy. All such editing shall be viewpoint neutral.

District and school web pages shall also conform to the following guidelines.

- a. All pages on the District's web site may contain advertising and links only to educational sources.
- b. The District's home page shall contain links to existing individual school's web pages and the school home pages shall link back to the District's home page. The District's home page may also include links to educational extracurricular organization's web pages which shall also link back to the District's home page.
- c. Photos along with the student's name shall only be posted on web pages after receiving written permission from the student or their parents if the student is under the age of 18.<sup>3</sup>
- d. The District's web server shall host the Bismarck District's web site.<sup>4</sup>
- e. No web page on the District web site may contain public message boards or chat rooms.
- f. All web pages on the District web site shall be constructed to download in a reasonable length of time.
- g. The District's home page shall contain a link to a privacy policy notice which must be placed in a clear and prominent place and manner.<sup>5</sup>

- h. With the exception of students who may retain the copyright of material they have created that is displayed on a District web page, all materials displayed on the District web site are owned by Bismarck School District.
- i. Included on the District's web site shall be:<sup>6</sup>
- ~~a. Minutes of regular and special meetings of the school board;~~
  - ~~b. The budget for the ensuing year;~~
  - ~~c. A financial breakdown of monthly expenditures of the district;~~
  - ~~d. The salary schedule for all employees;~~
  - ~~e. The district's yearly audit;~~
  - ~~f. The annual statistical report of the district.~~
  - 8. Local and state revenue sources;
  - 9. Administrator and teacher salary and benefit expenditure data;
  - 10. District balances, including legal balances and building fund balances;
  - 11. Minutes of regular and special meetings of the school board;
  - 12. The district's budget for the ensuing year;
  - 13. A financial breakdown of monthly expenditures of the district;
  - 14. The salary schedule for all employees including extended contract and supplementary pay amounts;
  - 15. Current contract information (not including social security numbers, telephone numbers, personal addresses or signatures) for all district employees;
  - 16. The district's annual budget;
  - 17. The annual statistical report of the district;
  - 18. The district's personnel policies.

The information and data required in 9) above shall be the actual data for the previous two school-years and the projected data for the current school-year.

Legal References:——A.C.A. § 6-11-129  
20 U.S.C. § 1232 g  
15 U.S.C. § 6501 (COPPA)

Date Adopted: 10-18-04  
Last Revised: 10-16-2006; 6-20-11

### **5.20.1—WEB SITE PRIVACY POLICY**

The Bismarck School District operates and maintains a web site for the purpose of informing the citizens of the district about its activities. The web site does not use “cookies” or ISP addresses to collect or retain personally identifying information about visitors to its web site nor is any such information given to “third parties.” Any data collected is used solely for the purpose of monitoring site activity to help the district improve the usefulness of the site to its visitors.

The site serves no commercial purpose and does not collect any information from individuals for such purpose.

Photographs of students, when associated with the student’s name, shall not be displayed on any page of the district’s web site without the prior written consent of the parent (or the student if 18 or older).

The site provides for email communication between the District and individuals for the purpose of exchanging information regarding the District and its activities or between teachers and their students. The site may also provide for password protected communication between the District and its staff. <sup>1</sup>

Legal References: 15 U.S.C. § 6501 (COPPA)

Date Adopted: 10-18-04  
Last Revised: 10-16-2006  
7-21-08

## **5.20 F1—PERMISSION TO DISPLAY PHOTO OF STUDENT ON WEB SITE**

I hereby grant permission to the Bismarck School District to display the photograph or video clip of me/my student (if student is under the age of eighteen { 18 }) on the District's web site, including any page on the site, or in other District publications without further notice. I also grant the Bismarck School District the right to edit the photograph or video clip at its discretion.

The student's name may be used in conjunction with the photograph or video clip. It is understood, however, that once the photograph or video clip is displayed on a web site, the District has no control over how the photograph or video clip is used or misused by persons with computers accessing the District's web site.

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Name of student (Printed)

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Signature of student (only necessary if student is over 18)

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Signature of parent (required if student is under 18)

---

Date

Revised: 10-16-2006

## 5.21—ADVANCED PLACEMENT

The number of units students must earn to be eligible for high school graduation are to be earned from the categories listed below. A minimum of 22 units is required for graduation for a student participating in either the Smart Core or Core curriculum. In addition to the 22 units required for graduation by the Arkansas Department of Education, the district requires additional 2 units to graduate for a total of 24 units. The additional required units may be taken from any electives offered by the district.<sup>1</sup> There are some distinctions made between Smart Core units and Graduation units. Not all units earned toward graduation necessarily apply to Smart Core requirements. The provisions of a student's Individualized Education Plan (IEP) serve as his/her graduation plan.

### **SMART CORE: Sixteen (16) units**

English: four (4) units – 9th, 10th, 11th, and 12th

Oral Communications: one-half (1/2) unit

Mathematics: four (4) units (all students under Smart Core must take a mathematics course in grade 11 or 12 and complete Algebra II.)

- Algebra I or Algebra A & B\* which may be taken in grades 7-8 or 8-9
  - Geometry or Investigating Geometry or Geometry A & B\* which may be taken in grades 8-9 or 9-10
- \*A two-year algebra equivalent or a two-year geometry equivalent may each be counted as two units of the four-unit requirement for the purpose of meeting the **graduation** requirement, but only serve as one unit each toward fulfilling the **Smart Core** requirement.

- Algebra II
- Beyond Algebra II: this can include Pre-Calculus, Calculus, AP Statistics, Algebra III, Advanced Topic and Modeling in Mathematics, Mathematical Applications and Algorithms, Linear Systems and Statistics, or any of several IB or Advanced Placement math courses

(Comparable concurrent credit college courses may be substituted where applicable)

Natural Science: a total of three (3) units with lab experience chosen from

One unit of Biology; and

Two units chosen from the following three categories (there are acceptable options listed by the ADE for each)

- Physical Science
- Chemistry
- Physics or Principles of Technology I & II or PIC Physics

Social Studies: three (3) units

- Civics one-half (½) unit
- World History - one unit
- American History - one unit

Physical Education: one-half (1/2) unit

**Note:** While one-half (1/2) unit is required for graduation, no more than one (1) unit may be applied toward fulfilling the necessary units to graduate.

Health and Safety: one-half (1/2) unit



Economics – one half ( $\frac{1}{2}$ ) unit – dependent upon the licensure of the teacher teaching the course, this can count toward the required three (3) social studies credits or the six (6) required Career Focus elective credits.<sup>40 2</sup>

Fine Arts: one-half ( $\frac{1}{2}$ ) unit

**CAREER FOCUS: - Six (6) units**

- All career focus unit requirements shall be established through guidance and counseling based on the student's contemplated work aspirations. Career focus courses shall conform to the curriculum policy of the district and reflect state curriculum frameworks through course sequencing and career course concentrations where appropriate.

The Smart Core and career focus units must total at least twenty-two (22) units to graduate. Additionally, the district requires 2 units for a total of 24 units to graduate which may be taken from any electives offered by the district.<sup>1</sup>

**CORE: Sixteen (16) units**

English: four (4) units – 9, 10, 11, and 12

Oral Communications: one-half ( $\frac{1}{2}$ ) unit

Mathematics: four (4) units

- Algebra or its equivalent\* - 1 unit
- Geometry or its equivalent\* - 1 unit
- All math units must build on the base of algebra and geometry knowledge and skills.
- (Comparable concurrent credit college courses may be substituted where applicable)

\*A two-year algebra equivalent or a two-year geometry equivalent may each be counted as two units of the four (4) unit requirement.

Science: three (3) units

- at least one (1) unit of biology or its equivalent
- one (1) unit of a physical science

Social Studies: three (3) units

- Civics one-half ( $\frac{1}{2}$ ) unit
- World history, one (1) unit
- American History, one (1) unit

Physical Education: one-half ( $\frac{1}{2}$ ) unit

**Note:** While one-half ( $\frac{1}{2}$ ) unit is required for graduation, no more than one (1) unit may be applied toward fulfilling the necessary units to graduate.

Health and Safety: one-half ( $\frac{1}{2}$ ) unit

Economics – one half ( $\frac{1}{2}$ ) unit – dependent upon the licensure of the teacher teaching the course, this can count toward the required three (3) social studies credits or the six (6) required Career Focus elective credits.<sup>42</sup>

Fine Arts: one-half (1/2) unit

**CAREER FOCUS: - Six (6) units**

All career focus unit requirements shall be established through guidance and counseling based on the student's contemplated work aspirations. Career focus courses shall conform to the curriculum policy of the district and reflect state curriculum frameworks through course sequencing and career course concentrations where appropriate.

The Core and career focus units must total at least twenty-two (22) units to graduate. Additionally, the district requires 2 units for a total of 24 units to graduate which may be taken from any electives offered by the district.<sup>1</sup>

Notes: <sup>1</sup> The Standards of Accreditation Unit has objected to the policy's previous implication (if you substituted a number greater than 22) that the ADE was requiring more than 22 units to graduate. Therefore, this sentence is necessary if your district requires more than 22 units. If you have specific requirements for the additional units, change the new sentence's wording to reflect those requirements.

The Rules specify the option is dependent upon the licensure of the teacher. Specifically, if the course is taught by a licensed social studies teacher, both options exist. If the course is taught by a licensed business education teacher, the credit must be applied toward the career focus requirement.

Cross Reference: Policy 4.45-~~1~~ SMART CORE CURRICULUM AND GRADUATION REQUIREMENTS

Legal Reference: State Board of Education; Standards of Accreditation 14.02

Date Adopted: 10-18-04

Last Revised: 8-15-05

7-21-08; 6/17/13

## 5.22—CONCURRENT CREDIT

A ninth through twelfth grade student who successfully completes a college course(s) from an institution approved by the Arkansas Department of Education shall be given credit toward high school grades and graduation at the rate of one high school credit for each three (3) semester hours of college credit. Unless approved by the school's principal, **prior to enrolling for the course**, the concurrent credit shall be applied toward the student's graduation requirements as an elective.

A student who takes a three-semester hour remedial/developmental education course, as permitted by the ADE Rules Governing Concurrent College and High School Credit, shall be the equivalent of one-half unit of credit for a high school career focus elective. The remedial/developmental education course cannot be used to meet the core subject area/unit requirements in English and mathematics.

Participation in the concurrent high school and college credit program must be documented by a written agreement between:

- The District's student, and his or her parent(s) or guardian(s) if the public school student is under the age of eighteen (18);
- The District; and
- The publicly supported community college, technical college, four-year college or university, or private institution the student attends to take the concurrent credit course.

Students are responsible for having the transcript for the concurrent credit course(s) they've taken sent to their school in order to receive credit for the course(s). Credit for concurrent credit courses will not be given until a transcript is received. Transcripts for students who take concurrent credit courses as partial fulfillment of the required full day of class for students in grades 9-12 (see Policy 4.44) **are to be received by the school within 5 school days of the end of the concurrent college semester in which the course is taken**. Students may not receive credit for the course(s) they took or the credit may be delayed if the transcripts are not received in time, or at all. This may jeopardize students' eligibility for extracurricular activities, graduation, or **scholarship opportunities**.

Students will retain credit earned through the concurrent credit program which was applied toward a course required for high school graduation from a previously attended, accredited, public school.

Any and all costs of higher education courses taken for concurrent credit are the student's responsibility.

Legal References:      A.C.A. § 6-15-902(c)(2)  
Arkansas Department of Education Rules and Regulations: Concurrent College and High School Credit for Students Who Have Completed the Eighth Grade

Date Adopted: 10-18-04

Last Revised: 8-15-05; 4/22/13

## **5.24—STUDENT PARTICIPATION IN SURVEYS**

Section One: No student shall be required to submit to a survey, analysis, or evaluation which is administered or distributed by a school, and is funded in whole or in part by any program administered by the U.S. Department of Education without the prior written consent of the parent/guardian that reveals information concerning the following:

1. political affiliations;
2. mental and psychological problems potentially embarrassing to the student or his family;
3. sex behavior and attitudes;
4. illegal, anti-social, self-incriminating, and demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. religious practices, affiliations, or beliefs of the student or student's parent; or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

Section Two: No surveys shall be administered without the prior approval of the school principal. Any survey created by a third party, or funded, in whole or in part, as part of any US Department of Education administered program, containing one or more of the eight categories listed above shall be available to be inspected by a student's parent/guardian before the survey is administered or distributed by a school to a student. Parents/guardians shall have the right to deny permission for their child to participate in the taking of the survey. The school shall not penalize students whose parents/guardians exercise this option. The school shall take reasonable precautions to protect students' privacy during their participation in the administration of any survey, analysis, or evaluation containing one or more of the eight categories listed above.

Section Three: Parents or guardians wishing to inspect a survey, analysis, or evaluation shall be able to do so in the administrative office of the administering school where the surveys shall be available for inspection for a period of ten (10)\* days (regular school days when school is in session) after the notice of intent to administer the survey is sent. Included in the notice shall be information regarding how the survey or questionnaire will be administered; how it will be utilized; and the persons or entities that will have access to the results of the completed survey or questionnaire. Parents may refuse to allow their student to participate before or after reviewing the survey or questionnaire.

The requirements of sections one, two, and three of this policy do not apply to a survey administered to a student in accordance with the Individuals with Disabilities Education Act (IDEA).

Section Four: Prior written parental permission is required before any survey or questionnaire (not including tests mandated by state or Federal law or regulation and standardized scholastic achievement tests) is administered to a student the responses to which are to be provided to a person or entity other than another public school, school district, or any branch of the Federal Government and which requests or requires a student to provide any of the eight (8) categories of information listed above and/or the following;

1. A student's name;
2. The name of the student's parent or member of the student's family;
3. The address, telephone number, or email address of a student or a member of a student's family;
4. A personal identification number, such as a social security number, driver's license number, or student identification number of a student or a member of the student's family;
5. Any information, the disclosure of which is regulated, or prohibited by any other state or federal law or regulation.

The rights provided to parents under this policy transfer to the student when he/she turns 18 years old.

Date Adopted: 10-18-2004

Last Revised: 10-16-2006

**5.24F1—OBJECTION TO PARTICIPATION IN SURVEYS, ANALYSIS, OR EVALUATIONS**

I, the undersigned, being a parent or guardian of a student, or a student eighteen (18) years of age or older, hereby note my objection to participation by the student named below in the following survey, analysis, or evaluation.

I choose not to have my student participate in the following survey, analysis, or evaluation.

Name of specific survey \_\_\_\_\_

\_\_\_\_ All surveys

\_\_\_\_\_  
Name of student (Printed)

\_\_\_\_\_  
Signature of parent (or student, if 18 or older)

\_\_\_\_\_  
Date form was filed (To be filled in by office personnel)

**5.24F2—PERMISSION TO PARTICIPATE IN A SURVEY, ANALYSIS, OR EVALUATION**

I, the undersigned, being a parent or guardian of a student, or a student eighteen (18) years of age or older, hereby grant my permission for the student named below to participate in the following survey, analysis, or evaluation.

Name of survey \_\_\_\_\_

\_\_\_\_\_  
Name of student (Printed)

\_\_\_\_\_  
Signature of parent (or student, if 18 or older)

\_\_\_\_\_  
Date form was filed (To be filled in by office personnel)

## 5.25—MARKETING OF PERSONAL INFORMATION

The Bismarck School District shall not collect, disclose, or use personal information for the purpose of marketing or for selling that information or to otherwise provide that information to others for that purpose.<sup>1</sup>

Personal information is defined, **for the purposes of this policy only**, as individually identifiable information including

1. a student or parent's first and last name,
2. a home or other physical address (including street name and the name of the city or town),
3. telephone number, and
4. social security identification number.

The district may collect, disclose, or use personal information that is collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, students or educational institutions such as the following:

1. College or other postsecondary education recruitment, or military recruitment;
2. Book clubs, magazines, and programs providing access to low cost literary products;
3. Curriculum and instructional materials used by elementary schools and secondary schools;
4. Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students (or to generate other statistically useful data for the purpose of securing such tests and assessments) and the subsequent analysis and public release of the aggregate data from such tests and assessments;
5. The sale by students of products or services to raise funds for school related or education related activities; and
6. Student recognition programs.

<sup>1</sup> While the law does allow a school or district to collect and disclose "personal information" for marketing purposes under certain circumstances, the requirements for doing so are such that ASBA recommends you simply not go there. If you're extremely determined to do so, look at 20 USC § 1232h (c) [NCLB Act of 2001, Part F, Section 1061 (c) (6) (E) (F) (i) (ii) to help you make your final decision.

Legal Reference: 20 USC § 1232h (c) [NCLB Act of 2001, Part F, Section 1061 (c) (1)(E), (2)(A)(C)(i), (4)(A), (5)(A)(i)(B), (6)(C)(E)]

Date Adopted: 10-18-04

Last Revised:



## **5.26—ALTERNATIVE LEARNING ENVIRONMENTS**

The district shall have an alternative learning environment (ALE) which shall be part of an intervention program designed to provide guidance, counseling, and academic support to students who are experiencing emotional, social, or academic problems.

The superintendent or his/her designee shall appoint an Alternative Education Placement Team which shall have the responsibility of determining student placement in the ALE. The team should consist of at least a school counselor, the ALE director or principal, a parent or legal guardian, and a regular classroom teacher.

Students who are placed in the ALE shall exhibit at least two of the following characteristics:

- j. Disruptive behavior
- k. Drop out from school
- l. Personal or family problems or situations
- m. Recurring absenteeism
- n. Transition to or from residential programs

For the purposes of the ALE, personal or family problems or situations are conditions that negatively affect the student's academic and social progress. These may include, but are not limited to:

- g. Ongoing, persistent lack of attaining proficiency levels in literacy and mathematics
  - Abuse: physical, mental, or sexual
  - Frequent relocation of residency
  - Homelessness
  - Inadequate emotional support
  - Mental/physical health problem
  - Pregnancy
  - Single parenting

The teachers and administrator of the ALE shall determine exit criteria for students assigned to the district's ALE on which to base the student's return to the regular school program of instruction.

The district's ALE program shall follow class size, staffing, curriculum, and expenditure requirements identified in the ADE Rules Governing the Distribution of Student Special Needs Funding and the Determination of Allowable Expenditure of These Funds.

Legal References:———A.C.A. § 6-20-2305(b)(2)

A.C.A. § 6-48-102, 103

ADE Rules Governing the Distribution of Student Special Needs  
Funding and the Determination of Allowable Expenditure of These  
Funds – 3.01, 3.05, 4.00, and 8.0

Date Adopted: 8-15-2005

Last Revised: 10-16-2006; 6-20-11

### **5.26.1—ALE PROGRAM EVALUATION**

The ALE program shall be evaluated at least annually to determine its overall effectiveness. The evaluation shall specifically address how the use of ALE funds is in alignment with the district's ACSIP in addressing identified achievement gaps and student performance deficiencies.

Legal Reference: A.C.A. § 6-15-426(f)

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Date Adopted: 8-15-05

Last Revised: 10-15-2007

## **5.27—ENGLISH LANGUAGE LEARNERS**

The district shall utilize the special needs funding it receives for identified English Language Learners on activities, and materials listed in the ADE Rules Governing the Distribution of Student Special Needs Funding and the Determination of Allowable Expenditure of These Funds.

The expenditures of ELL supplemental funding shall be evaluated at least annually to determine their overall effectiveness. The evaluation shall specifically address how the use of ELL funds is in alignment with the district's ACSIP in addressing identified achievement gaps and student performance deficiencies.

### **Entry Procedure for Placement of Language Minority Students in ESL Program**

To enroll LMS students who are new to Bismarck School District, parents will fill out the necessary paperwork for enrollment according to district policy.

If a language other than English is indicated on any question of the Home Language Survey, the person responsible for enrolling the student should call the ESL office immediately with the name of the student, school, grade and language indicated while the family is still at the school, if possible.

The student will be placed according to the Grade Level Placement chart.

The student will be assessed by the ESL teacher to determine English Language Proficiency level.

Results of the assessment are shared with the Language Proficiency Assessment Committee. An LPAC shall consist of at least one representative from the following areas: District ESL staff, classroom teacher, administrator or appointed designee, and/or counselor. Others may include parent, a special education teacher or the gifted and talented teacher when appropriate. (ADE)

Documentation is recorded on the LPAC Plan form.(ADE)

The LPAC will determine the student's placement in the ESL program based on the assessment and information from each of the committee members.

## **Grade Level Placement of Language Minority Students**

Students who have been classified as LEP (Limited English Proficiency)

### **Grade Level Placement:**

Placement should be based on the actual age of the student so that he/she is placed with his/her age-level peers. A student who is 15 years of age or older should be placed at least at grade 9. Educational level of the student should also be considered when placing a student especially at the high school level. At the high school level, grade level is determined by number of credits earned.

The following table can serve as a guideline for determining grade level based on the student's age as of September 15 of the current school year.

### **GRADE LEVEL PLACEMENT BASED ON ACTUAL AGE OF STUDENT AS OF SEPTEMBER 15**

<b>Age as of September 15</b>	<b>Grade Level*</b>
5	K
6	K or 1
7	1 or 2
8	2 or 3
9	3 or 4
10	4 or 5
11	5 or 6
12	6 or 7
13	7 or 8
14	8 or 9
15+	<b>Based on credits**</b>

\*Use the first grade listed only when there is evidence of little or no prior education.

#### **Bismarck Public Schools Student Grade Placement Based on Credits**

Less than 5 credits—Freshman (9)

15 credits—Senior (12)

5 credits—Sophomore (10)

22 credits—Graduation

10 credits—Junior (11)

Legal References:    A.C.A. § 6-20-2305(b)(3)  
                              A.C.A. § 6-15-426(f)  
                              ADE Rules Governing the Distribution of Student Special Needs  
                              Funding and the Determination of Allowable Expenditure of These  
                              Funds – 3.04, 5.00, 8.00

Date Adopted:        8-15-05  
Last Revised:        10-16-2006  
                              10-15-2007  
                              11-19-2007

## **5.28—NATIONAL SCHOOL LUNCH ACT FUNDING EXPENDITURES**

Funding received from the state based on the number of students eligible for free and reduced-priced meals under the National Student Lunch Act shall be expended in accordance with guidelines outlined in the ADE Rules Governing the Distribution of Student Special Needs Funding and the Determination of Allowable Expenditure of These Funds.

The district shall at least annually evaluate programs supported by NSLA funds to determine the effectiveness of the programs and to ensure they are providing intervention/prevention services designed to increase student achievement which are in alignment with the district's ACSIP.

Legal References:     A.C.A. § 6-20-2305(b)(4)  
                              A.C.A. § 6-15-426(f)  
                              ADE Rules Governing the Distribution of Student Special Needs  
                              Funding and the Determination of Allowable Expenditure of These  
                              Funds 3.06, 3.07, 3.10, 6.00, 8.00

Date Adopted: 8-15-05  
Last Revised: 10-16-2006  
10-15-2007

## 5.29—WELLNESS POLICY

The health and physical well-being of our students directly affects their ability to learn. Childhood obesity increases the incidence of adult diseases occurring in children and adolescents such as heart disease, high blood pressure and diabetes. The increased risk carries forward into their adulthood. Research indicates that a healthy diet and regular physical activity can help prevent obesity and the diseases resulting from it. It is understood that the eating habits and exercise patterns of students cannot be magically changed overnight, but at the same time, the Board of Directors believes it is necessary to strive to create a culture in our schools that consistently promotes good nutrition and physical activity.

The problem of obesity and inactivity is a public health issue. The Board of Directors is keenly aware that it has taken years for this problem to reach its present level and will similarly take years to correct. The responsibility for addressing the problem lies not only with the schools and the Arkansas Department of Education, but with the community and its residents, organizations and agencies. Therefore, the District shall enlist the support of the larger community to find solutions which improve the health and physical activity of our students.

### Goals

In its efforts to improve the school nutrition environment, promote student health, and reduce childhood obesity, the District will adhere to the Arkansas Rules Governing Nutrition and Physical Activity Standards in Arkansas Public Schools. To promote nutrition, physical activity, and other school based activities that will improve student wellness, the District has established the following goals.

1. Appoint a district school health coordinator (or designated district official) who shall be responsible for ensuring that each school fulfills the requirements of this policy;
2. Implement a grade appropriate nutrition education program that will develop an awareness of and appreciation for nutrition and physical activity throughout the curriculum;
3. Enforce existing physical education requirements and engage students in healthy levels of vigorous physical activity;
4. Strive to improve the quality of physical education curricula and increase the training of physical education teachers;
5. Follow the Arkansas Physical Education and Health Education Frameworks in grades K-12;
6. Not use food or beverages as rewards for academic, classroom, or sports performances;
7. Ensure that drinking water is available without charge to all students;
8. Establish class schedules, and bus routes that don't directly or indirectly restrict meal access;
9. Provide students with ample time to eat their meals in pleasant cafeteria and dining areas;
10. Establish no more than nine (9) school wide events which permit exceptions to the food and beverage limitations established by Rule. The schedule of the events shall be by school and approved by the principal.
11. Abide by the current allowable food and beverage portion standards;

12. Meet the more stringent of Arkansas' or the U.S. Department of Agriculture's Nutrition Standards for reimbursable meals and a la' carte foods served in the cafeteria;<sup>4</sup>
13. Restrict access to vended foods, competitive foods, and foods of minimal nutritional value (FMNV) as required by law and Rule;
14. Conform new and/or renewed vending contracts to the content restrictions contained in the Rules and reduce district dependence on profits from the sale of FMNV.
15. Provide professional development to all district staff on the topics of nutrition and/or physical activity;<sup>5</sup>
16. Utilize the School Health Index available from the Center for Disease Control (CDC) to assess how well the district is doing at implementing this wellness policy and at promoting a healthy environment for its students;

### **Advisory Committee**

To enhance the district's efforts to improve the health of our students, a School Nutrition and Physical Activity Advisory Committee (SNPAAC) shall be formed. It shall be structured in a way that ensures age-appropriate recommendations are made which correlate to our district's grade configurations. The SNPAAC shall have the powers and responsibilities delegated to it by statute and Rule and are incorporated into this policy by reference.<sup>7</sup> The overarching goal of the committee shall be to promote student wellness by monitoring how well the district is doing at implementing this policy. The SNPAAC shall use modules 1, 2, 3, 4, and 8 of the CDC's School Health Index as a basis for assessing each school's progress toward meeting the requirements of this policy. The results of the annual assessment shall be included in each school's ACSIP, provided to each school's principal, and reported to the board. Goals and objectives for nutrition and physical activity shall also be included in the ACSIP.

Parents, students, the District's teachers of physical education, school health professionals, the District School Board of Directors, the District's school administrators, members of the community, and representatives of the District's school food authority shall be included in the development, implementation, and periodic review of the District's wellness policy to the extent interested persons from each group desire to be included.<sup>8</sup>

The SNPAAC shall provide recommendations to the school district concerning menus and other foods sold in the school cafeteria. Such recommendations shall be based, at least in part, on the information the Committee receives from the District on the requirements and standards of the National School Lunch Program and information and from menus for the National School Lunch Program and other food sold in the school cafeteria on a quarterly basis.<sup>9</sup>

The District shall periodically assess, with input from the SNPACC, the District and individual schools' status regarding implementing this policy. The assessment shall be based, at least in part, on:

- the extent to which District schools are in compliance with this policy;
- the extent to which this policy compares to other model local school wellness policies;  
and
- a description of the progress made in attaining the goals of this policy.

The assessment results along with the content of the this policy shall be periodically reported to the public, including parents, students, and other members of the community.

**Notes:**

8.02.5 of the Rules allows schools to distribute snacks during the school day as part of the planned instructional program (to allay afternoon hunger) provided the snacks meet the U.S. Dept. of Agriculture Child and Adult Care Snack Patterns.

The district has the option to adopt local restrictions on food that can be brought from home that exceed state and federal regulations, but it cannot diminish the regulations through local action. If you choose to exceed the regulations, you should state what your requirements are in this policy.

<sup>3</sup> The school “events” are required to be school-wide and not by individual classrooms.

<sup>4</sup> The ADE uses Commissioner's Memos to inform districts of many wellness policy issues concerning nutrition in general, serving portion sizes, drinking water availability, etc. The SNPAAC should be kept abreast of such applicable Memos. You have the choice to exceed the state or federal requirements. If you choose to meet and not exceed those mandated by government, you should delete “or exceed” at the start of the sentence. Currently, the state’s requirements are more stringent than the federal requirements, but this could change. By mentioning both governments in the policy, you’ll still be covered. If you do choose to exceed existing requirements you will need to specify what they are in this policy.

<sup>5</sup> The Rules require all staff to receive professional development, but, at this time, there is no provision for how much or what it is to consist of.

<sup>6</sup> The Rules Governing Nutrition and Physical Activity allow three options for accomplishing this requirement. 1) Establish a School Nutrition and Physical Activity Advisory Committee at each school in addition to the district committee. 2) Establish subcommittees of the district Committee, representing the appropriate age and grade configurations for your district. 3) Include representatives from each appropriate grade level group (elementary, middle, junior and senior high) on the membership of the district committee. Select the option you will use and rewrite the sentence to reflect your choice.

<sup>7</sup> The statutory powers are codified at A.C.A. § 20-17-135(e)(1) and repeated in the Rules starting at 6.01. The powers delegated solely through the Rules can be found starting at 6.06.

<sup>8</sup>The 2010 amendment to the Child Nutrition Act requires the groups listed in this paragraph to be **permitted** to participate (rather than "must"). There is no mention in the Act of limitations to the numbers of individuals included in each category for the policy's oversight, but some limitation to the overall size of this review team may be necessary for efficiency purposes.



<sup>9</sup>This paragraph was added to meet the requirements of A.C.A. § 6-20-709 and the ADE advises that WRITTEN documentation that this requirement has been met will be required during the Coordinated Review Effort (CRE), the federal monitoring review of the Child Nutrition Program.

Legal References: Richard B. Russell National School Lunch Act 42 U.S.C. § 1751 et seq.  
as amended by PL 111-296 (Section 204) of 2010. (Section 204 is  
codified at 42 U.S.C. § 1758(b))

Child Nutrition Act of 1966 42 U.S.C. § 1771 et seq.

A.C.A. § 6-20-709

A.C.A. §§ 20-7-133, 134, and 135

ADE Rules Governing Nutrition and Physical Activity Standards in  
Arkansas Public Schools

Allowable Competitive Foods/Beverages - Maximum Portion Size List  
for Middle, Junior High, and High School

Nutrition Standards for Arkansas Public Schools

Date Adopted: 4-24-06

Last Revised: 6/25/12

# TABLE OF CONTENTS

## SECTION 6—SCHOOL, HOME, AND COMMUNITY RELATIONS

COMMUNICATION GOALS_____	6.1
RELATIONS WITH SCHOOL SUPPORT ORGANIZATIONS_____	6.2
PUBLIC GIFTS AND DONATIONS TO THE SCHOOLS_____	6.3
VOLUNTEERS_____	6.4
VISITORS TO THE SCHOOLS_____	6.5
FUND RAISING_____	6.6
COMPLAINTS_____	6.7
DISTRIBUTION OF PRINTED MATERIALS_____	6.8
MEDIA RELATIONS AND NEWS RELEASES_____	6.9
MEGAN’S LAW_____	6.10
PARENTAL/COMMUNITY INVOLVEMENT - DISTRICT_____	6.11
PARENTAL/COMMUNITY INVOLVEMENT - SCHOOL_____	6.12
SUPPORTING INFORMATION FOR 6.11 AND 6.12_____	i

# **SCHOOL, HOME, AND COMMUNITY RELATIONS**

## 6.1—COMMUNICATION GOALS

The single most significant factor in student achievement is the teacher. The teacher's effectiveness is greatly enhanced when supported by the school community as a whole, the student's home, and the community at large. The Arkansas General Assembly and the Department of Education have demonstrated their understanding of the importance of involving such groups by repeatedly mandating their inclusion in the educational system and process. Communication with staff, parents, grandparents, legal guardians, business, and community members is fundamental to increasing their concern for, and involvement in, raising student achievement.

Communication should be two-way between the District and the public. The communications program shall strive to:

1. Increase mutual understanding, trust, and support between the District and parents, business, and the community as a whole;
2. Keep District staff regularly informed of upcoming District programs and events as well as noteworthy staff and student accomplishments to enable all the staff to help promote positive public relations;
3. Create and disseminate brochures, flyers, and fact sheets that will help parents and community members better understand school policies and procedures and acquaint them with areas where their volunteer services are most needed;
4. Inform legislators of the accomplishments of the District's students and staff, as well as how proposed legislation could affect the district;
5. Maintain good relations with the news media and provide the media with pertinent news releases; and
6. Increase the participation of parents, grandparents, legal guardians, business, and community members in school activities and programs.

The Board will appoint committees, when appropriate, to help the District examine issues facing it. Such committees may include members of the public, students, parents, and school employees, as well as members of the Board. Members may serve until the committee makes its non-binding recommendations to the Board.

Any committee, which includes among its members a member of the School Board, shall operate according to the requirements of the Arkansas Freedom of Information Act.\*

The Board shall hold a public meeting, at least annually, to report on the District's progress toward attaining its goals and to review its long-range plan. Those individuals attending shall have an opportunity to ask questions.

Legal References:      A.C.A. § 6-18-1003 (2)  
                                 A.C.A. § 6-18-1005 (a) (1) (HA.C.A. § 6-15-1005 (c), (f) (1) (2)

A.C.A. § 6-16-603 (a) (3)

\*A.C.A. § 25-19-106

Arkansas State Board of Education: Standards for Accreditation: II (B)(1);

III(A);XI(B)(2)

Arkansas Department of Education: Gifted and Talented Program Approval Standards:  
4.0; 10.03

Date Adopted: 5-19-03

Last Revised:

## **6.2—RELATIONS WITH SCHOOL SUPPORT ORGANIZATIONS**

The Board recognizes and values the many contributions support organizations make to the District's schools. Parent/teacher organizations and booster clubs work to augment and strengthen the District's educational and extracurricular objectives through the goods and services they provide.

Groups wishing to be recognized as a support organization must have open membership and have their by-laws approved by the school principal, the Superintendent, and the Board. School personnel shall assist approved booster organizations in their efforts to the extent practicable. Meetings of such organizations, cleared through the principal, shall not be subject to school use fees. School staff members are encouraged to attend and participate.

Fund-raising activities are to be approved in advance by the principal or his/her designee. Prior to the donation of equipment and/or supplies to the school, the organization should seek the advice of the principal to help ensure the compatibility of the donation with present school equipment. All equipment donated to the District becomes the property of the District.

Date Adopted: 5-19-03

Last Revised:

### **6.3—PUBLIC GIFTS AND DONATIONS TO THE SCHOOLS**

The District and the Board of Education may receive monetary gifts or donations of goods or services which serve to improve or enhance the goals of the District. Any gifts to the District become the property of the District and are subject to the same regulations as any other District owned property.

It is a breach of ethical standards and a violation of Arkansas law for any Board member, administrator, or District employee to, in any manner, receive a gift in return for employment, or to influence the award of any contract or transaction with the District. Prior to accepting any gift or donation in the name of a school or the District, all personnel shall examine the “reasonableness” of the gift against its potential for real or perceived violation of the aforementioned ethical standards.

The Board reserves the right to not accept any gift or donation that would not contribute to the attainment of District goals or that would obligate the District to unacceptable outlays of District resources. The administration shall present for Board consideration and approval any gifts or donations they deem could so obligate the District.

The Board will strive to honor the donor’s intent regarding gifts earmarked for a specific purpose. Laws and District’s needs change with time and the District reserves the right to adjust the use of any gift to meet current needs of the educational program.

Legal References:      A.C.A. § 6-24-110  
                                 A.C.A. § 6-24-112

Date Adopted: 5-19-03  
Last Revised:

## 6.4—VOLUNTEERS

Enlisting the support of volunteers is a way in which the District can expand the scope of resources and knowledge available to enrich the students' educational experiences, while strengthening the relationship between the school and the community. Volunteers can also perform non-instructional tasks that allow ~~certified~~ licensed personnel more time to devote to instruction.

The Superintendent shall be responsible for establishing and maintaining a program to coordinate the services volunteers are willing and able to contribute with the needs of District personnel. The program shall establish guidelines to ensure volunteers are aware of pertinent District policies and rules. Volunteers who violate school policies or rules, or knowingly allow students to violate school rules, may be asked to leave the school campus. The guidelines should also include provision for evaluation of the volunteer program and a method for soliciting suggestions from both the volunteers and staff for its improvement.

### Background Checks for Volunteers

For the purposes of this policy, "clear background check" shall mean that a background check was performed, as authorized by A.C.A. §§ 12-12-1601 et seq., and that a potential school volunteer has not committed any of the crimes or offenses contained in A.C.A. §§ 6-17-410, 6-17-411 or 6-17-414, as amended, with regard to both the Arkansas and national background check, and whose name is not found on the Child Abuse Central Registry.

A person wishing to volunteer in a capacity that requires a background check may not perform volunteer services requiring a background check until a clear background check is received by the District. Once received, a clear background check is good for 3 years; a background check renewal must be applied for and a clear background check received prior to the time of renewal or an interruption of permitted volunteer service could occur. A clear background check will be accepted of any individual wishing to volunteer provided it was conducted within the timeframe provided for in this policy.

The Application for an initial background check may be made through the District administrative office. The District may charge the potential volunteer the same fee charged by the State of Arkansas for performing the check. For a volunteer who has passed his/her previous background check, the District will incur the fee charged by the State of Arkansas for performing a renewal background check.

A person who failed a previous background check may petition the Board for a waiver from this policy's requirement. The petition shall be accompanied by a signed authorization for disclosure of his or her entire criminal and child abuse registry history. In deciding whether to grant a waiver, the board may take into consideration the circumstance or circumstances under which the act or omission leading to conviction or Child Abuse Registry true finding, the age of the person at the time of the act or omission, the length of time that has passed without reoffending, and other relevant circumstances. If the Superintendent recommends a waiver be granted, the Board may, by a majority vote adopt a resolution providing an exception to this policy's requirement for a time period not to exceed five years. The board must consider this matter in open session, and may not confer or deliberate in closed or executive session.

The board shall not have the authority to waive the application of this policy to any potential volunteer who is a Registered Sex Offender.



Clear background checks for school volunteers are only required for those individuals who are required to be or who seek to become Registered Volunteers, as defined in A.C. A. § 6-22-102 et seq.

No information relating to the application for or receipt of a criminal background check, including that a background check has or has not been applied for, shall be subject to disclosure under the Arkansas Freedom of Information Act, as provided by A.C.A. §§ 12-12-1601 et seq. Requests for background checks and reports on background checks obtained under this policy shall be retained by the district for a minimum of three years.

Notes: Background checks for public school volunteers are **not** required by law, but a mechanism exists to provide schools with the results of background checks if the school chooses by policy to require background checks for all or some categories of school volunteers.

Legal References:      A.C.A. §§ 6-17-410, 411, 414  
                                 A.C.A. §§ 12-12-1601 et seq.  
                                 A.C.A. § 12-18-909(g)(21)

Date Adopted: 5-19-03

Last Revised: 7/15/13

## 6.5—VISITORS TO THE SCHOOLS

Parents, grandparents, legal guardians, business, and community members are welcome and encouraged to visit District schools. To minimize the potential for disruption of the learning environment, visitors, for a purpose other than to attend an activity open to the general public, are required to first report to the school's main office. No one shall be exempt from this requirement. Visitors who are Level 3 or Level 4 sex offenders may only enter a school campus under the provisions listed in Policy 6.10.

Parents and legal guardians are encouraged to participate in regularly scheduled visitation events such as school open houses and parent/teacher conferences. Additional conferences are best when scheduled in advance. Conferences shall be scheduled at a time and place to accommodate those participating in the conference. Visits to individual classrooms during class time are permitted on a limited basis with the principal's prior approval and the teacher's knowledge.

Parents wishing to speak to their children during the school day shall register first with the office.

The District has the right to ask disruptive visitors to leave its school campuses. Principals are authorized to seek the assistance of law enforcement officers in removing any disruptive visitors who refuse to leave school property when requested to do so.

Cross References: For non-adult visits see Policy 4.16—STUDENT VISITORS  
For Level 3 and Level 4 sex offenders see Policy 6.10—SEX  
OFFENDERS ON CAMPUS (MEGAN'S LAW)

Legal References:     A.C.A. § 6-21-606  
                                 A.C.A. § 6-21-607

Date Adopted: 5-19-03  
Last Revised: 10-15-2007; 6-20-11

## **6.6 —FUND RAISING**

All fund raising activities held in the District or in the name of the District must be pre-approved in writing by the Superintendent and affected school principal. Approval will be predicated on the potential for return relative to the time and energy to be invested in the fund raising. Fund raising that conflicts excessively with and/or detracts from student or teacher instructional time in either the planning or the execution of the activity will not be approved.

Neither an individual school nor the District shall be liable for any contract between clubs or organizations and third parties.

Student participation in any fund raising activity shall:

- 1) Be voluntary. Students who choose not to participate shall not forfeit any school privileges. It shall not be considered discriminatory to reward those who participate; and
- 2) Not influence or affect the student's grade.

### **Secondary Schools**

Fund raising in the secondary schools may only be done by officially sanctioned student clubs, spirit groups, school PTAs, or parent booster clubs. Student clubs and spirit groups must receive written approval from their sponsor and the school principal before submitting the fund raising proposal to the Superintendent.

Door to door fundraising activities are generally discouraged. If approved, students wishing to participate who are under the age of eighteen (18) must return to their sponsor a signed parental notification and permission form.

### **Elementary Schools (K-6)**

Fund raising in the elementary schools may only be done by the school or a school sponsored organization. Door to door fundraising activities are generally discouraged, but there shall be no more than one such activity per school per school year.

Schools must provide written notification of the following to parents or legal guardians of elementary students who participate in fund raising programs.

- 1) Student participation in fund raising programs is voluntary;
- 2) Students who do not participate will not forfeit any school privileges;

3) Students may not participate in fund raising programs without written parental permission returned to school authorities;

- 4) An elementary student who sells fund raising merchandise door to door must be accompanied by a parent or an adult; and
- 5) Unless the school provides supervision, parents must accept responsibility for appropriate adult supervision.

Legal Reference: A.C.A. § 6-18-1104

Date Adopted: 5-19-03

Last Revised:

## 6.7—COMPLAINTS

It is a goal of the Board and the District to be responsive to the community it serves and to continuously improve the educational program offered in its schools. The Board or the District welcomes constructive criticism when it is offered with the intent of improving the quality of the system's educational program or the delivery of the District's services.

The Board formulates and adopts policies to achieve the District's vision and elects a Superintendent to implement its policies. The administrative functions of the District are delegated to the Superintendent who is responsible for the effective administration and supervision of the District. Individuals with complaints concerning personnel, curriculum, discipline (including specific discipline policies), coaching, or the day to day management of the schools need to address those complaints according to the following sequence:

1. Teacher, coach, or other staff member against whom the complaint is directed
2. Principal
3. Superintendent

Other than in the few instances where statutorily allowed or required, student discipline and personnel matters may not be discussed in Board meetings. Individuals with complaints regarding such matters need to follow the sequence outlined above.

Unless authorized by the Board as a whole for a specific purpose, no individual Board member has any authority when acting alone. District constituents are reminded that the Board serves as a finder of fact, not unlike a jury, in matters such as student suspensions initiated by the Superintendent, expulsions, and personnel discipline. For this reason, the board may not be involved or informed prior to a board hearing on particular disciplinary matters.

Complaints that are related to district use or administration of federal funds generated through specific programs identified by the Arkansas Department of Education and authorized in the 2002 reauthorization of the Elementary and Secondary Education Act<sup>1</sup> may be taken directly from a patron or by referral from the Arkansas Department of Education (ADE). If taken directly from a patron, the complaint may be submitted by either a signed statement or by a certified, recorded deposition or statement in which the complainant is identified. The complaints shall be addressed in the following manner.

1. The complaint shall be referred to the federal programs director,<sup>2</sup> who shall assemble a team of at least two people to investigate the complaint.
2. Throughout the investigation, sufficient notes and records will be taken and maintained to substantiate the position of the findings of the investigation.
3. The team will interview the complainant and others as necessary to enable the team to make a determination of the validity of the complaint. The team may consult with individuals with knowledge or expertise in the matter which is the subject of the complaint, including legal counsel.
4. The investigation of complaints referred by the ADE shall be completed within 30 work days of receipt of the complaint, unless a longer time period has been approved by the ADE.<sup>3</sup>

5. The investigation of complaints made directly to the district shall be completed within 40 work days unless there are extenuating circumstances; in such a case, a preliminary report shall be made within 40

work days of receipt of the complaint, which shall include an explanation of the unusual circumstances requiring additional time to complete the investigation.<sup>4</sup>

6. The report of the conclusions of the investigation shall be given to the complainant. It shall contain: a summary of the allegations of the complaint; a summary of the investigative actions taken by the team; a summary of the findings concerning each alleged violation or implied violation; a statement of corrective actions needed to resolve the issues involved in each allegation and finding of complaint.

Date Adopted: 5-19-03

Last Revised: 10-15-2007

## **6.8—DISTRIBUTION OF PRINTED MATERIALS**

The District shall devise and maintain a system for distributing District communications and other printed materials between the Administration and the schools. Use of the system by employees or employee organizations shall be with prior approval of the Superintendent or his/her designee.

Distribution of printed materials, flyers, photographs, or other visual or auditory materials not originating within District schools to students or staff shall have prior approval of the Superintendent or his/her designee.

Date Adopted: 5-19-03

Last Revised:



## **6.9—MEDIA RELATIONS AND NEWS RELEASES**

It is important that the District maintain good relations with the media. The Superintendent or his/her designee shall devise and implement a plan for the release of pertinent information to the media regarding educational programs, awards, or other student and staff achievements, and special events. The plan shall not require schools to clear the release of public service announcements through the District Administration prior to their release, but may require schools to obtain the approval of the Superintendent prior to the release of any statistical type data.

The District shall attempt, within reason, to accommodate media requests for interviews and shall endeavor to be fair and impartial in its treatment of media representatives.

The release of information to the media shall be done in a timely manner, either by written releases or by telephone interviews, to keep patrons abreast of newsworthy District achievements and shall strive to be factual and objective with personal opinions duly noted.

The Board encourages students and staff to participate in academic competitions and programs. Awards earned in such endeavors shall be communicated to the media. Award recipients may also be recognized at Board meetings.

Date Adopted: 5-19-03

Last Revised:

## 6.10—SEX OFFENDERS ON CAMPUS (MEGAN’S LAW)

The Bismarck School District shall work with area law enforcement in a manner consistent with applicable state law and Arkansas Department of Education Regulations to communicate the presence of a sexual offender. When necessary, law enforcement may contact building principals and give them information concerning registered sex offenders. The decision regarding which school principals to notify rests solely with law enforcement officials who use a rating system to determine those needing to be notified according to the offender’s dangerousness to the community.

Building principals should, in turn, notify any person who in the course of their employment is regularly in a position to observe unauthorized persons on or near the school’s property. Those notified could include employees such as aides, bus drivers, coaches, maintenance staff, professional support staff, school level administrative staff, security personnel, teachers’ assistants, and teachers.

It is important that school personnel receiving notice understand that they are receiving sex offender notifications in their official capacity and are **not** to disseminate information about an offender to anyone outside the school. If school personnel are asked about notification information by an organization using school facilities, they should be referred to the area law enforcement agency that issued the notice.

Persons **not** to be notified except at the specific discretion of area law enforcement officials include members of parent-teacher organizations, other schools, organizations using school facilities, students, parents or guardians of students, and the press. Personnel may inform the press about procedures which have been put in place and other general topics, but may not reveal the name or any other specifics regarding an offender.

A parent or guardian who is a Level 1 or Level 2 sex offender shall be allowed to enter the school campus to attend parent-teacher conferences or any other activity which is appropriate for a parent or guardian, or community member.

Level 3 and Level 4 sex offenders may only enter the school campus in the following instances.

1. The offender is a student attending school in the district;
2. To attend a graduation or baccalaureate ceremony, or a school sponsored event for which an admission fee is charged or tickets are sold or distributed;
3. It is a non-student contact day according to the school calendar or no school-sponsored event is taking place on campus;
4. The offender is a parent or guardian of a student enrolled in the district and goes directly to the school office to have school personnel deliver medicine, food, or personal items for the student;
5. The offender is a parent or guardian of a student and enters the school campus where the student is enrolled to attend a scheduled parent-teacher conference **and** the offender is escorted to and from the conference by a designated school official or employee.

A Level 3 and Level 4 sex offender who is the parent or guardian of a child enrolled in the district and who wishes to enter the school campus in which the student is enrolled for any other purpose than those listed above, must give reasonable notice to the school principal or his/her designee. The principal or designee may allow the sex offender to enter upon the campus provided there is a designated school official or employee to escort and

supervise the sex offender while they remain on campus. The sex offender shall not enter upon the school campus until such time as a designated school official or employee is available.

Copies of the notification from law enforcement should be kept in a secure place accessible to teachers and staff, but should not be posted on school bulletin boards or made available to students or members of the community at large.

Legal References:     A.C.A. § 12-12-913 (g)(3)  
                              Arkansas Department of Education Guidelines for “Megan’s Law”  
                              A.C.A. § 5-14-131

Date Adopted: 10-18-04  
Last Revised: 10-15-2007

## **6.11 —PARENTAL/COMMUNITY INVOLVEMENT - DISTRICT**

The Bismarck School District understands the importance of involving parents and the community as a whole in promoting higher student achievement and general good will between the district and those it serves. Therefore, the district shall strive to develop and maintain the capacity for meaningful and productive parental and community involvement that will result in partnerships that are mutually beneficial to the school, students, parents, and the community. To achieve such ends, the district shall work to

1. Involve parents and the community in the development of the long range planning of the district;
2. Give the schools in the district the support necessary to enable them to plan and implement effective parental involvement activities;
3. Have a coordinated involvement program where the involvement activities of the district enhance the involvement strategies of other programs such as Head Start, HIPPY, Parents as Partners, Parents as Teachers, ABC, ABC for School Success, area Pre-K programs, and Even Start;
4. Explain to parents and the community the State's content and achievement standards, State and local student assessments and how the district's curriculum is aligned with the assessments and how parents can work with the district to improve their child's academic achievement;
5. Provide parents with the materials and training they need to be better able to help their child achieve. The district may use parent resource centers or other community based organizations to foster parental involvement and provide literacy and technology training to parents.
6. Educate district staff, with the assistance of parents, in ways to work and communicate with parents and to know how to implement parent involvement programs that will promote positive partnerships between the school and parents;
7. Keep parents informed about parental involvement programs, meetings, and other activities they could be involved in. Such communication shall be, to the extent practicable, in a language the parents can understand;
8. Find ways to eliminate barriers that work to keep parents from being involved in their child's education. This may include providing transportation and child care to enable parents to participate, arranging meetings at a variety of times, and being creative with parent/teacher conferences;
9. Find and modify other successful parent and community involvement programs to suit the needs of our district;
10. Train parents to enhance and promote the involvement of other parents;
11. Provide reasonable support for other parental involvement activities as parents may reasonably request.

To ensure the continued improvement of the district's parental/community involvement program, the district will conduct an annual review of its parental involvement policies to examine their affect on promoting higher student achievement. The review shall be done by a committee consisting of parents and other community members, certified and classified staff, and member(s) of the administration.

This policy shall be part of the school's Title I plan and shall be distributed to parents of the district's students and provided, to the extent practicable, in a language the parents can understand.

**Notes:** If any school in your district receives Title I aid, NCLB requires you to have a district policy covering parental involvement for the parents of students served under the program. Because your district is required to "develop jointly with, agree on with, and distribute to parents of participating children a written parent involvement policy," this model policy is designed to be a starting point to be used in the development of your final policy. The NCLB Act requires the basics of the introduction and the last two paragraphs as well as items-#1 – 7 and #11. Items #8 – 10 are proposed in the act, but **not mandatory**. Act 603 of 2003 along with several subsequent amendments (A.C.A. §§ 6-15-1702, 1703, and 1704) require each district to develop a parental involvement plan (rather than a policy) in collaboration with parents. The law is very detailed, and full of "shalls" going far beyond the requirements of this policy required by NCLB. Be sure to have the law handy when working out the details of your district's parental involvement plan.

The US DOE has correctly opined that this policy (and policy 6.12) are of no use unless accompanied by an implementation plan. Consequently, the ADE's ACSIP office requires districts to have such a plan.

Act 1423 of 2013 requires each school to place a parent-friendly summary of the parent involvement plan as a supplement to the student handbook. The parent has to sign a receipt acknowledging receipt of the summary and return the signed form to the school where the student is enrolled.

Legal References:        20 U.S.C. § 6318 (a)(2),(A),(B),(D),(E) (NCLB Act of 2001, Section 1118)  
                                 20 U.S.C. § 6318 (e)(1),(2),(3),(4),(5),(6),(8),(9),(10),(11),(13),(14) (NCLB Act of 2001, Section 1118)

Date Adopted: 10-18-04

Last Revised: 8-15-05; 7/15/13

## **6.12—PARENTAL/COMMUNITY INVOLVEMENT - SCHOOL**

Bismarck School understands the importance of involving parents and the community as a whole in promoting higher student achievement and general good will between the school and those it serves. Therefore, Bismarck School shall strive to develop and maintain the capacity for meaningful and productive parental and community involvement that will result in partnerships that are mutually beneficial to the school, students, parents, and the community. To achieve such ends, the school shall work to

1. Involve parents and the community in the development and improvement of Title I programs for the school;
2. Have a coordinated involvement program where the involvement activities of the school enhance the involvement strategies of other programs such as Head Start, HIPPY, Parents as Partners, Parents as Teachers, ABC, ABC for School Success, area Pre-K programs, and Even Start;
3. Explain to parents and the community the State's content and achievement standards, State and local student assessments and how the school's curriculum is aligned with the assessments and how parents can work with the school to improve their child's academic achievement;
4. Provide parents with the materials and training they need to be better able to help their child achieve. The school may use parent resource centers or other community based organizations to foster parental involvement and provide literacy and technology training to parents.
5. Educate school staff, with the assistance of parents, in ways to work and communicate with parents and to know how to implement parent involvement programs that will promote positive partnerships between the school and parents;
6. Keep parents informed about parental involvement programs, meetings, and other activities they could be involved in. Such communication shall be, to the extent practicable, in a language the parents can understand;
7. Find ways to eliminate barriers that work to keep parents from being involved in their child's education. This may include providing transportation and child care to enable parents to participate, arranging meetings at a variety of times, and being creative with parent/teacher conferences;
8. Find and modify other successful parent and community involvement programs to suit the needs of our school;
9. Train parents to enhance and promote the involvement of other parents;
10. Provide reasonable support for other parental involvement activities as parents may reasonably request.

To help promote an understanding of each party's role in improving student learning, Bismarck School shall develop a compact that outlines the responsibilities of parents, students, and the school staff in raising student academic achievement and in building the partnerships that will enable students to meet the State's academic standards.

Bismarck School shall convene an annual meeting, or several meetings at varying times if necessary to adequately reach parents of participating students, to inform parents of the school's participation in Title I, its requirements regarding parental involvement, and the parents right to be involved in the education of their child.

Bismarck School shall, at least annually, involve parents in reviewing the school's Title I program and parental involvement policy in order to help ensure their continued improvement.

This policy shall be part of the school's Title I plan and shall be distributed to parents of the district's students and provided, to the extent practicable, in a language the parents can understand.

**Notes:** If your school receives Title I assistance, NCLB requires you to have a school policy covering parental involvement for the parents of students served under the program. Because your school is required to "develop jointly with, agree on with, and distribute to parents of participating children a written parent involvement policy," this model policy is designed to be a starting point to be used in the development of your final policy. The NCLB Act requires the basics of the introduction and the last four paragraphs as well as items #1 – 6 and #10. Items #7 – 9 are proposed in the act, but not mandatory. Act 603 of 2003 along with several subsequent amendments (A.C.A. §§ 6-15-1702, 1703, and 1704) require each district to develop a parental involvement plan (rather than a policy) in collaboration with parents. The law is very detailed, and full of "shalls" going far beyond the requirements of this policy required by NCLB. Be sure to have the law handy when working out the details of your district's parental involvement plan.

The "compact" is also required to be developed jointly with parents of the children served under Title I.

The US DOE has correctly opined that this policy (and policy 6.11) are of no use unless accompanied by an implementation plan. Consequently, the ADE's ACSIP office requires schools to have such a plan.

Act 1423 of 2013 requires each school to place a parent-friendly summary of the parent involvement plan as a supplement to the student handbook. The parent has to sign a receipt acknowledging receipt of the summary and return the signed form to the school where the student is enrolled.

Legal References:      20 U.S.C. § 6318 (b)(1) (NCLB Act of 2001, Section 1118)  
                                 20 U.S.C. § 6318 (c)(1),(2),(3),(4) (NCLB Act of 2001, Section 1118)  
                                 20 U.S.C. § 6318 (d) (NCLB Act of 2001, Section 1118)  
                                 20 U.S.C. § 6318 (e)(1),(2),(3),(4),(5),(6),(8),(9),(10),(11),(13),(14) (NCLB Act of 2001, Section 1118)

Date Adopted: 10-18-04

Last Revised: 8-15-05; 7/15/13

## SUPPORTING INFORMATION FOR 6.11 AND 6.12

This information is offered to assist you in developing your parental involvement policies and is **not** to be included in your district's policy manual.

### Checklist

#### Act 603 of 2003

#### Parental Involvement Plan

Below is a list of questions that districts can use as a checklist. The purpose of the checklist is to assist school districts in creating a Parental Involvement Plan as required by Act 603 of 2003 that complies with the requirements of that law. Careful attention should be paid to Act 603 of 2003 as schools and school districts create their Parental Involvement Plans.

1. Who are the people who participated in creating the district's parental involvement plan? Suggestion: create a list of participants, and indicate whether each person is a parent, staff member or member of the community. In the case of parents, reference the parents' names and grade levels of their children, and the school(s) the children attend. Document the dates, times and places that the group met to create the district's parental involvement plan.

2. Do you have copies of each parent kit developed for the various ages and grades of children in the school district? Suggestion: retain copies of each kit and document when and where the kits are distributed to parents.

- My school district uses \_\_\_\_\_ (number) different parents kits for the following age groups (list).
- These are given to parents \_\_\_\_\_ (insert occasion(s) or time(s) of year distributed).
- Does each kit contain *at least* the following minimum information:
  - description of school's parental involvement program
  - states recommended roles for parents, students, teachers and the school
  - lists activities planned throughout the year to encourage parental involvement
  - explains system in place to permit meaningful, 2-way communication with a child's teacher and principal.  
Example: space for teacher comments and parent notes to teacher in the required assignment notebook.
- list any other information your district includes in the parent kit as helpful to parents

3. What are the dates of the (minimum of two) planned parent-teacher conferences scheduled for this school year? Suggestion: retain a copy of the school calendar, with the conference dates circled.



4. What other activities is each school planning that will encourage communication with parents? Example: Weekly newsletter from school to parents sent home with students. Suggestion: collect documentation that relates to all of these activities.

5. What are the titles of the parenting books, magazines, and other informative material related to responsible parenting obtained by the school? Have you advertised to parents explaining the existence of this material, and how to borrow this material from the school? Suggestion: retain a copy of any advertising (advertising does not have to be in a commercial medium), and the dates and methods it was communicated to parents. Consider photographing a display of parenting material in your school's media center as further documentation.

6. When do you plan for the school district to honor parents at the end of the school year by publishing the names of parents who have attended ALL parent-teacher conferences scheduled by the school? Suggestion: Retain copy of advertisement.

7. Where are the district's parent centers? What services and information are available there?

8. What are the other activities planned by the schools and school district that will promote responsible parenting? Suggestion: retain documentation of activities and materials used.

9. What are the dates of the planned "Parents Make the Difference" evenings? Suggestion: retain copies of any materials distributed.

The meetings must include the following:

- parents are given a report on the state of the school
- parents are given an overview of what students will be learning
- student assessment is explained
- parents are told what to expect from their child's education
- parents are told what they can do to assist and make a difference in their child's education

10. What other activities are planned by each school in your school district and by the school district as a whole that will help parents assist in their children's education? Suggestion: retain documentation of all planned activities and materials used.

11. Is your school and school district in compliance with the following:

- there are no policies that discourage parents from visiting the school
- there are no policies that require parents to pick children up from school outside the school building

- there are no policies that prevent parents from visiting his/her child's classroom during school events

12. Have you surveyed parents regarding their interests, and used the results to create a volunteer resource book and made it available to school employees? Note that availability options listed on the survey must include the possibility of volunteering once a year as well as the option to perform volunteer work at home. Suggestion: retain a copy of your school district's volunteer resource book, which should list the interests and availability of school district volunteers.

13. Do you have a statement produced by the district which attests to the school district's commitment to parental involvement? Suggestion: Note the date and distribution method whereby these statements were given to the parents of students.

14. What activities does each school in your school district engage in to welcome parents to the school?

15. Does your school/school district have a written process for resolving parental concerns, which includes how to define the problem, to whom to approach first and how to develop solutions? Suggestion: note the dates and distribution methods whereby the concern resolution process notices were **frequently** (the law requires "frequently") given to the parents of students.

16. What are the date(s) of the seminar or seminars held to inform parents of high school students about how to be involved in decisions affecting course selection, career planning and preparation for post-secondary education? Suggestion: retain any materials distributed to the parents at such seminars, as well as sign in sheets from the seminars and any material generated to invite parents to such seminars.

17. What are all the other activities that each school in your school district engages in to encourage parents to participate as full partners in the decisions that affect their child and family?

18. What are the names of the members of the alumni advisory committee of each school in your school district? Suggestion: note the dates that they met to provide advice and guidance for school improvement, and any suggestions they made to your school or school district.

19. Has your district created or obtained paycheck sized cards containing tips for how parents can foster their child's success and solicited area employers who have agreed to place these cards in their employee's paychecks?

20. What other activities does each school engage in whereby the schools use community resources to strengthen school programs, family practices, and student learning?

21. What are the names of those certified staff members in each school designated by the principal to serve as Parent Facilitator? The responsibilities of the Parent Facilitator are to organize meaningful training for staff and parents promoting and encouraging a welcoming atmosphere to parental involvement and to undertake efforts to ensure that parental participation is recognized as an asset to the school. Suggestions: list the dates of all training sessions organized by each Parent Facilitator; state how the Parent Facilitator in each school has created a welcoming atmosphere; retain a copy of the school district's salary schedule with the stipend paid to Parent Facilitators circled.

22. What was the date, time and place that the minimum of 2 hours of professional development activities for teachers (can be part of 30 hours presently required) occurred that were designed to enhance understanding of effective parental involvement strategies? Suggestion: retain lists of attendees, and retain any materials used at the professional development session.

23 What were the date, time and place that the minimum of 3 hours of professional development activities for administrators (in **excess** of 30 hours presently required) occurred that were designed to enhance understanding of effective parental involvement strategies and the importance of administrative leadership in setting expectations and creating a climate conducive to parental participation? Suggestion: retain lists of attendees, and retain any materials used at the professional development session.

24. (Beginning October 1, 2004 and by every October 1 thereafter) On what date was the school district's parental involvement plan reviewed by the school district, and on what date was the parental involvement plan submitted to the Department of Education?

# TABLE OF CONTENTS

## SECTION 7—BUSINESS AND FINANCIAL MANAGEMENT

7.1—FISCAL YEAR	_____
7.2—ANNUAL OPERATING BUDGET	_____
7.3—GRANTS AND SPECIAL FUNDING	_____
7.4—PURCHASES OF COMMODITIES	_____
7.5F—COMMODITIES BIDDER AFFIDAVIT	_____
7.7—CASH IN CLASSROOMS	_____
7.8—PERSONAL PROPERTY	_____
7.10—PUBLIC USE OF SCHOOL BUILDINGS	_____
7.11—USE OF SCHOOL FUNDS FOR NON-SCHOOL RELATED PURPOSES	_____
7.12—EXPENSE REIMBURSEMENT	_____
7.13—MANAGEMENT AND DISPOSAL OF DISTRICT PROPERTY	_____
7.14—USE OF DISTRICT CELL PHONES AND COMPUTERS	_____
7.15—RECORD RETENTION AND DESTRUCTION	_____
7.16—REQUIRMENTS FOR ESTABLISHING PAYROLL DEDUCTIONS	_____
7.17—PAYMENT OF TEACHER LICENSURE FEES	_____
7.18—DISPOSAL OF NON-NEGOTIATED CHECKS OR UNCLAIMED PROPERTY	_____
7.19—SERVICE ANIMALS IN DISTRICT FACILITIES	_____
7.21—NAMING SCHOOL FACILITIES	_____

# **BUSINESS and FINANCIAL MANAGEMENT**

## **7.1—FISCAL YEAR**

The District's fiscal year shall begin July 1 and end on the following June 30.

Legal Reference:       A.C.A. § 6-20-410

Date Adopted: 5-19-03

Last Revised:

## 7.2—ANNUAL OPERATING BUDGET

The Superintendent shall be responsible for the preparation of the annual operating budget for the District. The Superintendent shall present the budget to the Board for its review, modification, and approval.

The budget shall be prepared in the electronic format as prescribed by the State Board of Education and filed with the Arkansas Department of Education no later than September ~~45~~<sup>30</sup> of each year.

The approved budget shall provide for expenditures that are within anticipated revenues and reserves. The District Treasurer shall present monthly reconciliation reports and a statement on the general financial condition of the District monthly to the Board.

Line item changes may be made to the budget at any time during the fiscal year upon the approval of the Board. Any changes made shall be in accordance with District policy and state law.

Legal References:      A.C.A. § 6-17-914  
                                 A.C.A. § 6-13-701 ~~(e)~~ (e) (3)  
                                 ~~A.C.A. § 6-20-2202~~

Date Adopted: 5-19-03

Last Revised: 4-22-13

### **7.3—MILLAGE RATE**

The Board shall publish one time in some newspaper published in the county in which the district lies, at least sixty (60) days in advance of the school election at which the annual ad valorem property tax for the district is decided by the electors, the District's proposed budget, together with a millage rate sufficient to provide the funds necessary for the District's operation.

Legal References:     A.C.A. § 6-13-622  
                              Arkansas Constitution: Article 14 Section 3 (c) as amended by  
                              Amendment 74

Date Adopted: 5-19-03  
Last Revised: 6-20-11



## **7.4—GRANTS AND SPECIAL FUNDING**

The Superintendent or his/her designee may apply for grants or special funding for the District. Any grants or special funding that require matching District resources shall receive Board approval prior to the filing of the grant's or special resource's application.

Date Adopted: 5-19-03

Last Revised:

## 7.5—PURCHASES OF COMMODITIES

Purchases shall be made in accordance with State laws and procurement procedures governing school purchases that are deemed to be in the best interest of the District and are the result of fair and open competition between qualified bidders and suppliers.

### DEFINITIONS

“Commodities” are all supplies, goods, material, equipment, computers, software, machinery, facilities, personal property, and services, other than personal and professional services, purchased on behalf of the District.

“Specifications” means a technical description or other description of the physical and/or functional characteristics of a commodity.

Purchases of commodities with a purchase price of more than \$10,000 require prior Board approval, unless an emergency exists in which case the Superintendent may waive this requirement.

The district shall notify in writing all actual or prospective bidders, offerors, or contractors who make a written request to the district for notification of opportunities to bid. The notification shall be made in sufficient time to allow actual or prospective bidders, offerors, or contractors to submit a bid or other appropriate response.<sup>3</sup> The board shall accept bids submitted electronically by email or fax for any and all district purchases, unless specified to be submitted by other means or methods, and except those bids which have been specified to have a designated date upon which the bids shall be opened. The superintendent shall be responsible for ensuring submitted bids, whether written, faxed, or emailed, are retained in accordance with policy 7.15—RECORD RETENTION AND DESTRUCTION.

The district will not solicit bids or otherwise contract for a sum greater than \$25,000 with vendors that are on the “excluded parties list” if the contract is to be paid from federal grant funds.

All purchases of commodities in which the estimated purchase price equals or exceeds ten thousand dollars (\$10,000) shall be procured by soliciting bids. Specifications shall be devised for all commodities to be bid that are specific enough to ensure uniformity of the bid and yet not so restrictive that it would prevent competitive bidding. The bid specifications shall not include the name or identity of any specific vendor. The Board reserves the right to reject all bids and to purchase the commodity by negotiating a contract. In such an instance, each responsible bidder who submitted a bid shall be notified and given a reasonable opportunity to negotiate.

Bids shall be awarded after careful examination of the details of the bid to determine the best overall value to the District. In instances where the low bid was not accepted a statement of the reasons shall be attached to the bid. Bidders submitting written bids shall be notified in writing of the bid award.

The following commodities may be purchased without soliciting bids provided that the purchasing official (school board) determines in writing that it is not practicable to use other than the required or designated commodity or service, and a copy of this statement is attached to the purchase order:

1. Commodities in instances of an unforeseen and unavoidable emergency;
2. Commodities available only from the federal government;
3. Utility services;
4. Used equipment and machinery; and

5. Commodities available only from a single source.

Prospective bidders, offerors, or contractors may appeal to the district's superintendent if they believe the district failed follow district bidding and purchasing policy or state law.

Any award of a contract shall be subject to revocation for ten working days or, if an appeal is received, after resolution of the appeal. This shall give prospective bidders, offerors, or contractors the opportunity to appeal the bid award if they believe the facts warrant an appeal. Any appeal shall be **in writing by certified mail** and received by the district office, "attention to the superintendent" within seven calendar days following the initial and revocable award of the contract.

If the district receives an appeal of a bid award, they shall notify, in writing, those prospective bidders, offerors, or contractors who have made a written request to the district for notification of opportunities to bid that an appeal has been submitted. The notification shall state:

- that the contract award has been halted pending resolution of the appeal and could be revoked;
- the reasons for the appeal;
- that the recipient of the letter may respond to the protested issues identified in the appeal;
- the date the decision on the appeal will be made and notification sent;
- that if the appeal is upheld, the bidding process will start all over again;
- that if the bidding is re-opened, changes will be made to the request for bids as necessary to satisfy the reasons for upholding the appeal.

The sole authority to resolve any appeal made relating to this policy shall rest with the superintendent. The superintendent's decision shall be final and conclusive. In the event the district upholds an appeal, the sole responsibility of the district to the aggrieved bidder(s) shall be the re-opening of the bidding process.

The District reserves the right to extend or renew a contract that was previously awarded under the process governed by this policy and law, provided the extension or renewal meet the following criteria.

1. The equipment and services provided under the extended or renewed contract meets or exceeds the specifications of the original bid.
2. The extended or renewed contract agreement complies with the state of Arkansas's documentation requirements.
3. The cost of the extended or renewed contract is the same or less than the original contract.
4. The extension or renewal is approved by the local school board.

**Notes:** Names of vendors on the excluded parties list can be found at <http://www.epls.gov>.

Any commodities purchased by the district through the TAPS program satisfies the bidding requirements.

Used school buses, over two years old as defined in A.C.A. § 6-21-306(a), are exempt from bidding requirements.

A "sole source justification document" should be attached to the purchase order and maintained in the audit file for all commodities purchased as such. ADE stipulates the following seven criteria which the justification must meet.

- Why the service or product is needed;

- The methods used to determine that a lack of responsible/responsive competition exists for the service or product;
- How it was determined that the provider possesses exclusive capabilities;
- Why the service or product is unique;
- Whether or not there are patent or property rights which make the required service or product unavailable from other sources;
- What the district would do if the provider/service product were no longer available;
- Any program considerations which make the use of a “sole source” critical to the successful completion of the district’s task.

Act 2161 of 2005 specifically states the parameters required within the appeal process. Your district could choose to alter the paragraph and how it intends to deal with the appeal and its resolution. An example would be to award a financial settlement to the appellant if the appeal is upheld. Another example would be to state, by policy, the length of time for the resolution of the appeal process.

Legal References:      A.C.A. § 6-21-301, 303, 304, 305, 306  
                                  A.C.A. § 6-24-101 et seq.

Date Adopted: 5-19-03

Last Revised: 4/22/13

## 7.5F2— **FOOD SERVICE** COMMODITIES BIDDER AFFIDAVIT

NAME OF SCHOOL DISTRICT

NAME OF COUNTY

I, \_\_\_\_\_, hereby state:

(1) I am the duly authorized agent of \_\_\_\_\_, the bidder submitting the competitive bid which is attached to this statement. I certify the facts as detailed below pertaining to the non-existence of collusion among and between bidders and state officials, as well as to the facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the awarding of any contract pursuant to the bid to which this statement is attached.

(2) I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of the bid.

(3) Neither the bidder nor anyone subject to the bidder's direction or control has been a party:

(A) To any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding;

(B) To any collusion with any state official or employee as to quantity, quality, or price in the prospective contract, or as to any other terms of the prospective contract; or

(C) In any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the awarding of a contract.

(4) I hereby guarantee that the specifications outlined in the bid shall be followed as specified and that deviations from the specifications shall occur only as part of a formal change process approved by the Board of Directors of the school district.

(5) I hereby certify that the bid, unless specifically exempted by the USDA, is for agricultural commodities that have been produced in the U.S. or if the bid contains food products that at least 51% of food in the product was produced in the U.S. I understand that the district shall not accept any product that does not meet this requirement and is not liable for any loss I may incur as a result of such refusal to accept.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

## **7.5—ACTIVITY ACCOUNT**

The District shall maintain an account of activity funds. The funds for the account are those revenues derived from the sale of tickets to athletic contests or other school sponsored activities; the sale of food other than that sold in the cafeteria; the sale of soft drinks, school supplies, and books; and fees charged by clubs and organizations.

Activity funds are considered “school funds” and as such may only be spent for school related purposes.

The Superintendent shall be the custodian of all activity funds and shall be responsible and accountable for the funds. The Superintendent may appoint a co-custodian for each school in the District who shall also be responsible for the activity funds he/she maintains.

Legal Reference:      A.C.A. § 6-13-701

Date Adopted: 5-19-03

Last Revised: 6-20-11

## 7.6—CASH IN CLASSROOMS

No cash or checks are to be left in any classroom overnight. Staff, other than the District bookkeeper, who collect funds in the course of their employment should deposit the funds daily with the bookkeeper or designated staff member. Designated staff members should deposit daily, unless otherwise directed by the superintendent or business manager.

Notes: Policies 3.47 and 8.39 both require daily deposits with the superintendent or designee determining if the fund collection requires receipts and/or other record keeping requirements. That language is not repeated in this policy, but the reasons for daily deposits are the same as for those policies. Specifically, the goal is to protect both the district and the staff from possible overnight theft which is only covered by insurance if there are receipts to prove the existence of the funds and even then, there is a deductible (often \$1000).

Date Adopted: 5-19-03

Last Revised: 6/25/12





## **7.7—PERSONAL PROPERTY**

To avoid confusion and the potential for misunderstandings, District staff who bring personal property to school to use in the performance of their jobs should label the items with their names. Any such items should be removed from the school at the close of school each year. The District assumes no responsibility for damage to, or the loss of, personal property brought to District facilities by District staff.

Date Adopted: 5-19-03

Last Revised:

## **7.8—PROPERTY INSURANCE**

The Superintendent shall be responsible, with approval of the Board, for maintaining adequate insurance coverage for all District properties. At a minimum, the District will purchase insurance coverage sufficient to meet the requirements by the Arkansas Commission for Public School Academic Facilities and Transportation.

Legal References:     A.C.A. § 6-21-114(d)  
Arkansas Commission for Public School Academic Facilities and  
Transportation Rules Governing Property Insurance Requirements

Date Adopted: 5-19-03  
Last Revised: 6-20-11



## **7.9 —PUBLIC USE OF SCHOOL BUILDINGS**

It is the policy of the Board that District school buildings may be used by citizens of the District to conduct lawful meetings for social, civic, or recreational purposes provided such meetings do not interfere with the regular school work. The Superintendent shall be responsible, with Board approval, for establishing procedures governing such use of school buildings. The governing procedures shall be viewpoint neutral. Building principals shall be consulted to determine if there exists any conflict with planned school activities prior to other groups being allowed to use school facilities.

The District shall establish a fee schedule for the use of school facilities. Charges made for the use of school facilities shall reflect the actual costs (e.g. labor, utility, and materials) incurred by the District.

Organizations using school facilities assume full and complete responsibility for the conduct of all persons, regardless of age, associated with their use of the facility while they are in or about the facility. Smoking or the use of tobacco or products containing tobacco in any form or the use of drugs or intoxicants is prohibited. Firearms of any kind are not allowed on school property unless the person carrying the firearm is permitted to do so by law as defined in A.C.A. § 5-73-120.\*

Legal Reference:       A.C.A. § 6-21-101  
                              A.C.A. § 5-73-120

Date Adopted: 5-19-03  
Last Revised:



## **7.11—USE OF SCHOOL FUNDS FOR NON-SCHOOL RELATED PURPOSES**

School funds shall not be used for political, charitable, or humanitarian purposes.

No employee of the District shall use school time, school property, school personnel, or school equipment for the purpose of furthering the interests of any political party, the campaign of any political candidate or the advocacy of any political issue or ballot issue whether partisan or non-partisan. School employees may participate as part of a community organization which is renting a school facility for a political purpose.

Any school employee found guilty or who pleads guilty, or nolo contendere to the use of District funds to support any ballot measure shall be immediately suspended, and recommended for termination by the superintendent.

The Board of Directors is not prohibited from expressing an opinion on a ballot measure through the passage of resolution or proclamation. School employees are allowed to verbally express their views on a ballot measure other than in an attempt to persuade a student to the employee's point of view.

District employees and members of the Board of Directors may incur incidental expenditure of District funds for travel costs when speaking at an event in which a ballot measure is discussed if the subject matter of the speaking engagement is within the scope of the person's official duties and responsibilities.

District funds may be used to disseminate public information at a public speaking engagement. The incidental use of District resources may be used to prepare an analysis of the public information if such information is within the scope of the person's official duties and responsibilities.

Legal References:      Arkansas Constitution Article 14 § 2  
                                 A.C.A. § 7-1-103  
                                 A.C.A. § 7-1-111  
                                 A.C.A. § 21-8-402

Date Adopted: 5-19-03  
Last Revised: 7-21-08; 7/15/13

## **7.12—EXPENSE REIMBURSEMENT**

The requirements of this policy shall govern reimbursement for expenses related to travel and/or attendance at conferences and professional development activities incurred by district employees and/or members of the Board of Directors on behalf of the district. Employees are only eligible for

reimbursement for travel expenses for travel which has been approved in advance. Original receipts must accompany all requests for reimbursement to the extent that such receipts are customarily available. For a receipt to be valid it should contain the name of the issuing company, the date, and the amount. No cash advances shall be made for travel. Mileage, lodging, and meal expenses will not be reimbursed when incurred for the personal convenience of the employee and not required by the reason for the travel. Reimbursement for travel shall be for the lesser of the cost between travel by air or by car with some consideration allowed for length of time of the method of travel.

To the extent practicable, employees shall have the district pay initial conference and professional development registration fees and associated necessary materials. In the occasional circumstances where this is not practical, the district shall reimburse the employee for such fees if they were authorized in advance and are supported with proper receipts.

The district will not reimburse expenses of any non-school board member or non-employee who accompanies the school board member or employee during his/her school related travel.

### **Reimbursable Expenses**

Mileage that is driven for a district sanctioned purpose in an employee's personal vehicle shall be reimbursed provided appropriate documentation is submitted establishing the date and time, place, and purpose of the travel. Mileage shall be reimbursed at the current rate authorized by the state/IRS and shall be based on the shortest, most reasonable, route available.

Meals may be reimbursed for travel which necessitates an overnight stay when submitted according to the dictates of this policy. Reimbursement shall be prorated based on the percent of a day the employee is away on travel. For example, if an employee returns from his/her travel in the afternoon, he/she is only eligible for reimbursement for breakfast and lunch expenditures. Meals shall be reimbursed for the actual expense to the extent they are not lavish and are reasonable based on circumstances. Except as otherwise specified by this policy, meals are only reimbursable in conjunction with travel requiring an overnight stay.

Tips paid by a school employee for meals associated with travel as defined in this policy are reimbursable for up to 15% of the cost of the meal provided the employee submits a receipt for the meal as part of an "accountable plan" for reimbursement. <sup>4</sup>Tips are not allowed if an employee is reimbursed using a "per diem" plan.

Meal expenses incurred by the superintendent or other administrators as necessary, in the performance of their duties when meeting with state officials or consultants may be reimbursed on a prorated, per person basis in line with the mandates of this policy. Such expenses shall only be reimbursed when the expenditure is likely to result in a tangible benefit to the district.

Travel necessitating overnight lodging shall be reimbursed to the extent that it is not lavish and is reasonable based on circumstances of the expenditure. Proper documentation establishing the date and time, place, and purpose of the travel must be submitted along with a receipt for the overnight accommodations. To the extent practicable, employees shall receive assistance from administrators or their designee in arranging travel plans to help keep expenses to a minimum.

## Expenses not covered

The district shall not reimburse the following items/categories of expenses.

- Alcoholic beverages;
- Entertainment expenses – including sports or sporting events; pay per view or game expenses at motels;
- Replacement due to loss or theft;
- Discretionary expenses for items such as clothing or gifts;
- Medical expenses incurred while on route to or from or at the destination of the reason for the travel;
- Optional or supplementary insurance obtained by the employee for the period covered during the travel; and

## Credit Cards

Only those employees specifically issued credit cards to be used in the performance of their jobs to purchase goods, services, or supplies on behalf of the district shall be allowed to use such cards. Employees who incur reimbursable expenses as defined in this policy are expected to pay for them initially by any means they choose and then submit their request for reimbursement. The district assumes no responsibility for the payment of any personal credit card charges incurred by a district employee.

## Airport Associated Expenses

Receipts for airport associated expenses are required for reimbursement. All airline flights shall be by coach/economy class. Upon arrival at their destination, employees are expected to take the less expensive option between a taxi and an airport shuttle service to his/her hotel or meeting site. When circumstances dictate that a rental car is necessary and/or the most economical approach to the travel requirements, the least expensive car that will accomplish the job should be rented. The district shall not reimburse for any kind of rental car supplemental insurance.

**Notes:** The following IRS publications were used in the development of this policy. 15-A, 15-B, 463, 535, and the Fringe Benefit Training Guide.

To find the current rate recognized by the IRS go to [www.irs.gov](http://www.irs.gov) and type in mileage rates in the search box. To access the current reimbursement rate for state employees, go to [www.arkansas.gov/dfa/accounting](http://www.arkansas.gov/dfa/accounting).

Per diem reimbursement rates are established by the IRS. Reimbursement rates vary and can be determined by going to [http://www.gsa.gov/portal/content/104877?utm\\_source=OGP&utm\\_medium=print-radio&utm\\_term=portal/category/21287&utm\\_campaign=shortcuts](http://www.gsa.gov/portal/content/104877?utm_source=OGP&utm_medium=print-radio&utm_term=portal/category/21287&utm_campaign=shortcuts).

<sup>4</sup> Act 715 of 2007 allows state employees to be reimbursed for tips for amounts up to 15% of the bill. Page 5 of IRS Publication 463 specifies tips the IRS deems acceptable for certain expenses, but state law can be more restrictive than what IRS permits. Attorney General's



Opinion 2012-070 essentially blesses tips up to a 15% cap paid by municipal employees in such a way that it can be construed to also apply to school employees. To be eligible for tip reimbursement, the employee must file for actual expenses (receipts required) and NOT as part of a per diem rate reimbursement.

Cross References: 3.20—CERTIFIED PERSONNEL REIMBURSEMENT OF TRAVEL  
EXPENSES

8.14— CLASSIFIED PERSONNEL REIMBURSEMENT OF TRAVEL  
EXPENSES

Date Adopted: 5-19-03

Last Revised: 7-17-06; 6-20-11; 7/15/13

## 7.13—MANAGEMENT AND DISPOSAL OF DISTRICT PROPERTY

### Definitions

For the purposes of this policy, the following definitions apply:

Commodities are all supplies, goods, material, computers, software, machinery and other equipment purchased on behalf of the district having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.

Surplus commodities are those commodities that are no longer needed, obsolete, irreparable, or worn out.

Real property is land and whatever is erected or affixed to land, such as structures or buildings.

Surplus real property is real property that is not presently needed or foreseen to be needed by the District, and that has been authorized for sale as surplus real property by vote of the School Board.

Trash are those items that would otherwise belong to another category of goods or property defined in this policy, but which, due to the property's age or an act of God, have less value than it would cost to repair the item. Examples could include, but are not limited to, fire damage, vehicle accidents, extreme age and/or decline in value of the item.

The District's purchases of commodities shall be in accordance with Policy 7.5—PURCHASES OF COMMODITIES and, to the extent applicable, the procurement requirements of any granting source of funding used to purchase the commodity. The Superintendent shall develop procedures governing the use, management, and dispersal of commodities. At a minimum, the procedures will cover the following topics.

- labeling all commodities<sup>1</sup>;
- establishing adequate controls to account for their location, custody, and security;
- annually auditing the inventory of commodities and updating a listing of such commodities to reconcile the audit with the district's inventory records. The audit will be documented and account for any transfer and/or disposal of a commodity.
- Disposing of surplus commodities and surplus real property, whether purchased in whole or in part with federal grant funds or with local funds.

### Disposal of Surplus Commodities

The Board of Directors recognizes that commodities sometime become of no use to the District and thus meet this policy's definition of surplus commodities.

The Superintendent or designee(s) will determine the objective fair market value of surplus commodities. The District will strive to dispose of surplus commodities at or near their fair market value.<sup>2</sup>

The Superintendent may declare surplus any commodity with a fair market value of less than \$1000. Surplus commodities with a fair market value of less than \$1000 will be periodically sold by the most efficient, cost effective means that is likely to result in sales at or near fair market value.

The Superintendent may submit a list of surplus commodities deemed to have a fair market value of \$1,000 or greater to the Board of Directors for authorization to sell such surplus commodities. Once the Board of Directors has authorized the sale of such surplus commodities, the Superintendent or designee(s) may sell that surplus commodity as the need arises. Items with a fair market value of \$1,000 or greater will be sold by the most efficient, cost effective means that is likely to result in sales at or near fair market value. If the Superintendent chooses to dispose of the surplus items by bid, the Superintendent or designee may set a minimum or reserve price on any item, and may reject all bids. The Superintendent or designee is authorized to accept the high bid provided the high bid is at or near the fair market value without further Board action unless the high bid comes under the jurisdiction of Arkansas ethics legislation in which case the provisions of A.C.A. §§ 6-24-101–107 would apply.

If attempts at public sales fail to produce any interested buyers or bidders, such remaining unsold commodities may then, at the discretion of the Superintendent, be disposed of as scrap or junk or be donated to appropriate charitable or education related entities. Computer or technology equipment will be cleansed of data prior to disposal.

#### Disposal of Surplus Real Property

The Board of Directors recognizes that real property it owns sometimes becomes no longer of use to the District and thus meets this policy's definition of surplus real property.

The Superintendent may submit a request to the Board of Directors for authorization to sell surplus real property. Once the Board of Directors has authorized the sale of such surplus real property, the Superintendent or designated individual(s) may sell that surplus real property as the need arises. The Superintendent or designee(s) shall be responsible for getting a determination of the objective fair market value of surplus real property<sup>3</sup>. The district will strive to dispose of surplus items at or near their fair market value. The real property may be listed for sale with a real estate broker, and the Superintendent or designated individual may contract on behalf of the district to pay the usual and customary sales commission for such transactions, upon sale of the property.

If the Superintendent chooses to dispose of the surplus items by bid, the Superintendent or designee(s) may set a minimum or reserve price on any item, and may reject all bids. The Superintendent or designee is authorized to accept the high bid provided the high bid is at or near the fair market value without further Board action unless the high bid comes under the jurisdiction of Arkansas ethics legislation in which case the provisions of A.C.A. §§ 6-24-101–107 would apply.

If attempts at public sales fail to produce any interested buyers or bidders, such remaining unsold real property may then, if agreed to by the Superintendent and Board of Directors, be donated to appropriate education related entities or not-for-profit organizations in accordance with the provisions of state law.<sup>4</sup>

Items obtained with federal funds shall be handled in accordance with applicable federal regulations, if any.

The disposal of school property must be for the benefit of the school district and consistent with good business principles.

Trash, as defined in this policy, may be disposed of in the most cost efficient or effective method available to the district.

Notes: <sup>1</sup> Due to federal monitoring and disposal requirements, we suggest differentiating the labeling of items purchased with federal funds from non-federal fund items.

<sup>2</sup> The fair market value (FMV) of items must be established prior to their disposal. The determination of the surplus commodity's value will determine whether the superintendent has to submit it to the board. You need to document how you reached FMV; Digital photos can be very useful, particularly if you decide FMV seems low.

The disposal of items purchased with federal grant funds is governed by the following requirements which are located at 34 CFR 80.32(e).

Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

<sup>3</sup> The fair market value (FMV) of items must be established prior to their disposal. In the case of real property, this should be established by means of a survey and real estate appraisal by a licensed surveyor and appraiser performed within the preceding six months.

The disposal of real property purchased with federal grant funds is governed by the requirements contained in 34 CFR 80.31 which states in part:

(c) Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) Retention of title. Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sale of property. Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net

proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer of title. Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

<sup>4</sup> A.C.A. § 6-13-111 and A.C.A. § 6-21-108 are the statutes that cover donating District property. Please keep in mind that selling below Fair Market Value has the same legal connotation as donating.

Legal References:      A.C.A. § 6-13-111  
                                 A.C.A. § 6-13-620  
                                 A.C.A. § 6-21-108  
                                 A.C.A. § 6-21-110  
                                 A.C.A. § 6-24-101–107  
                                 34 CFR § 80.3 – 80.52  
                                 34 CFR § 80.31  
                                 34 CFR § 80.32(d)(e)

Date Adopted: 4-22-13

Last Revised:

## 7.14—USE OF DISTRICT CELL PHONES AND COMPUTERS

Board members, staff, and students shall not be given cell phones or computers for any purpose other than their specific use associated with school business. School employees who use a school issued cell phones and/or computers for non-school purposes, except as permitted by District policy, shall be subject to discipline, up to and including termination. School employees may be issued District cell phones if their position requires the employee be available at all times for work related emergencies or the employee be available to speak with others on school related business when the employee is away from the office. Employees issued cell phones for such purposes may use the phone for personal use on an “as needed” basis.<sup>1</sup>

Students who use a school-issued cell phones and/or computers for non-school purposes, except as permitted by the District’s Internet/computer use policy, shall be subject to discipline, up to and including suspension or expulsion.

All employees are forbidden from using school-issued cell phones while driving any vehicle at any time. Violation may result in disciplinary action up to and including termination.<sup>2</sup>

Note: <sup>1</sup> The IRS has changed its position regarding the use of district issued cell phones for personal use for those employees who have a genuine **need** for a cell phone due to their job’s duties. Cell phones **cannot** be issues as a fringe benefit, but only as a “legitimate” need related to their job’s responsibilities. There is no longer a need to keep track of personal calls and claim their value as income. The district has the option of supplying the phone directly to the employee or of reimbursing the employee for the cost of his/her personal phone that is used for both District and personal purposes. Any such reimbursement can only be for the specific employee and not any other individuals associated with that employee’s cell phone plan. There has been no change to the use of school computers for personal purposes. Use of school issued cell phones and/or computers by board members or employees who do not meet the policy’s definition of eligibility for non-school purposes is considered income by the Internal Revenue Service. “Income” in this sense means the fair market value that the individual would have had to pay for the use of the cell phone or computer on the open market. Any board member, or employees who do not meet the policy’s definition of eligibility, who uses a school-issued cell phone and/or computer for non-school purposes should be issued the appropriate IRS form (1099) stating the amount of income they have been paid by the district.

Please be aware that telephone records for both personal and school business calls of any school employee’s district-provided cell phone can be requested and must be disclosed by the school district under the Arkansas Freedom of Information Act.

Cross References: 3.34—CERTIFIED PERSONNEL CELL PHONE USE

ETC. 4.47— POSSESSION AND USE OF CELL PHONES, BEEPERS,

8.25— NONCERTIFIED PERSONNEL CELL PHONE USE

Legal References: IRC § 132(d)  
IRC § 274(d)  
IRC § 280F(d)(4)  
IRS Publication 15 B

Date Adopted: 6/25/12

Last Revised:





## 7.15—RECORD RETENTION AND DESTRUCTION

It is necessary to maintain district records in a manner that provides for efficient document storage and retrieval and is conducive to eliminating unnecessary record retention. Due to the variety of records that may need to be retained and accessed, the superintendent shall ensure that all staff receive appropriate training to understand this policy. Staff shall also understand the possible ramifications to the district and/or themselves for failure to properly maintain records and follow the requirements contained in this policy.

“Record” is defined for the purposes of this policy, as an item or items, whether electronic or material, employees receive or generate and purposefully retain in the course of their employment. Examples include, any kind of correspondence, calendars, computer files and documents (which may include drafts), telephone logs, expense records, and other types of data.

The superintendent shall be responsible for establishing a schedule for the routine destruction of district records that accommodates the needs of the district. The schedule shall specify the length of retention for any records not specifically delineated by this policy and be distributed to staff on a need-to-know basis according to their respective employment duties and responsibilities. The schedule should accommodate the need for records to be stored as a blend of printed, bound and electronically recorded (e.g., audio tape, video tape, micro-fiche, computer disk) material. The superintendent or designee shall ensure the effective and efficient securing, cataloging, storing, and appropriate scheduled destruction of all records.

The following records categories shall be retained for the time specified.

Board of Education Minutes – forever

Personnel files – forever

Student files – until the student receives a high school diploma or its equivalent, or is beyond the age of compulsory school attendance<sup>1</sup>

Student records of attendance/graduation – forever<sup>2</sup>

Financial Records – five years<sup>3</sup>

Transactions between the district and members of its board of education, administration, or employees<sup>4</sup> - forever

Expenditures made with federal grant monies<sup>5</sup> – governed by the terms of each grant

Video Surveillance Recordings – the timeline established in Policy 4.48—VIDEO

SURVEILLANCE

Emails – whatever the district’s policy is on this subject<sup>6</sup>

The superintendent or designee shall be responsible for determining when there is a need to interrupt the routine destruction of records.<sup>7</sup> When the superintendent or designee makes the decision to cease the routine disposal of records, staff affected by the decision shall be promptly informed of the decision and of the nature of records that are to be retained. Such records shall be retained until the superintendent or designee has authorized their destruction. Employee training on the district’s records retention schedule shall specifically include information on the records that may need to be retained due to pending disciplinary or legal actions which otherwise are subject to routine disposal. If an employee has doubt about the need to retain any record otherwise scheduled for destruction, he/she shall consult with the superintendent or designee prior to destroying such records.<sup>8</sup>

The records' storage system devised by the superintendent and designee(s) shall be organized in a manner that enables the efficient retrieval of data and documents. The district shall have adequate backup of critical data which is stored electronically.<sup>9</sup> The system shall be communicated to employees in a manner that enables them to understand and follow the system's requirements.

In retaining and destroying records, no employee shall:

- Destroy, alter, mutilate, conceal, cover up, falsify, or make a false entry in any record that may be connected to a disciplinary matter or lawsuit or to a matter within the jurisdiction of a federal or state agency, in violation of federal or state law or regulations.
- Alter, destroy or conceal a document, or attempt to do so, with the intent to impair the document's availability for use in a disciplinary matter, lawsuit or an official proceeding or otherwise obstruct, influence or impede any lawsuit or official proceeding, in violation of federal or state law or regulations.
- Retaliate or discriminate against an employee who refuses to violate this policy or to coerce or threaten an employee to violate this policy.

Failure to follow the requirements set forth in this policy may result in disciplinary action against the employee(s), up to and including termination. The district's board of directors prohibits and will not tolerate any form of reprisal, retaliation or discrimination against any employee who, in good faith, has attempted to comply with this policy.

Notes: <sup>1</sup> These are the records required to be maintained during a student's attendance at your district and must be aligned with Policy 4.38—PERMANENT RECORDS.

<sup>2</sup> This is limited to the dates a student attended school in your district and if the student earned a diploma. This is information students and adults need from time to time to prove they lived somewhere or to enroll in a college, for security clearances, or for background checks.

<sup>3</sup> This is a suggested length of time. The minimum time your district must keep financial records (specifically original receipts of district expenditures) is until the records have been audited. In setting up your retention schedule, you might consider the warranty and/or depreciation schedule of the items purchased and keep all financial records until, at a minimum, the warranty has expired or the item has been fully depreciated. As with all other retention schedules, relevant data must be retained if there is pending litigation or the likelihood of litigation until the matter is resolved.

<sup>4</sup> A.C.A. § 6-24-105(d), 106(c)(6), 107(c), and 109(c) which restrict financial transactions in the areas mentioned currently have no time limits for how long the records must be kept.

<sup>5</sup> We suggest making this determination on a case-by-case basis using the latest of: the terms required by the grant, any related litigation is concluded, the records have been audited, or the 5 year statute of limitations for contracts.

<sup>6</sup> **Routine** deletion of records, email or other records, is not a problem **so long as** prompt action is taken to stop the deletion relating to matters that common sense and/or previous experience indicates could result in legal and/or disciplinary action. In districts that have routine deletion settings for electronic devices, the person responsible for halting the routine destruction of district records will need to inform the district's Network Administrator (or equivalent) when events trigger the need to retain information that would otherwise be routinely deleted.

<sup>7</sup> Due to the potential adverse repercussions for the failure to cease the destruction of such records, the person responsible for making a "cessation" decision should be close to the source of the cause precipitating the cessation. When an incident occurs that common sense and/or previous experience indicate could result in legal and/or disciplinary action, the routine destruction of district records relating to the incident must be suspended until such time as the legal or disciplinary action, or the likelihood of such action, has concluded. The Federal Rules of Civil Procedure (FCRP) as amended in December of 2006 specifically require litigants to be able to produce pertinent electronically stored information (ESI). FCRP's Rule 37(f) specifically acknowledges the need for routine deletion of records. The issue becomes one of a "good faith" effort to stop record destruction when necessary. The committee's (responsible for developing the rules) notes on this matter state, *"When a party is under a duty to preserve information because of pending or reasonably anticipated litigation, intervention in the routine operation of an information system is one aspect of what is often called a 'litigation hold.' Among the factors that bear on a party's good faith in the routine operation of an information system are the steps the party took to comply with a court order in the case or party agreement requiring preservation of specific electronically stored information."* Records which cannot be produced in a timely manner and/or have been destroyed when common sense and/or previous experience indicated legal and/or disciplinary action could result can cause the district unnecessary and expensive trouble. Besides the inevitable bad public relations of having destroyed records that, the press will be sure to point out, obviously should have been retained, there can also be significant financial costs and/or penalties for the process of attempting to retrieve the records. ASBA would like to stress that deleting electronic records doesn't really get rid of them until they have been overwritten several times by new entries. The process of getting to the supposedly deleted ESI can be a costly one.

<sup>8</sup> If there is any doubt concerning the need to retain, prudence would dictate retention.

<sup>9</sup> While there is a need and/or a place for different formats of document storage/retention (paper, audio tape, video tape, micro-fiche, computer disk), the space required for records storage quickly tilts the equation in favor of electronic methods to the maximum extent possible. The vast majority of documents can be transferred

electronically (if created electronically) or scanned into a digital format (if created on paper) and stored on external hard drives, firewalls, servers, tape drives, CDs or DVDs. While this method/process is not free, it can be relatively inexpensive and quite possibly save the district money in the long run when stored records are needed. Consult with your district's technology person to devise the system that will best meet your district's needs, but here are a few points to consider. 1) When scanning, store the documents as PDFs which uses little memory space. If you do the scanning in an Optical Character Recognition (OCR) format, the final documents can be stored in a data base and searched which can save you many hours and much frustration when you need to retrieve something (which is, after all, the reason for the storage). 2) Make multiple copies of the stored

documents on separate external storage devices and store the duplicate devices at separate locations to ensure the survival of at least one copy if there is a fire or natural disaster that destroys one of the storage sites. This should be included as part of the district's Disaster Recovery Plan. 3) It is important to remember that technology gets old and obsolete. This necessitates that you establish a schedule or a trigger for the updating of the stored data/documents that are to be retained for more than 10 years. For example, 5" floppies are nearly extinct. If you had stored any such floppies, it would be necessary to convert them to a more modern storage device. In short, you need to include file format update/upgrades as part of your district's technology plans.

Legal Reference: Federal Rules of Civil Procedure Numbers 16, 26, 33, 34, 37, and 45

Date Adopted: 7-21-08

Last Revised:

## **7.16— REQUIRMENTS FOR ESTABLISHING PAYROLL DEDUCTIONS**

For a new payroll deduction to be established, a minimum of ten (10) employees must participate with the vendor. If a payroll deduction is established and the number of employees participating falls below 10, the deductions will continue. If all employees drop the deduction option, for a particular vendor, that vendor deduction option will be dropped. In order to reestablish a dropped vendor to payroll deductions the vendor will need 10 employees to participate.

If vendors wish to speak with school employees they must do so during the employees lunch break or before/after school. A vendor may hire a substitute, from the district's substitute list, to temporarily relive an employee from their duties for the purpose of communicating with the employee.

Approval from the administration must be obtained before a vendor can solicit the district's employees. An employee may refuse solicitation.

Date Adopted: 8-18-08

Last Revised:

## **7.17 — PAYMENT OF TEACHER LICENSURE FEES**

The district will pay the fees associated with renewing a teacher's licenses; provided the teacher has one (1) year of service within the district.

Date Adopted: 8-18-08

Last Revised:

## **7.18 – DISPOSAL OF NON-NEGOTIATED CHECKS OR UNCLAIMED PROPERTY**

State law specifies how the district is to dispose of retained funds in the form of issued but non-negotiated checks that have been not been presented for payment within one calendar year. The district shall dispose of these retained funds in accordance with the law and remit the amount of all non-negotiated checks to the Unclaimed Property Division of the Arkansas Auditor's Office.

The district shall make a good faith effort to return physical items that have been left on district property to their rightful owners. When contact information is known for the owner of an item of a non-perishable nature left at the district, the district shall use the information to attempt to contact the owner to inform him/her of the location of the item. Owners of such items shall be given at least ten (10) days to pick up the item he/she left at the district. If the owner fails to pick up the item within the time allotted, the district may dispose of the item in a manner of its choosing.

The district is under no obligation to retain an abandoned, perishable item left on district property.

Notes: Checks are considered to be non-negotiated when they have not been paid by the bank from the school district's checking account and shown as cleared on the school district's bank statement. Funds are considered "unclaimed" after a check has been issued and mailed, but is not presented for payment at the bank or appear on the bank statement in the 12 month period after it has been issued. Districts are required to file annual reports by October 31.

The state auditor's website <http://www.auditor.ar.gov/index.html> has a section that does a good job of explaining the requirements.

Legal References:     A.C.A. § 18-28-201  
                              A.C.A. § 18-28-202(11), (c), (d)  
                              A.C.A. § 18-28-204  
                              A.C.A. § 18-28-206  
                              A.C.A. § 18-28-207  
                              A.C.A. § 18-28-208(a)  
                              A.C.A. § 18-28-210(b)(c)  
                              A.C.A. § 18-28-217  
                              A.C.A. § 18-28-221(a)  
                              A.C.A. § 18-28-224

Date Adopted: 6/25/12  
Last Revised:

## 7.19—SERVICE ANIMALS IN DISTRICT FACILITIES

In accordance with the provisions of the Americans with Disabilities Act, service dogs and trained miniature horses<sup>1</sup> (hereinafter referred to as *service animals*) are permitted for use by individuals with disabilities on district property and in district facilities provided the individuals and their animals meet the requirements and responsibilities covered in this policy.

When an individual with a disability seeks to bring a service animal into a district facility, the district is entitled to ask the individual if the animal is required because of a disability and what work or task the animal has been trained to perform. The district is not entitled to ask for documentation that the animal has been properly trained, but the individual bringing the animal into a district facility will be held accountable for the animal's behavior.

Any service animal brought into a district facility by an individual with a disability must have been trained to do work or perform tasks for the individual. The work or tasks performed by the service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do **not** constitute work or tasks for the purposes of this policy.

Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control by means of voice control, signals, or other effective means.

District staff (is there a better word) may ask an individual with a disability to remove a service animal from the premises if:

- (1) The animal is out of control and the animal's handler does not take effective action to control it; or
- (2) The animal is not housebroken.

If the district excludes a service animal due to the reasons listed above, the district shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.



The District and its staff are not responsible for the care or supervision of a service animal brought onto district property or into district facilities by an individual with a disability.

The District shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets.<sup>3</sup>

Note: <sup>1</sup> A service dog is any breed unless restricted by a local ordinance. A miniature horse is not one specific breed, but may be one of several breeds, with distinct characteristics that produce animals suited to service animal work. The animals generally range in height from 24 inches to 34 inches measured to the withers, or shoulders, and generally weigh between 70 and 100 pounds. There is a bit more flexibility for Districts in determining if a facility can accommodate a horse than for a dog. Miniature horses are less flexible than dogs and therefore may not fit into smaller spaces as well as a dog. In specific instances when the horse's size poses a legitimate safety hazard, the horse could be prohibited from that specific event or facility. Keep in mind, however, that if a facility could reasonably accommodate a 24" dog, it could likely accommodate a 24" horse.

<sup>2</sup> Districts are **not** allowed to ask about the nature or extent of a person's disability.

<sup>3</sup> The District can only charge an individual with a disability for damage caused by his or her service animal if it charges other individuals for damages they cause.

Legal References:     28 CFR § 35.104  
                                 28 CFR § 35.136

Date Adopted: 6/20/11  
Last Revised:

## **7.21—NAMING SCHOOL FACILITIES**

Except as otherwise permitted in this policy or Arkansas law, the District shall not name any building, structure, or facility, paid for in whole or in part with District funds, for an individual living at the time of its completion who, in the ten (10) years preceding its construction, was elected, or held, a federal, state, county, or municipal office and received a salary for his/her service.

Exceptions to the preceding paragraph may be made when a building, structure, or facility is a constructed through the use of at least 50% private funds or, the name refers to:

1. an individual(s) living at the time of its completion and who has historical significance;

2. an individual who is or has been a prisoner of war; or
3. a living individual who is at least 75 years of age and is retired.

Legal Reference:      A.C.A. § 25-1-121

Date Adopted: 7/15/13

Last Revised:



# TABLE OF CONTENTS

## SECTION 8—NONCERTIFIED PERSONNEL POLICIES

8.1—NONCERTIFIED PERSONNEL SALARY SCHEDULE	1
8.2— NONCERTIFIED PERSONNEL EVALUATIONS	3
8.3—EVALUATION OF NONCERTIFIED PERSONNEL BY RELATIVES	5
8.4— NONCERTIFIED EMPLOYEES DRUG TESTING	6
8.5— NONCERTIFIED EMPLOYEES SICK LEAVE	11
8.6—SICK LEAVE BANK — NONCERTIFIED EMPLOYEES *	14
8.7—NONCERTIFIED PERSONNEL PERSONAL AND PROFESSIONAL LEAVE	15
8.7.1— NONCERTIFIED EMPLOYEES PERSONAL LEAVE	18
8.8—CERTIFIED PERSONNEL RESPONSIBILITIES IN DEALING WITH SEX OFFENDERS ON CAMPUS	19
8.9—PUBLIC OFFICE – NONCERTIFIED PERSONNEL	20
8.10—JURY DUTY – NONCERTIFIED PERSONNEL	21
8.11—OVERTIME, COMPTIME, and COMPLYING WITH FLSA	22
8.12— NONCERTIFIED PERSONNEL OUTSIDE EMPLOYMENT	26
8.13— NONCERTIFIED PERSONNEL EMPLOYMENT	27
8.14— NONCERTIFIED PERSONNEL REIMBURSEMENT OF TRAVEL EXPENSES	28
8.15— NONCERTIFIED PERSONNEL TOBACCO USE *	29
8.16—DRESS OF NONCERTIFIED EMPLOYEES	30
8.17— NONCERTIFIED PERSONNEL POLITICAL ACTIVITY	31

8.18— NONCERTIFIED PERSONNEL DEBTS	32
8.19— NONCERTIFIED PERSONNEL GRIEVANCES	33
8.19F—LEVEL TWO GRIEVANCE FORM - NONCERTIFIED	37
8.20— NONCERTIFIED PERSONNEL SEXUAL HARASSMENT	38
8.21— NONCERTIFIED PERSONNEL SUPERVISION OF STUDENTS	40
8.22— NONCERTIFIED PERSONNEL COMPUTER USE POLICY	41
8.22F—NONCERTIFIED PERSONNEL INTERNET USE AGREEMENT	42
8.23—NONCERTIFIED PERSONNEL FAMILY MEDICAL LEAVE *	44
8.24—SCHOOL BUS DRIVER’S USE OF CELL PHONES	53
8.25— NONCERTIFIED PERSONNEL CELL PHONE USE	54
8.27—NONCERTIFIED PERSONNEL LEAVE — INJURY FROM ASSAULT	59
8.28	—
DRUG FREE WORKPLACE - NONCERTIFIED PERSONNEL	60
8.28F—DRUG FREE WORKPLACE POLICY ACKNOWLEDGEMENT	62
8.29	—
NONCERTIFIED PERSONNEL VIDEO SURVEILLANCE	63
8.31—NONCERTIFIED PERSONNEL TERMINATION AND NON-RENEWAL	67

8.32—NONCERTIFIED PERSONNEL ASSIGNMENTS	68
8.33—NONCERTIFIED PERSONNEL SCHOOL CALENDAR	69
8.34—NONCERTIFIED PERSONNEL WHO ARE MANDATORY REPORTERS DUTY TO REPORT CHILD ABUSE, MALTREATMENT OR NEGLECT	70
SUPPORTING DOCUMENTS AND INFORMATION FOR POLICY—8.11	i
8.35—OBTAINING AND RELEASING STUDENTS FREE AND REDUCED PRICE MEAL ELIGIBILITY INFORMATION	
8.36—CLASSIFIED PERSONNEL WORKPLACE INJURIES AND WORKERS’ COMPENSATION	
8.40—CLASSIFIED PERSONNEL WEAPONS ON CAMPUS	

# **NONCERTIFIED PERSONNEL**

## 8.1—NONCERTIFIED PERSONNEL SALARY SCHEDULE

### CLASSIFIED SALARY SCHEDULE 2013-2014

BOARD APPROVED 04/15/2013

EMPLOYEE	HRS/ DAYS	BASE	1YR	2YR	3YR	4YR	5YR	6YR	7YR	8YR	9YR	10YR	11YR
BOOKKEEPER	8/260	14.58	14.85	15.11	15.37	15.64	15.9	16.17	16.43	16.7	16.97	17.24	17.51
ADMINISTRATIVE ASSISTANT	8/260	11.94	12.15	12.36	12.57	12.78	12.99	13.21	13.42	13.63	13.84	14.06	14.27
ADMINISTRATIVE SECRETARY	8/260	9.69	9.85	10.02	10.19	10.35	10.52	10.69	10.85	11.02	11.19	11.36	11.53
HS. MS. ELEM SECRETARY	8/260	9.61	9.77	9.94	10.1	10.27	10.43	10.6	10.76	10.93	11.1	11.27	11.44
ROVING SECRETARY	8/185	8.63	8.77	8.92	9.06	9.21	9.35	9.5	9.64	9.79	9.94	10.09	10.24
ACT. FUND/FOOD SERV. SEC.	8/190	9.27	9.43	9.59	9.75	9.91	10.06	10.22	10.38	10.54	10.7	10.86	11.03
COOK	7.5/180	8.99	9.14	9.29	9.45	9.6	9.75	9.91	10.06	10.21	10.36	10.52	10.68
PART TIME COOK	4/180	8.99	9.14	9.29	9.45	9.6	9.75	9.91	10.06	10.21	10.36	10.52	10.68
FOOD SERVICE SUPERVISOR	8/200	10.15	10.33	10.5	10.68	10.86	11.03	11.21	11.38	11.56	11.74	11.92	12.1
CAFE MANAGER/LEA SEC.	8/190	9.61	9.77	9.94	10.1	10.27	10.43	10.6	10.76	10.93	11.1	11.27	11.44
ISS SUPERVISOR	8/178	8.99	9.14	9.3	9.45	9.6	9.75	9.91	10.06	10.21	10.36	10.52	10.68
INSTRUCTIONAL AIDE	8/178	8.99	9.14	9.3	9.45	9.6	9.75	9.91	10.06	10.21	10.36	10.52	10.68
CBI AIDE/CBI BUS	8/185	13.21	13.45	13.69	13.92	14.16	14.4	14.63	14.87	15.11	15.35	15.59	15.83
INTERPRETER(STATE)	7.5/178	13.09	13.32	13.56	13.79	14.03	14.26	14.49	14.73	14.96	15.19	15.43	15.67
INTERPRETER (NATIONAL)	7.5/178	17.68	18.01	18.33	18.66	18.99	19.31	19.64	19.96	20.29	20.62	20.95	21.28
NURSE RN	8/178	17.68	18.01	18.33	18.66	18.99	19.31	19.64	19.96	20.29	20.62	20.95	21.28
NURSE LPN	8/178	11.56	11.77	11.97	12.18	12.38	12.58	12.79	12.99	13.2	13.41	13.62	13.83
MAINTENANCE	8/260	11.6	11.8	12.01	12.21	12.41	12.62	12.82	13.03	13.23	13.43	13.64	13.85
GOURNDS KEEPER/MAIN.	8/260	10.5	10.07	10.00	11.04	11.22	11.4	11.59	11.77	11.95	12.13	12.32	12.51
HANDYMAN	8/260	9.38	9.54	9.7	9.86	10.02	10.18	10.35	10.51	10.67	10.83	11	11.16
CUSTODIAN SUPER	8/260	8.65	8.8	8.94	9.09	9.24	9.38	9.53	9.67	9.82	9.97	10.12	10.27
CUSTODIAN	8/185	8.51	8.66	8.8	8.94	9.09	9.23	9.37	9.51	9.66	9.81	9.96	10.11
PART TIME CUSTODIAN	4/185	8.51	8.66	8.8	8.94	9.09	9.23	9.37	9.51	9.66	9.81	9.96	10.11
MECHANIC	8/260	13.79	14.04	14.29	14.54	14.78	15.03	15.28	15.53	15.78	16.03	16.28	16.54
BUS ROUTE	per route	19.05	19.41	19.78	20.14	20.5	20.86	21.22	21.58	21.94	22.3	22.67	23.03
MAINTENANCE SUPERVISOR	8/260	28805	29242	29700	30157	30594	31052	31509	31946	32404	32841	33298	33756
TECHNOLOGY DIRECTOR	8/240	44806	45256	45706	46156	46606	47056	47506	47956	48406	48856	49306	49756

EMPLOYEE	HRS/ DAYS	12YR	13YR	14YR	15YR	16YR	17YR	18YR	19YR	20YR
BOOKKEEPER	8/260	17.78	18.03	18.28	18.53	18.78	19.03	19.28	19.53	19.78
ADMINISTRATIVE ASSISTANT	8/260	14.49	14.74	14.99	15.24	15.49	15.74	15.99	16.24	16.49
ADMINISTRATIVE SECRETARY	8/260	11.7	11.95	12.2	12.45	12.7	12.95	13.2	13.45	13.7
HS. MS. ELEM SECRETARY	8/260	11.61	11.86	12.11	12.36	12.61	12.86	13.11	13.36	13.61
ROVING SECRETARY	8/185	10.39	10.64	10.89	11.14	11.39	11.64	11.89	12.14	12.39
ACT. FUND/FOOD SERV. SEC.	8/190	11.19	11.44	11.69	11.94	12.19	12.44	12.69	12.94	13.19
COOK	7.5/180	10.83	11.08	11.33	11.58	11.83	12.08	12.33	12.58	12.83
PART TIME COOK	4/180	10.83	11.08	11.33	11.58	11.83	12.08	12.33	12.58	12.83
FOOD SERVICE SUPERVISOR	8/200	12.28	12.53	12.78	13.03	13.28	13.53	13.78	14.03	14.28
CAFE MANAGER/LEA SEC.	8/190	11.61	11.86	12.11	12.36	12.61	12.86	13.11	13.36	13.61
ISS SUPERVISOR	8/178	10.83	11.08	11.33	11.58	11.83	12.08	12.33	12.58	12.83
INSTRUCTIONAL AIDE	8/178	10.83	11.08	11.33	11.58	11.83	12.08	12.33	12.58	12.83
CBI AIDE/CBI BUS	8/185	16.08	16.33	16.58	16.83	17.08	17.33	17.58	17.83	18.08
INTERPRETER(STATE)	7.5/178	15.91	16.16	16.41	16.66	16.91	17.16	17.41	17.66	17.91
INTERPRETER (NATIONAL)	7.5/178	21.61	21.86	22.11	22.36	22.61	22.86	23.11	23.36	23.61
NURSE RN	8/178	21.61	21.86	22.11	22.36	22.61	22.86	23.11	23.36	23.61
NURSE LPN	8/178	14.04	14.29	14.54	14.79	15.04	15.29	15.54	15.79	16.04
MAINTENANCE	8/260	14.06	14.31	14.56	14.81	15.06	15.31	15.56	15.81	16.06
GOURNDS KEEPER/MAIN.	8/260	12.7	12.95	13.2	13.45	13.7	13.95	14.2	14.45	14.7
HANDYMAN	8/260	11.33	11.58	11.83	12.08	12.33	12.58	12.83	13.08	13.33
CUSTODIAN SUPER	8/260	10.42	10.67	10.92	11.17	11.42	11.67	11.92	12.17	12.42
CUSTODIAN	8/185	10.25	10.5	10.75	11	11.25	11.5	11.75	12	12.25
PART TIME CUSTODIAN	4/185	10.25	10.5	10.75	11	11.25	11.5	11.75	12	12.25
MECHANIC	8/260	16.79	17.04	17.29	17.54	17.79	18.04	18.29	18.54	18.79
BUS ROUTE	per route	23.4	23.76	24.12	24.48	24.84	25.2	25.56	25.92	26.28
MAINTENANCE SUPERVISOR	8/260	34193	34713	35233	35753	36273	36793	37313	37833	38353
TECHNOLOGY DIRECTOR	8/240	50206	50656	51106	51556	52006	52456	52906	53356	53806

SUMMER TIME WORKERS \$9.00 PER HOUR AS NEEDED ONLY (BOARD APPROVED 6/21/10)

STUDENT SUMMER WORKERS \$8.50 PER HOUR AS NEEDED ONLY (BOARD APPROVED 6/21/10)



For the purposes of this policy, an employee must work eighty-five percent of their regularly assigned annual work days to qualify for a step increase.

The superintendent has the authority, when recommending an applicant and his/her placement on the District's salary schedule to the Board for its approval, to consider the applicant's previous work experience with similar duties, responsibilities, and skill sets to those job duties and responsibilities the applicant would assume for the District.

**Notes:** "Classified Salary Schedule is a set of matrices that are updated and published each school year, which contains the minimum salaries for all five classifications of classified employees and includes ranges, steps, and rates of pay. The salary schedule is required to reflect the actual pay practices of the district."

When considering the pros and cons of school issued technology, keep in mind that any correspondence made on such technology (cell phone, iPad, computer) would be subject to inspection under the Freedom of Information Act. Because it is district issued, there would be no differentiation between personal and school use.

Legal Reference:        **A.C.A. § 6-17-2203**  
                                 **A.C.A. § 6-17-2301**  
                                 ADE Rules Governing School District Requirements for Personnel Policies, Salary  
                                 Schedules, Minimum Salaries, and Documents Posted to District Websites

Date Adopted: 5/19/03  
Last Revised: 10/18/04; 4/22/2013

## **8.2—NONCERTIFIED PERSONNEL EVALUATIONS**

Noncertified personnel may be periodically evaluated.

Any forms, procedures or other methods of evaluation, including criteria, are to be developed by the Superintendent and or his designee(s), but shall not be part of the personnel policies of the District.

Legal Reference:        A.C.A. § 6-17-2301

Date Adopted: 5-19-03  
Last Revised: 3-19-2007



### **8.3—EVALUATION OF NONCERTIFIED PERSONNEL BY RELATIVES**

No person shall be employed in, or assigned to, a position which would require that he be evaluated by any relative, by blood or marriage, including spouse, parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, nephew, or first cousin.

Date Adopted: 5-19-03

Last Revised:

## **8.4—NONCERTIFIED EMPLOYEES DRUG TESTING**

### **Scope of Policy**

Each person hired for a position which allows or requires that the employee operate any type of motor vehicle which is privately owned and operated for compensation, or which is owned, leased or otherwise operated by, or for the benefit of the District, and is operated for the transportation of children to or from school or school sponsored activity shall undergo a physical examination, including a drug test.<sup>1</sup> Each person's initial employment for a job entailing a safety sensitive function is conditioned upon the district receiving a negative drug test result for that employee.<sup>2</sup> The offer of employment is also conditioned upon the employee's signing an authorization for the request for information by the district from the Commercial Driver Alcohol and Drug Testing Database.<sup>3</sup>

### **Methods of Testing**

The collection, testing methods and standards shall be determined by the agency or other medical organizations chosen by the School Board to conduct the collection and testing of samples. The drug and alcohol testing is to be conducted by a laboratory certified pursuant to the most recent guidelines issued by the United States Department of Health and Human Services for such facilities. ("Mandatory Guidelines for Federal Workplace Drug Testing Programs").

### **Definition**

Safety sensitive function includes:

1. All time spent inspecting, servicing, and/or preparing the vehicle;
2. All time spent driving the vehicle;
3. All time spent loading or unloading the vehicle or supervising the loading or unloading of the vehicle; and
4. All time spent repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

### **Requirements**

Employees shall be drug and alcohol free from the time the employee is required to be ready to work until the employee is relieved from the responsibility for performing work and/or any time they are performing a safety-sensitive function. In addition to the testing required as an initial condition of employment, employees shall submit to subsequent drug tests as required by law and/or regulation. Subsequent testing includes, and/or is triggered by, but is not limited to:

1. Random tests;
2. Testing in conjunction with an accident;
3. Receiving a citation for a moving traffic violation; and
4. Reasonable suspicion.

## **Prohibitions**

- a. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater;
- b. No driver shall use alcohol while performing safety-sensitive functions;
- c. No driver shall perform safety-sensitive functions within four (4) hours after using alcohol;
- d. No driver required to take a post-accident alcohol test under # 2 above shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first;
- e. No driver shall refuse to submit to an alcohol or drug test in conjunction with # 1, 2, and/or 4 above;
- f. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when using any controlled substance, except when used pursuant to the instructions of a licensed medical practitioner, knowledgeable of the driver's job responsibilities, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate his/her vehicle. It is the employee's responsibility to inform his/her supervisor of the employee's use of such medication;
- g. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive or has adulterated or substituted a test specimen for controlled substances.

Violation of any of these prohibitions may lead to disciplinary action being taken against the employee, which could include termination or non-renewal.

## **Testing for Cause**

Drivers involved in an accident in which there is a loss of another person's life shall be tested for alcohol and controlled substances as soon as practicable following the accident. Drivers shall also be tested for alcohol within eight (8) hours and for controlled substances within thirty two (32) hours following an accident for which they receive a citation for a moving traffic violation if the accident involved: 1) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or 2) one or more motor vehicles incurs disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.<sup>4</sup>

## **Refusal to Submit**

Refusal to submit to an alcohol or controlled substance test means that the driver

- Failed to appear for any test within a reasonable period of time as determined by the employer consistent with applicable Department of Transportation agency regulation;
- Failed to remain at the testing site until the testing process was completed;
- Failed to provide a urine specimen for any required drug test;
- Failed to provide a sufficient amount of urine without an adequate medical reason for the failure;

- Failed to undergo a medical examination as directed by the Medical Review Officer as part of the verification process for the previous listed reason;
- Failed or declined to submit to a second test that the employer or collector has directed the driver to take;
- Failed to cooperate with any of the testing process; and/or
- Adulterated or substituted a test result as reported by the Medical Review Officer.

### **Consequences for Violations**

Drivers who engage in any conduct prohibited by this policy, who refuse to take a required drug or alcohol test, refuse to sign the request for information required by law, or who exceed the acceptable limits for the respective tests shall no longer be allowed to perform safety sensitive functions. Actions regarding their continued

employment shall be taken in relation to their inability to perform these functions and could include termination or non-renewal of their contract of employment.<sup>25</sup>

Drivers who exhibit signs of violating the prohibitions of this policy relating to alcohol or controlled substances shall not be allowed to perform or continue to perform safety-sensitive functions if they exhibit those signs during, just preceding, or just after the period of the work day that the driver is required to be in compliance with the provisions of this policy. This action shall be based on specific, contemporaneous, articulatable observations concerning the behavior, speech, or body odors of the driver. The Superintendent or his/her designee shall require the driver to submit to “reasonable suspicion” tests for alcohol and controlled substances. The direction to submit to such tests must be made just before, just after, or during the time the driver is performing safety-sensitive functions. If circumstances prohibit the testing of the driver the Superintendent or his/her designee shall remove the driver from reporting for, or remaining on, duty for a minimum of 24 hours from the time the observation was made triggering the driver’s removal from duty.

If the results for an alcohol test administered to a driver is equal to or greater than 0.02, but less than 0.04, the driver shall be prohibited from performing safety-sensitive functions for a period not less than 24 hours from the time the test was administered. Unless the loss of duty time triggers other employment consequence policies, no further other action against the driver is authorized by this policy for test results showing an alcohol concentration of less than 0.04.

**Notes:** You are required to give drivers a copy of the procedures that will be used in the testing for drugs and alcohol. If you are following your own policy in this regard, give your drivers a copy of that policy; if you’re using a drug testing company to administer the tests, give your drivers a copy of the test administration procedures.

You are required to provide your drivers the name of the person you have designated to answer your drivers questions about the materials you give them regarding drug and alcohol testing.

You are also required to give your employees “information pertaining to the effects of alcohol and controlled substance use on an individual’s health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver’s or a co-worker’s); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.”

Give a copy of this policy to your drivers.

Have your drivers sign an acknowledgement that they have received all of the information contained in this policy and these footnotes.

<sup>1</sup> You have the option of also requiring an alcohol test, but you may not selectively require it, i.e. if you require it for one prospective employee you must require it for all prospective employees.

<sup>2</sup> While A.C.A. § 6-19-108(e) permits a district to hire a non-certified bus driver in an emergency situation, 49CFR382.301 forbids a first time driver (employee) from performing any safety sensitive functions prior to the district receiving a negative drug test for the employee.

<sup>3</sup> While the provisions for fines contained in 27-23-209 do not apply to school districts, school districts are still required to comply with this law. It is for this reason, along with simple prudence in not hiring a person who receives a positive drug/alcohol test, that this language is included. The request for information required by the state is in addition to the federal requirement (49CFR40.25(a)(b)) that you request drug and alcohol test results from any U.S. Department of Transportation regulated employers who have employed the employee during any period during the two years prior to the date of the employee’s application.

<sup>4</sup> Employers are required to report to the Office of Driver Services of the Revenue Division of the Department of Finance and Administration within three (3) business days the results of an alcohol test if it was performed due to cause or as part of random testing and the results were positive or the employee refused to provide a specimen for testing.

<sup>2, 5</sup> The drivers covered under this policy are those who operate a vehicle as outlined in the first paragraph, “Scope of Policy.” Federal law requires you to remove them from safety-sensitive functions when a drug or alcohol related problem exists, but the law does not enter into the realm of dismissing them from other, non-driving, duties.

This policy is similar to Policy 3.7. If you change this policy, review 3.7 at the same time to ensure applicable consistency between the two.

Legal Reference:     A.C.A. § 6-19-108  
                          A.C.A. § 27-23-201 et seq.  
                          49 C.F.R. § 382-101 – 605  
                          49 C.F.R. § part 40  
                          Arkansas Division of Academic Facilities and Transportation Rules Governing  
                          Maintenance and Operations of Arkansas Public School Buses and Physical  
                          Examinations of School Bus Drivers

Date Adopted: 5/19/03  
Last Revised: 4/28/08



## 8.5—NONCERTIFIED EMPLOYEES SICK LEAVE

### Definitions

1. “Employee” is an employee of the District working 20 or more hours per week who is not required to have a teaching license as a condition of his employment.
2. “Sick Leave” is absence from work due to illness, whether by the employee or a member of the employee’s immediate family, or due to a death in the family. The principal shall determine whether sick leave will be approved on the basis of a death outside the immediate family of the employee.
3. “Current Sick Leave” means those days of sick leave for the current contract year, which leave is granted at the rate of one day of sick leave per month worked, or major part thereof.<sup>1</sup>
4. “Accumulated Sick Leave” is the total of unused sick leave, up to a maximum of ninety (90) days accrued from previous contract, but not used.
5. “Immediate family” means an employee’s spouse, child, parent, or any other relative provided the other relative lives in the same household as the employee.

### Sick Leave

The principal has the discretion to approve sick leave for an employee to attend the funeral of a person who is not related to the employee, under circumstances deemed appropriate by the principal.

Employees who are adopting or seeking to adopt a minor child or minor children may use up to 15 sick leave days in any school year for absences relating to the adoption, including time needed for travel, time needed for home visits, time needed for document translation, submission or preparation, time spent with legal or adoption agency representatives, time spent in court and bonding time. See also, 8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE, which also [applies](#). Except for bonding time, documentation shall be provided by the employee upon request.<sup>2</sup>

Pay for sick leave shall be at the employee’s daily rate of pay, which is that employee’s hourly rate of pay times the number of hours normally worked per day. Absences for illness in excess of the employee’s accumulated and current sick leave shall result in a deduction from the employee’s pay at the daily rate as defined above.

At the discretion of the principal (or Superintendent), and, if FMLA is applicable, subject to the certification or recertification provisions contained in policy 8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE the District may require a written statement from the employee’s physician documenting the employee’s illness. Failure to provide such documentation of illness may result in sick leave not being paid, or in dismissal.

If the employee’s absences are not subject to the FMLA or are in excess of what is protected under the FMLA, excessive absenteeism, to the extent that the employee is not carrying out his/[her](#) assigned duties to the degree that the education of students or the efficient operation of a school or the district is substantially adversely affected (at the determination of the principal or Superintendent) may result in dismissal.

### **Sick Leave and Family Medical Leave Act (FMLA) Leave**

When an employee takes sick leave, the District shall determine if the employee is eligible for FMLA leave and if

the leave qualifies for FMLA leave. The District may request additional information from the employee to help make the applicability<sup>3</sup> determination. If the employee is eligible for FMLA leave and if the leave qualifies under the FMLA, the District will notify the employee in writing, of the decision within five (5) workdays. If the circumstances for the leave as defined in policy 8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE don't change, the District is only required to notify the employee once of the determination regarding the applicability of sick leave and/or FMLA leave within any applicable twelve (12) month period. To the extent the employee has accrued paid sick leave, any sick leave taken that qualifies for FMLA leave shall be paid leave and charged against the employee's accrued leave including, once an employee exhausts his/her accrued sick leave, vacation or personal leave. See 8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE.

**Notes:** This policy is similar to Policy 3.8. If you change this policy, review 3.8 at the same time to ensure applicable consistency between the two. \_

<sup>1</sup> For classified employees your district has the choice of crediting sick leave days up front as is done for licensed employees, or of crediting sick leave at the rate of one day per month worked. Choose your method and delete the portion of this sentence that doesn't reflect your choice.

<sup>2</sup> This paragraph is optional. Leave for adoption is protected by FMLA, but FMLA leave is unpaid unless otherwise provided for in policy. By including this paragraph, you would allow the employee to receive sick leave pay for the days missed during the adoption process. If you choose to include it, select the number of days of sick leave an employee may use annually for the adoption/bonding process (15 is not a required number of days).

<sup>3</sup> As used in this policy, "applicable" is a very important word. Some leave taken under FMLA also applies to sick leave and therefore, the employee will get paid for the leave to the extent the employee has sick leave accrued. Other leave taken under FMLA is not applicable to sick leave and therefore the FMLA leave is unpaid unless vacation or personal leave is available. For instance, "applicable leave" in terms of time taken under FMLA due to the birth of a child will vary depending on the language in your district's policy on sick leave. For instance, if sick leave may be taken "for reason of personal illness or illness in the immediate family" (based on the statutory definition in 6-17-1302, and an employee gives birth to a child, she may take sick leave for the amount of time that her personal physician deems it necessary for her to physically recover from childbirth. Once the medically necessary time has passed, sick leave is no longer appropriate and cannot be used. While under the FMLA, the employee could take additional time off work, she would need to take unpaid FMLA leave for this purpose, unless she had personal days or vacation days available. However, if your district has a much more liberal

definition of sick leave in district policy, the results could be entirely different and all birth related leave might be applicable. Another example would be the potential for overlap between pregnancy complications that arise to the level of a "serious health condition." For instance, pregnancy complications that rose to the level of a "serious health condition" would qualify for both, while missing work for a dentist's appointment would qualify for sick leave, but would not qualify for FMLA leave. Consult policy 8.23— CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE when making the determination of what sick leave qualifies under both policies. It may also be helpful to consult 29 CFR 825.113, 114, and 115 which are available by calling the ASBA office.

Cross Reference: 8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE

Legal References:       A.C.A. § 6-17-1301 et seq.  
                              29 USC §§ 2601 et seq.  
                              29 CFR 825.100 et seq.

Date Adopted: 5/19/03

Last Revised: 3-19-07

5-19-2008

6-16-08

8-1-08

4-22-2013

## **8.6—SICK LEAVE BANK — NONCERTIFIED EMPLOYEES \***

A sick leave bank is established for the purpose of permitting noncertified employees, upon approval, to obtain sick leave in excess of accumulated and current sick leave, when the noncertified employee has exhausted all such leave. Only those noncertified employees who contribute to the sick leave bank during a given contract year shall be eligible to withdraw from the sick leave bank.

The Superintendent shall appoint a Noncertified Sick Leave Bank Committee. That committee shall consist of six (6) members: five (5) noncertified employees<sup>1</sup> and one (1) principal.

The terms of the committee shall be for three years with two members being replaced each year.

The Committee shall meet as necessary for the purpose of reviewing requests for withdrawal from the bank. The determination of the committee shall be final.

### **Withdrawals**

The Committee may, but is not obligated to, grant sick leave up to 30 days per contract year for serious personal or family illness, disabilities or accidents (not including accidents for which the employee is receiving Workers' Compensation), which cause the employee to be absent from work and when the employee has exhausted all accumulated and current sick leave. The employee shall be eligible to withdraw the day(s) he/she has donated to the bank if sufficient days are available in the bank.

Absence from work due to medically unnecessary elective surgery may not make the employee eligible to withdraw from the sick leave bank.

Requests for withdrawal from the sick leave bank must state the reason(s) for the request and the number of days requested and must be accompanied by a detailed statement from an attending physician of the nature of the malady and the expected duration thereof.

If the information provided to the Committee is deemed by a majority of the Committee to be insufficient, the Committee may require additional information or deny the employee's request, at its discretion.

The Committee shall have the authority to grant, reduce or deny any request. However, the Committee may grant no request, or any granted time may be withdrawn, when the employee accepts retirement; is eligible for Social Security Disability; or other disability insurance or the employee returns to work.

<sup>1</sup> ASBA recommends that each of the five categories of classified employees designated in Act 1780 have one representative on the committee. The five categories are 1) maintenance and operations, 2) transportation, 3) food service, 4) secretarial and clerical, and 5) aids and paraprofessionals.

Legal Reference: A.C.A. § 6-17-1306

Date Adopted: 5-19-03

Last Revised: 8-15-05

## **8.7—NONCERTIFIED PERSONNEL PERSONAL AND PROFESSIONAL LEAVE**

For the district to function efficiently and have the necessary personnel present to effect a high achieving learning environment, employee absences need to be kept to a minimum. The district acknowledges that there are times during the school year when employees have personal business that needs to be addressed during the school day. Each full-time employee shall receive two (2)<sup>1</sup> days of personal leave per contract year. The leave may be taken in increments of no less than 1 hour.<sup>2</sup>

Employees shall take personal leave or leave without pay for those absences which are not due to attendance at school functions which are related to their job duties and do not qualify for other types of leave (for sick leave see Policy 8.5, for professional leave see below).

School functions, for the purposes of this policy, means:

1. Athletic or academic events related to a public school district; and
2. Meetings and conferences related to education.

The determination of what activities meet the definition of a school function shall be made by the employee's immediate supervisor or designee. In no instance shall paid leave in excess of allotted vacation days and/or personal days be granted to an employee who is absent from work while receiving remuneration from another source as compensation for the reason for their absence.

Any employee desiring to take personal leave may do so by making a written request to his supervisor at least twenty-four (24) hours prior to the time of the requested leave. The twenty-four hour requirement may be waived by the supervisor when the supervisor deems it appropriate.

Employees who fail to report to work when their request for a personal day has been denied or who have exhausted their allotted personal days, shall lose their daily rate of pay for the day(s) missed (leave without pay). While there are instances where personal circumstances necessitate an employee's absence beyond the allotted days of sick and/or personal leave, any employee who requires leave without pay must receive advance permission (except in medical emergencies) from their immediate supervisor. Failure to report to work without having received permission to be absent is grounds for discipline, up to and including termination.

Personal leave does not accumulate from one contract year to the next.<sup>3</sup>

Personal leave may not be taken the day before or the day after a holiday.<sup>4</sup>

All unused personal leave will be converted to sick days at the end of the school year.

### **Professional Leave**

“Professional Leave” is leave granted for the purpose of enabling an employee to participate in professional activities (e.g., workshops or serving on professional committees) which can serve to improve the school district’s instructional program or enhances the employee’s ability to perform his duties. Professional leave will also be granted when a school district employee is subpoenaed for a matter arising out of the employee’s employment with the school district. Any employee seeking professional leave must make a written request to his immediate supervisor, setting forth the information necessary for the supervisor to make an informed

decision. The supervisor’s decision is subject to review and overruling by the superintendent. Budgeting concerns and the potential benefit for the district’s students will be taken into consideration in reviewing a request for professional leave.

Applications for professional leave should be made as soon as possible following the employee’s discerning a need for such leave, but, in any case, no less than two (2) weeks before the requested leave is to begin, if possible.

If the employee does not receive or does not accept remuneration for their participation in the professional leave activity and a substitute is needed for the employee, the district shall pay the full cost of the substitute. If the employee receives and accepts remuneration for their participation in the professional leave activity, the employee shall forfeit his/her daily rate of pay from the district for the time the employee misses. The cost of a substitute, if one is needed, shall be paid by the employee/district<sup>5</sup>.

Notes: While you are not required to provide employees with personal days, you are required to have a policy that requires employees who are absent from the district to take either personal days or leave without pay.

Please note that the provisions of Act 1028 of 2007 which gives state employees 8 hours of paid leave to attend their children’s school educational activities does **NOT** apply to public school employees.

<sup>1</sup> If your district gives personal days, insert the number of days given.

<sup>2</sup> Choose the number of hours or portion of a work day that is the minimum that may be taken at any one time.

<sup>3</sup> This sentence is optional.

<sup>4</sup> This sentence is optional.

<sup>5</sup> Choose whether the employee or the district will pay the cost of the employee.

Legal Reference: A.C.A. § 6-17-211

Date Adopted: 5-19-03

Last Revised: 6-28-04

Last Revised: 3-19-2007

Last Revised: 4-28-08

6-16-08



## **8.7.1—NONCERTIFIED EMPLOYEES PERSONAL LEAVE**

### **VACATIONS**

All personnel employed on a twelve (12) month contract earn vacation time as set by the Board of Education. Bismarck School District personnel who qualify will be given three weeks of vacation time. If an employee resigns with less than six months of service during the year, no vacation time will be given. If an employee has worked six months or more, one week of vacation time will be given. Employees hired during the year will be given a proportional amount of vacation time.

Each employee will be given one additional week for each five years of continued service to the Bismarck School District with a maximum of two additional weeks.

E.g.

0-4 years experience = 3 weeks

5-9 years experience = 4 weeks

10+ years experience = 5 weeks

Vacation time must be pre approved by Superintendent based on needs of District.

Date Adopted: 10-16-2006

Last Revised:



## **8.8—CERTIFIED PERSONNEL RESPONSIBILITIES IN DEALING WITH SEX OFFENDERS ON CAMPUS**

Individuals who have been convicted of certain sex crimes must register with law enforcement as sex offenders. Arkansas law places restrictions on sex offenders with a Level 1 sex offender having the least restrictions (lowest likelihood of committing another sex crime), and Level 4 sex offenders having the most restrictions (highest likelihood of committing another sex crime).

While Levels 1 and 2 place no restrictions prohibiting the individual's presence on a school campus, Levels 3 and 4 have specific prohibitions. These are specified in Policy 6.10—SEX OFFENDERS ON CAMPUS (MEGAN'S LAW) and it is the responsibility of district staff to know and understand the policy and, to the extent requested aid school administrators in enforcing the restrictions placed on campus access to Level 3 and Level 4 sex offenders.

It is the intention of the board of directors that district staff not stigmatize students whose parents or guardians are sex offenders while taking necessary steps to safeguard the school community and comply with state law. Each school's administration should establish procedures so attention is not drawn to the accommodations necessary for registered sex offender parents or guardians.<sup>1</sup>

Cross Reference: **6.10—SEX OFFENDERS ON CAMPUS (MEGAN'S LAW)**

Notes: This policy is similar to Policy 3.12. If you change this policy, review 3.12 at the same time to ensure applicable consistency between the two.

<sup>1</sup> For example, if a sex offender parent will arrive for conferences at the same time as other parents, staff should escort additional parents to their student's classroom, not just the sex offender parent. All principals, designees, and school employees who will or may have contact with the sex offender parents shall be required to keep confidential both the sex offender status and sex offender accommodations made for a parent.

Legal Reference: A.C.A. § 12-12-913 (g) (2)  
Arkansas Department of Education Guidelines for "Megan's Law"  
A.C.A. § 5-14-132

Date Adopted: 4/28/08

Last Revised: 6-16-08

## **8.9—PUBLIC OFFICE – NONCERTIFIED PERSONNEL**

An employee of the District who is elected to the Arkansas General Assembly or any elective or appointive public office (not legally constitutionally inconsistent with employment by a public school district) shall not be discharged or demoted as a result of such service.

No paid leave will be granted for the employee's participation in such public office. The employee may receive pay for personal leave or vacation (if applicable), if approved in advance by the Superintendent, during his absence.

Prior to taking leave, and as soon as possible after the need for such leave is discerned by the employee, he must make written request for leave to the Superintendent, setting out, to the degree possible, the dates such leave is needed.

An employee who fraudulently requests sick leave for the purpose of taking leave to serve in public office may be subject to nonrenewal or termination of his employment contract.

**Note:** This policy is substantially the same as Policy 3.13. If you change this policy consider changing 3.13 at the same time to ensure consistency between the two.

Cross Reference: Policy # 8.17—Noncertified Personnel Political Activity

Legal Reference: A.C.A. § 6-17-115

Date Adopted: 5-19-03

Last Revised: 8-15-05

## **8.10—JURY DUTY – NONCERTIFIED PERSONNEL**

Employees are not subject to discharge, loss of sick leave, loss of vacation time or any other penalty due to absence from work for jury duty, upon giving reasonable notice to the District through the employee's immediate supervisor.

The employee must present the original (not a copy) summons to jury duty to his supervisor in order to confirm the reason for the requested absence.

Employees shall receive their regular pay from the district while serving jury duty, and shall reimburse the district from the stipend they receive for jury duty, up to, but not to exceed, the cost of the substitute hired to replace the employee in his/her absence.

**Note:** This policy is similar to Policy 3.14. If you change this policy, review 3.14 at the same time to ensure applicable consistency between the two.

Legal Reference:       A.C.A. § 16-31-106

Date Adopted: 5-19-03

Last Revised:

## 8.11 ERTIME, COMPTIME, and COMPLYING WITH FLSA

The Bismarck School District shall comply with those portions of the Fair Labor Standards Act that relate to the operation of public schools. The act requires that covered employees be compensated for all hours worked at greater than or equal to the applicable minimum wage for workweeks of less than or equal to 40 hours.<sup>A</sup> It also requires that employees be compensated for workweeks of greater than 40 hours at 1 1/2 times their regular rate of pay either monetarily<sup>B</sup> or through compensatory time<sup>C</sup>.

### Definitions

Overtime is hours worked in excess of 40 per workweek. Compensation given for hours **not** worked such as for holidays or sick days do **not** count in determining hours worked per workweek.<sup>D</sup>

Workweek is the seven day consecutive period of time from 12:00AM on Sunday to midnight on the following Saturday.<sup>1</sup> Each workweek is independent of every other workweek for the purpose of determining the number of hours worked and the remuneration entitled to by the employee for that week.<sup>E</sup>

Exempt Employees are those employees who are not covered under the FLSA.<sup>F</sup> They include administrators and professional employees such as teachers, counselors, nurses, and supervisors.<sup>2</sup> Any employee who is unsure of their coverage status should consult with the District's Administration.

Covered Employees (also defined as non-exempt employees) are those employees who are not exempt, generally termed noncertified, and include bus drivers, clerical workers, maintenance personnel, custodians, transportation workers, receptionists, paraprofessionals, food service workers, secretaries, and bookkeepers.

Regular Rate of Pay includes all forms of remuneration for employment<sup>3</sup> and shall be expressed as an hourly rate.<sup>G</sup> For those employees previously paid on a salary basis, the salary shall be converted to an hourly equivalent. Employees shall be paid for each and every hour worked.

### Employment Relationships

1. The District does not have an employment relationship in the following instances.
2. Between the District and student teachers;
3. Between the District and its students;
4. Between the District and individuals who as a public service volunteer or donate their time to the District without expectation or promise of compensation.

The District does not have a joint employment relationship in the following instances.

1. Between the District and off-duty policemen or deputies who are hired on a part-time basis for security purposes or crowd control. The District is separate from and acts independently of other governmental entities.
2. Between the District and any agency contracted with to provide transportation services, security services, or other services.

## **Hours Worked**

Employees shall be compensated for all the time they are required to be on duty<sup>H</sup> and shall be paid for all hours worked each workweek. Employees shall accurately record the hours they work each week.<sup>I</sup>

The District shall determine the manner to be used by employees to accurately record the hours they work. Each employee shall record the exact time they commence and cease work including meal breaks. Employees arriving early may socialize with fellow workers who are off the clock, but shall not commence working without first recording their starting time.<sup>J</sup>

Employees shall sign in/clock in where they start work and sign out/clock out at the site where they cease working. Employees who do not start and end their workday at the same site shall carry a time card or sheet with them to accurately record their times. They shall turn in their time sheets or cards to their immediate supervisor no later than the following Monday morning after reviewing them to be sure that they accurately reflect their hours worked for that week.<sup>4</sup>

Each employee is to personally record his or her own times. Any employee who signs in or out (or who punches a time clock) for another employee or who asks another employee to do so for him or her will be dismissed.

Employees whose normal workweek is less than 40 hours and who work more than their normal number of hours in a given workweek may, at the District's option, be given compensatory time for the hours they worked in excess of their normal workweek in lieu of their regular rate pay. Compensatory time given in this manner shall be subject to the same conditions regarding accumulation and use as compensatory time given in lieu of overtime pay.

## **Breaks and Meals**

Each employee working more than 20 hours per week shall be provided two, paid, 15 minute duty free breaks per workday.<sup>K</sup>

Meal periods which are less than 30 minutes in length or in which the employee is not relieved of duty are compensable.<sup>L</sup> Employees with a bona fide meal period shall be completely relieved of their duty to allow them to eat their meal which they may do away from their work site, in the school cafeteria, or in a break area.

The employee shall not engage in any work for the District during meal breaks except in rare and infrequent emergencies.

## **Overtime**

Covered employees shall be compensated at not less than 1.5 times his or her regular rate of pay for all hours worked over 40 in a workweek.<sup>M</sup> Overtime compensation shall be computed on the basis of the hours worked in each week and may not be waived by either the employee or the District. Overtime compensation shall be paid on the next regular payday for the period in which the overtime was earned.<sup>N</sup>

Employees working two or more jobs for the District at different rates of pay shall be paid overtime at a weighted average of the differing wages.<sup>O</sup> This shall be determined by dividing the total regular remuneration for all hours worked by the number of hours worked in that week to arrive at the weighted average. One half that rate is then multiplied times the number of hours worked over 40 to arrive at the overtime compensation due.<sup>5</sup>

Provided the employee and the District have a written agreement or understanding before the work is performed,<sup>P</sup> compensatory time off may be awarded in lieu of overtime pay for hours worked over 40 in a workweek and shall be awarded on a one-and-one-half (1 1/2) time basis for each hour of overtime worked.<sup>Q</sup> The District reserves the right to determine if it will award compensatory time in lieu of monetary pay for the overtime worked. The maximum number of compensatory hours an employee may accumulate at a time is 20.<sup>6</sup> The employee must be able to take the compensatory time off within a reasonable period of time that is not unduly disruptive to the District.

An employee whose employment is terminated with the District, whether by the District or the employee shall receive monetary compensation for unused compensatory time. Of the following methods, the one that yields the greatest money for the employee shall be used.

1. The average regular rate received by the employee during the last 3 years of employment. Or
2. The final regular rate received by the employee.<sup>R</sup>

### **Overtime Authorization**

There will be instances where the district's needs necessitate an employee work overtime. It is the Board's desire to keep overtime worked to a minimum. To facilitate this, employees shall receive authorization from their supervisor in advance of working overtime except in the rare instance when it is unforeseen and unavoidable.

All overtime worked will be paid in accordance with the provisions of the FLSA, but unless the overtime was pre-approved or fit into the exceptions noted previously, disciplinary action must be taken for failure to follow District policy. In extreme and repeated cases, disciplinary action could include the termination of the employee.

### **Leave Requests**

All covered employees shall submit a leave request form prior to taking the leave if possible. If, due to unforeseen or emergency circumstances, advance request was not possible the leave form shall be turned in the day the employee returns to work. Unless specifically granted by the Board for special circumstances, the reason necessitating the leave must fall within District policy.

Payment for leave could be delayed or not occur if an employee fails to turn in the required leave form.

Leave may be taken in a minimum of 4 hour increments.<sup>7</sup>

## **Record Keeping<sup>S</sup> and Postings<sup>T</sup>**

The District shall keep and maintain records as required by the FLSA for the period of time<sup>U</sup> required by the act.<sup>8</sup>

The District shall display minimum wage posters where employees can readily observe them.<sup>9</sup>

## **Cooperation with Enforcement Officials<sup>V</sup>**

All records relating to the FLSA shall be available for inspection by, and District employees shall cooperate fully with, officials from the DOL and/or its authorized representatives in the performance of their jobs relating to:

1. Investigating and gathering data regarding the wages, hours, and other conditions and practices of employment;
2. Entering, inspecting, and/or transcribing the premises and its records;
3. Questioning employees and investigating such facts as the inspectors deem necessary to determine whether any person has violated any provision of the FLSA.

Legal References:

- A: 29 USC § 206(a), ACA § 6-17-2203
- B: 29 USC § 207(a)(1), 29 CFR § 778.100
- C: 29 USC § 207(o), 29 CFR § 553.50
- D: 29 CFR § 778.218(a)
- E: 29 CFR § 778.105
- F: 29 USC § 213(a), 29 CFR §§ 541 et seq.
- G: 29 USC § 207(e), 29 CFR § 778.108
- H: 29 CFR §§ 785.9, 785.16
- I: 29 CFR § 516.2(7)
- J: 29 CFR §§ 785.1 et seq.
- K: ACA § 6-17-2205
- L: 29 CFR §§ 785.19
- M: 29 USC § 207(a), 29 CFR § 778.100, 29 USC § 207(o), 29 CFR §§ 553.20 – 553.32
- N: 29 CFR § 778.106
- O: 29 USC § 207(g)(2), 29 CFR § 778.115
- P: 29 USC § 207(o)(2)(A), 29 CFR § 553.23
- Q: 29 CFR § 553.20
- R: 29 USC § 207(o)(4), 29 CFR § 553.27
- S: 29 USC § 211(c), 29 CFR §§ 516.2, 516.3, 553.50
- T: 29 CFR § 516.4
- U: 29 CFR §§ 516.5, 516.6
- V: 29 USC § 211(a)(b)

Date Adopted: 5-19-04

Last Revised: 8-15-05

## **8.12—NONCERTIFIED PERSONNEL OUTSIDE EMPLOYMENT**

An employee of the District may not be employed in any other capacity during regular working hours.

An employee may not accept employment outside of his district employment which will interfere, or otherwise be incompatible with the District employment, including normal duties outside the regular work day; nor shall an employee accept other employment which is inappropriate for an employee of a public school.

The Superintendent, or his designee(s), shall be responsible for determining whether outside employment is incompatible, conflicting, or inappropriate.

**Note:** This policy is similar to Policy 3.18. If you change this policy, review 3.18 at the same time to ensure applicable consistency between the two.

Legal Reference:       A.C.A. § 6-24-106, 107, 111

Date Adopted: 5-19-03

Last Revised:



## **8.13—NONCERTIFIED PERSONNEL EMPLOYMENT**

All prospective employees must fill out an application form provided by the District, in addition to any resume provided, all of which information is to be placed in the personnel file of those employed.

If the employee provides false or misleading information, or if he withholds information to the same effect, it may be grounds for dismissal.

The Bismarck School District is an equal opportunity employer and shall not discriminate on the grounds of race, color, religion, national origin, sex, age, or disability.

**Note:** This policy is similar to Policy 3.18. If you change this policy, review 3.18 at the same time to ensure applicable consistency between the two.

Date Adopted: 5-19-03

Last Revised:

## **8.14—NONCERTIFIED PERSONNEL REIMBURSEMENT OF TRAVEL EXPENSES**

Employees shall be reimbursed for personal and/or travel expenses incurred while performing duties or attending workshops or other employment-related functions, provided that prior written approval for the activity for which the employee seeks reimbursement has been received from the Superintendent, principal (or other immediate supervision with the authority to make school approvals), or the appropriate designee of the Superintendent.

Employees shall be reimbursed at \$.28 twenty eight cents per mile for the use of a personal automobile in the conduct of school business. The maximum allowable per day for meals is breakfast, \$7.00; lunch, \$7.50; dinner, \$12.00; or \$27.50 per day. To use the per day amount, employees must have an overnight trip.

It is the responsibility of the employee to determine the appropriate supervisor from which he must obtain approval.

Reimbursement claims must be made on forms provided by the District and must be supported by appropriate, original receipts. Copies of receipts or other documentation are not acceptable, except in extraordinary circumstances.

**Note:** This policy is similar to Policy 320. If you change this policy, review 3.20 at the same time to ensure applicable consistency between the two.

\*Cross Reference: Policy #7.12

Date Adopted: 5-19-03

Last Revised: \*10-18-04

## **8.15— NONCERTIFIED PERSONNEL TOBACCO USE \***

Smoking or the use of tobacco, or products containing tobacco in any form, in or on any property owned or leased by the district, including buses or other school vehicles, is prohibited.

Legal Reference:       A.C.A. § 6-21-609

Date Adopted: 5-19-03

Last Revised:

## **8.16—DRESS OF NONCERTIFIED EMPLOYEES**

Employees shall ensure that their dress and appearance are professional and appropriate to their positions.

**Note:** This policy is similar to Policy 3.22. If you change this policy, review 3.22 at the same time to ensure applicable consistency between the two.

Date Adopted: 5-19-03

Last Revised:

## **8.17—NONCERTIFIED PERSONNEL POLITICAL ACTIVITY**

Employees are free to engage in political activity outside of work hours and to the extent that it does not affect the performance of their duties or adversely affect important working relationships.

It is specifically forbidden for employees to engage in political activities on the school grounds or during work hours. The following activities are forbidden on school property:

1. Using students for preparation or dissemination of campaign materials;
2. Distributing political materials;
3. Distributing or otherwise seeking signatures on petitions of any kind;
4. Posting political materials; and
5. Discussing political matters with students, in or out of the classroom, in other than circumstances appropriate to the employee's responsibilities to the students and where a legitimate pedagogical reason exists.

**Note:** This policy is similar to Policy 3.23. If you change this policy, review 3.23 at the same time to ensure applicable consistency between the two.

Date Adopted: 5-19-03

Last Revised:

## 8.18—NONCERTIFIED PERSONNEL DEBTS

### 8.18—CLASSIFIED PERSONNEL DEBTS

For the purposes of this policy, "garnishment" of a district employee is when the employee has lost a lawsuit to a judgment creditor who brought suit against a school district employee for an unpaid debt, has been awarded money damages as a result, and these damages are recoverable by filing a garnishment action against the employee's wages. For the purposes of this policy, the word "garnishment" excludes such things as child support, student loan or IRS liens or deductions levied against an employee's wages.

All employees are expected to meet their financial obligations. If an employee writes "hot" checks or has his income garnished by a judgment creditor, dismissal may result.

An employee will not be dismissed for having been the subject of one (1) garnishment. However, a second or third garnishment may result in dismissal.

At the discretion of the Superintendent, he or his designee may meet with an employee who has received a second garnishment for the purpose of warning the employee that a third garnishment will result in a recommendation of dismissal to the School Board.

At the discretion of the Superintendent, a second garnishment may be used as a basis for a recommended dismissal. The Superintendent may take into consideration other factors in deciding whether to recommend dismissal based on a second garnishment. Those factors may include, but are not limited to, the amount of the debt, the time between the first and the second garnishment, and other financial problems which come to the attention of the District.

**Note:** This policy is similar to Policy 3.24. If you change this policy, review 3.24 at the same time to ensure applicable consistency between the two.

Date Adopted: 5-19-03  
Last Revised: 4/22/2013

## **8.19—NONCERTIFIED PERSONNEL GRIEVANCES**

The purpose of this policy is to provide an orderly process for employees to resolve, at the lowest possible level, their concerns related to the personnel policies or salary payments of this district.

### **Definitions**

Grievance: a claim or concern related to the interpretation, application, or claimed violation of the personnel policies, including salary schedules, federal or state laws and regulations, or terms or conditions of employment, raised by an individual employee of this school district. Other matters for which the means of resolution are provided or foreclosed by statute or administrative procedures shall not be considered grievances. Specifically, no grievance may be entertained against a supervisor for directing, instructing, reprimanding, or “writing up” an employee under his/her supervision.<sup>1</sup> A group of employees who have the same grievance may file a group grievance.

Group Grievance: A grievance may be filed as a group grievance if it meets the following criteria: (meeting the criteria does not ensure that the subject of the grievance is, in fact, grievable)

1. More than one individual has interest in the matter; and
2. The group has a well-defined common interest in the facts and/or circumstances of the grievance; and
3. The group has designated an employee spokesperson to meet with administration and/or the board; and
4. All individuals within the group are requesting the same relief.

Employee: any person employed under a written contract by this school district.

Immediate Supervisor: the person immediately superior to an employee who directs and supervises the work of that employee.

Working day: Any weekday other than a holiday whether or not the employee under the provisions of their contract is scheduled to work or whether they are currently under contract.

### **Process**

Level One: An employee who believes that he/she has a grievance shall inform that employee’s immediate supervisor that the employee has a potential grievance and discuss the matter with the supervisor within five working days of the occurrence of the grievance. The supervisor shall offer the employee an opportunity to have a witness or representative who is not a member of the employee’s immediate family present at their conference. (The five-day requirement does not apply to grievances concerning back pay.) If the grievance is not advanced to Level Two within five working days following the conference, the matter will be considered resolved and the employee shall have no further right with respect to said grievance.

If the grievance cannot be resolved by the immediate supervisor, the employee can advance the grievance to Level Two. To do this, the employee must complete the top half of the Level Two Grievance Form within five working days of the discussion with the immediate supervisor, citing the manner in which the specific personnel policy was violated that has given rise to the grievance, and submit the Grievance Form to his/her immediate supervisor. The supervisor will have ten working days to respond to the grievance using the bottom half of the Level Two Grievance Form which he/she will submit to the building principal or, in the event that the employee's immediate supervisor is the building principal, the superintendent.

Level Two (when appeal is to the building principal): Upon receipt of a Level Two Grievance Form, the building principal will have ten working days to schedule a conference with the employee filing the grievance. The principal shall offer the employee an opportunity to have a witness or representative who is not a member of the employee's immediate family present at their conference. After the conference, the principal will have ten working days in which to deliver a written response to the grievance to the employee. If the grievance is not advanced to Level Three within five working days the matter will be considered resolved and the employee shall have no further right with respect to said grievance.

Level Two (when appeal is to the superintendent): Upon receipt of a Level Two Grievance Form, the superintendent will have ten working days to schedule a conference with the employee filing the grievance. The superintendent shall offer the employee an opportunity to have a witness or representative who is not a member of the employee's immediate family present at their conference. After the conference, the superintendent will have ten working days in which to deliver a written response to the grievance to the employee.

Level Three: If the proper recipient of the Level Two Grievance was the building principal, and the employee remains unsatisfied with the written response to the grievance, the employee may advance the grievance to the superintendent by submitting a copy of the Level Two Grievance Form and the principal's reply to the superintendent within five working days of his/her receipt of the principal's reply. The superintendent will have ten working days to schedule a conference with the employee filing the grievance. The superintendent shall offer the employee an opportunity to have a witness or representative who is not a member of the employee's immediate family present at their conference. After the conference, the superintendent will have ten working days in which to deliver a written response to the grievance to the employee.

Appeal to the Board of Directors: An employee who remains unsatisfied by the written response of the superintendent may appeal the superintendent's decision to the Board of Education within five working days of his/her receipt of the Superintendent's written response by submitting a written request for a board hearing to the superintendent<sup>2</sup>. If the grievance is not appealed to the Board of Directors within five working days of his/her receipt of the superintendent's response, the matter will be considered resolved and the employee shall have no further right with respect to said grievance.



The school board will address the grievance at the next regular meeting of the school board, unless the employee agrees in writing to an alternate date for the hearing. After reviewing the Level Two Grievance Form and the superintendent's reply, the board will decide if the grievance, on its face, is grievable under district policy. If the grievance is presented as a "group grievance," the Board shall first determine if the composition of the group meets the definition of a "group grievance." If the Board determines that it is a group grievance, the Board shall then determine whether the matter raised is grievable. If the Board rules the composition of the group does not meet the definition of a group grievance, or the grievance, whether group or individual, is not grievable, the matter shall be considered closed. (Individuals within the disallowed group may choose to subsequently refile their grievance as an individual grievance beginning with Level One of the process.) If the Board rules the grievance to be grievable, they shall immediately commence a hearing on the grievance. All parties have the right to representation by a person of their own choosing who is not a member of the employee's immediate family at the appeal hearing before the Board of Directors. The employee shall have no less than 90 minutes to present his/her grievance, unless a shorter period is agreed to by the employee, and both parties shall have the opportunity to present and question witnesses. The hearing shall be open to the public

unless the employee requests a private hearing. If the hearing is open, the parent or guardian of any student under the age of eighteen years who gives testimony may elect to have the student's testimony given in closed session. At the conclusion of the hearing, if the hearing was closed, the Board of Directors may excuse all parties except board members and deliberate, by themselves, on the hearing. At the conclusion of an open hearing, board deliberations shall also be in open session unless the board is deliberating the employment, appointment, promotion, demotion, disciplining, or resignation of the employee. A decision on the grievance shall be announced no later than the next regular board meeting.

### **Records**

Records related to grievances will be filed separately and will not be kept in, or made part of, the personnel file of any employee.

### **Reprisals**

No reprisals of any kind will be taken or tolerated against any employee because he/she has filed or advanced a grievance under this policy.

**Note:** <sup>1</sup> It is important to understand the implications of the language contained in this paragraph. Only matters specified in the first sentence of the paragraph are, in fact, grievable, but that cannot prohibit an employee from filing a grievance which the administration does not deem to be grievable and nonetheless advancing it through the grievance process. Ultimately, it is the board that determines whether or not the matter is actually grievable by comparing the

written grievance to the definition of grievance in the grievance policy, and continuing on with the hearing only if the grievance is determined to be within the definition. This is addressed in the “Appeal to the Board of Directors” paragraph.

<sup>2</sup> It is suggested that you date stamp the request for a board hearing upon receipt. This policy is similar to Policy 3.25. If you change this policy, review 3.25 at the same time to ensure applicable consistency between the two.

Legal Reference: ACA § 6-17-208, 210

Date Adopted: 5-19-03

Last Revised: 10-18-04

Last Revised: 3-19-07

Last Revised: 4/28/08

## 8.19F—LEVEL TWO GRIEVANCE FORM - NONCERTIFIED

Name: \_\_\_\_\_

Date submitted to supervisor: \_\_\_\_\_

Noncertified Personnel Policy grievance is based upon:

\_\_\_\_\_

Grievance (be specific): \_\_\_\_\_

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What would resolve your grievance? \_\_\_\_\_

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Supervisor's Response

Date submitted to recipient: \_\_\_\_\_

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Date Adopted: 5-19-03

Last Revised:

## **8.20—NONCERTIFIED PERSONNEL SEXUAL HARASSMENT**

The Bismarck School District is committed to having an academic and work environment in which all students and employees are treated with respect and dignity. Student achievement and amicable working relationships are best attained in an atmosphere of equal educational and employment opportunity that is free of discrimination. Sexual harassment is a form of discrimination that undermines the integrity of the educational environment and will not be tolerated.

Believing that prevention is the best policy, the district will periodically inform students and employees about the nature of sexual harassment, the procedures for registering a complaint, and the possible redress that is available. The information will stress that the district does not tolerate sexual harassment and that students and employees can report inappropriate behavior of a sexual nature without fear of adverse consequences.

It shall be a violation of this policy for any student or employee to be subjected to, or to subject another person to, sexual harassment as defined in this policy. Any employee found, after an investigation, to have engaged in sexual harassment will be subject to disciplinary action up to, and including, termination.

Sexual harassment refers to unwelcome sexual advances, requests for sexual favors, or other personally offensive verbal, visual, or physical conduct of a sexual nature made by someone under any of the following conditions:

1. Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's education or employment;
2. Submission to, or rejection of, such conduct by an individual is used as the basis for academic or employment decisions affecting that individual; and/or
3. Such conduct has the purpose or effect of substantially interfering with an individual's academic or work performance or creates an intimidating, hostile, or offensive academic or work environment.

The terms "intimidating," "hostile," and "offensive" include conduct of a sexual nature which has the effect of humiliation or embarrassment and is sufficiently severe, persistent, or pervasive that it limits the student's or employee's ability to participate in, or benefit from, an educational program or activity or their employment environment.

Within the educational or work environment, sexual harassment is prohibited between any of the following: students; employees and students; non-employees and students; employees; employees and non-employees.

Actionable sexual harassment is generally established when an individual is exposed to a pattern of objectionable behaviors or when a single, serious act is committed. What is, or is not, sexual harassment will depend upon all of the surrounding circumstances. Depending upon such circumstances, examples of sexual harassment include, but are not limited to: unwelcome touching; crude jokes or pictures; discussions of sexual experiences; pressure for sexual activity; intimidation by words, actions, insults, or name calling; teasing related to sexual characteristics; and spreading rumors related to a person's alleged sexual activities.

Employees who believe they have been subjected to sexual harassment are encouraged to file a complaint by contacting their immediate supervisor, administrator, or Title IX coordinator who will assist them in the

complaint process. Under no circumstances shall an employee be required to first report allegations of sexual harassment to a school contact person if that person is the individual who is accused of the harassment. To the extent possible, complaints will be treated in a confidential manner. Limited disclosure may be necessary in order to complete a thorough investigation.

Employees who file a complaint of sexual harassment will not be subject to retaliation or reprisal in any form.

Employees who knowingly fabricate allegations of sexual harassment shall be subject to disciplinary action up to and including termination.

Individuals who withhold information, purposely provide inaccurate facts, or otherwise hinder an investigation of sexual harassment shall be subject to disciplinary action up to and including termination.

**Note:** This policy is similar to Policy 3.26. If you change this policy, review 3.26 at the same time to ensure applicable consistency between the two.

Legal References: Title IX of the Education Amendments of 1972, 20 USC 1681, et seq.  
Title VII of the Civil Rights Act of 1964, 42 USC 2000-e, et seq.  
ACA § 6-15-1005 (b) (1)

Date Adopted: 5-19-03

Last Revised:

## **8.21—NONCERTIFIED PERSONNEL SUPERVISION OF STUDENTS**

All District personnel are expected to conscientiously execute their responsibilities to promote the health, safety, and welfare of the District's students under their care. The Superintendent shall direct all principals to establish regulations ensuring adequate supervision of students throughout the school day and at extracurricular activities.

**Note:** This policy is similar to Policy 3.27. If you change this policy, review 3.27 at the same time to ensure applicable consistency between the two.

Date Adopted: 5-19-03

Last Revised:

## 8.22—NONCERTIFIED PERSONNEL COMPUTER USE POLICY

The Bismarck School District provides computers and/or computer Internet access for many employees, to assist employees in performing work related tasks. Employees are advised that they enjoy **no expectation of privacy** in any aspect of their computer use, including email, and that under Arkansas law, both email and computer use records maintained by the district are subject to disclosure under the Freedom of Information Act.

Passwords or security procedures are to be used as assigned, and confidentiality of student records is to be maintained at all times. Employees must not disable or bypass security procedures, compromise, attempt to compromise, or defeat the district's technology network security, alter data without authorization, disclose passwords to other staff members or students, or grant students access to any computer not designated for student use. It is the policy of this school district to equip each computer with Internet filtering software designed to prevent users from accessing material that is harmful to minors. The designated District Technology Administrator or designee may authorize the disabling of the filter to enable access by an adult for a bona fide research or other lawful purpose.

Employees who misuse district-owned computers in any way, including excessive personal use, using computers for personal use during work or instructional time, using computers to violate any other policy, knowingly or negligently allowing unauthorized access, or using the computers to access or create sexually explicit or pornographic text or graphics, will face disciplinary action, up to and including termination or non-renewal of the employment contract.

**Note:** This policy is similar to Policy 3.28. If you change this policy, review 3.28 at the same time to ensure applicable consistency between the two.

Legal References:      20 USC 6801 et seq. (Children's Internet Protection Act; PL 106-554)  
                                 A.C.A. § 6-21-107  
                                 A.C.A. § 6-21-111

Date Adopted: 5-19-03  
Last Revised: 6-16-08

## 8.22F—NONCERTIFIED PERSONNEL INTERNET USE AGREEMENT

Name (Please Print)\_\_\_\_\_

School\_\_\_\_\_Date\_\_\_\_\_

The Bismarck School District agrees to allow the employee identified above (“Employee”) to use the district’s technology to access the Internet under the following terms and conditions:

1. Conditional Privilege: The Employee’s use of the district’s access to the Internet is a privilege conditioned on the Employee’s abiding by this agreement.
2. Acceptable Use: The Employee agrees that in using the District’s Internet access he/she will obey all federal and state laws and regulations. Internet access is provided as an aid to employees to enable them to better perform their job responsibilities. Under no circumstances shall an Employee’s use of the District’s Internet access interfere with, or detract from, the performance of his/her job-related duties.
3. Penalties for Improper Use: If the Employee violates this agreement and misuses the Internet, the Employee shall be subject to disciplinary action up and including termination.
4. “Misuse of the District’s access to the Internet” includes, but is not limited to, the following:
  - h. using the Internet for any activities deemed lewd, obscene, vulgar, or pornographic as defined by prevailing community standards;
  - i. using abusive or profane language in private messages on the system; or using the system to harass, insult, or verbally attack others;
  - j. posting anonymous messages on the system;
  - k. using encryption software;
  - l. wasteful use of limited resources provided by the school including paper;
  - m. causing congestion of the network through lengthy downloads of files;
  - n. vandalizing data of another user;
  - o. obtaining or sending information which could be used to make destructive devices such as guns, weapons, bombs, explosives, or fireworks;
  - p. gaining or attempting to gain unauthorized access to resources or files;
  - q. identifying oneself with another person’s name or password or using an account or password of another user without proper authorization;
  - r. using the network for financial or commercial gain without district permission;
  - s. theft or vandalism of data, equipment, or intellectual property;
  - t. invading the privacy of individuals;
  - u. using the Internet for any illegal activity, including computer hacking and copyright or intellectual property law violations;
  - v. introducing a virus to, or otherwise improperly tampering with, the system;
  - w. degrading or disrupting equipment or system performance;
  - x. creating a web page or associating a web page with the school or school district without proper authorization;

Form Page. 1 of 1



- y. attempting to gain access or gaining access to student records, grades, or files of students not under their jurisdiction;
- z. providing access to the District's Internet Access to unauthorized individuals; or
- aa. taking part in any activity related to Internet use which creates a clear and present danger of the substantial disruption of the orderly operation of the district or any of its schools;
- bb. making unauthorized copies of computer software.
- cc. personal use of computers during instructional time.

5. Liability for debts: Staff shall be liable for any and all costs (debts) incurred through their use of the District's computers or the Internet including penalties for copyright violations.

6. No Expectation of Privacy: The Employee signing below agrees that in using the Internet through the District's access, he/she waives any right to privacy the Employee may have for such use. The Employee agrees that the district may monitor the Employee's use of the District's Internet Access and may also examine all system activities the Employee participates in, including but not limited to e-mail, voice, and video transmissions, to ensure proper use of the system.

7. Signature: The Employee, who has signed below, has read this agreement and agrees to be bound by its terms and conditions.

Employee's Signature: \_\_\_\_\_ Date \_\_\_\_\_

**Note:** This policy is similar to Policy 3.28F. If you change this policy, review 3.28F at the same time to ensure applicable consistency between the two.

Date Adopted: 5-19-03

Last Revised:

Form Page. 2 of 1

## **8.23—NONCERTIFIED PERSONNEL FAMILY MEDICAL LEAVE \***

### **8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE\***

The Family and Medical Leave Act (FMLA) leave offers job protection for what might otherwise be considered excessive absences. Employees need to carefully comply with this policy to ensure they do not lose FMLA protection due to inaction or failure to provide the District with needed information. ~~The FMLA Family Medical Leave Act~~ provides up to 12 work weeks (or in some cases 26 weeks) of job-protected leave to eligible employees with absences that qualify under the FMLA. While an employee can request FMLA leave and has a duty to inform the District as provided in this policy of foreseeable absences that may qualify for FMLA leave, it is the District's ultimate responsibility to identify qualifying absences as FMLA or non-FMLA. FMLA leave is unpaid, except to the extent that paid leave applies to any given absence as governed by the FMLA and this policy.

#### **SECTION ONE**

##### **Definitions:**

Eligible Employee: is an employee who has been employed by the District for at least twelve (12) months and for 1250 hours of service during the twelve (12) month period immediately preceding the commencement of the leave.<sup>1</sup>

FMLA: is the Family and Medical Leave Act

Health Care Provider: is a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices. It also includes any other person determined by the U.S. Secretary of Labor to be capable of providing health care services.

Instructional Employee: is an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting and includes athletic coaches, driving instructors, preschool teachers, and special education assistants such as signers for the hearing impaired. The term does not include, and the special rules related to the taking of leave near the end of a semester do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include administrators, counselors, librarians, psychologists, or curriculum specialists.

Intermittent leave: is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

Next of Kin: used in respect to an individual, means the nearest blood relative of that individual.

Parent: is the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or a daughter. This term does not include parents "in-law."

Serious Health Condition: is an injury, illness, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical facility or continuing treatment by a health care provider.

Son or daughter, for numbers 1, 2, or 3 below: is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence.<sup>2</sup>

Year: the twelve (12) month period of eligibility shall begin on July first of each school-year.<sup>23-</sup>

### **Policy**

The provisions of this policy are intended to be in line with the provisions of the FMLA. If any conflict(s) exist, the Family and Medical Leave Act of 1993, as amended, shall govern.

### **Leave Eligibility**

The District will grant up to twelve (12) weeks of leave in a year in accordance with the ~~Family Medical Leave Act of 1993~~ (FMLA), as amended, to its eligible employees for one or more of the following reasons:

1. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
2. Because of the placement of a son or daughter with the employee for adoption or foster care;
3. To care for the spouse, son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition; and
4. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.
5. Because of any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. (See Section Two)
6. To care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury. (See Section Two)

The entitlement to leave for reasons 1 and 2 listed above shall expire at the end of the twelve (12) month period beginning on the date of such birth or placement.

A husband and wife who are both eligible employees employed by the District may not take more than a combined total of 12 weeks of FMLA leave for reasons 1, 2, 3 and 5.

## **Provisions Applicable to both Sections One and Two**

### **District Notice to Employees**

The District shall post, in conspicuous places in each school within the District where notices to employees and applicants for employment are customarily posted, a notice explaining the FMLA's provisions and providing information about the procedure for filing complaints with the Department of Labor.<sup>34</sup>

### **Designation Notice to Employee**

When an employee requests FMLA leave or the District determines that an employee's absence may be covered under the FMLA, the District shall provide written notice within five (5) business days (absent extenuating circumstances) to the employee of the District's determination of his/her eligibility for FMLA leave.<sup>45</sup> If the employee is eligible, the District may request additional information from the employee and/or certification from a health care provider to help make the applicability<sup>56</sup> determination. After receiving sufficient information as requested, the District shall provide a written notice within five (5) business days (absent extenuating circumstances) to the employee of whether the leave qualifies as FMLA leave and will be so designated.<sup>67</sup>

If the circumstances for the leave don't change, the District is only required to notify the employee once of the determination regarding the designation of FMLA leave within any applicable twelve (12) month period.

### **Concurrent Leave Under the FMLA**

All FMLA leave is unpaid unless substituted by applicable accrued leave. The District requires employees to substitute any applicable accrued leave (in the order of sick, personal, or vacation leave as may be applicable) for any period of FMLA leave.<sup>56</sup>

### **Health Insurance Coverage**

The District shall maintain coverage under any group health plan for the duration of FMLA leave the employee takes at the level and under the conditions coverage would have been provided if the employee had continued in active employment with the District. Additionally, if the District makes a change to its health insurance benefits or plans that apply to other employees, the employee on FMLA leave must be afforded the opportunity to access additional benefits and/or the same responsibility for changes to premiums. Any changes made to a group health plan which apply to other District employees, must also apply to the employee on FMLA leave. The District will notify the employee on FMLA leave of any opportunities to change plans or benefits. The employee remains responsible for any portion of premium payments customarily paid by the employee. When on unpaid FMLA leave, it is the employee's responsibility to submit his/her portion of the cost of the group health plan coverage to the district's business office on or before it would be made by payroll deduction.<sup>78</sup>

The District has the right to pay an employee's unpaid insurance premiums during the employee's unpaid FMLA leave to maintain the employee's coverage during his/her leave. The District may recover the employee's share of any premium payments missed by the employee for any FMLA

leave period during which the District maintains health coverage for the employee by paying the his/her share. Such recovery shall be made by offsetting the employee's debt through payroll deductions or by other means against any monies owed the employee by the District.

An employee who chooses to not continue group health plan coverage while on FMLA leave, is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc. <sup>89</sup>

If an employee gives unequivocal notice of intent not to return to work, or if the employment relationship would have terminated if the employee had not taken FMLA leave, the District's obligation to maintain health benefits ceases.

If the employee fails to return from leave after the period of leave to which the employee was entitled has expired, the District may recover the premiums it paid to maintain health care coverage unless:

1. The employee fails to return to work due to the continuation, reoccurrence, or onset of a serious health condition that entitles the employee to leave under reasons 3 or 4 listed above; and/or
2. Other circumstances exist beyond the employee's control.

Circumstances under "a" listed above shall be certified by a licensed, practicing health care provider verifying the employee's inability to return to work.

#### **Reporting Requirements During Leave**

Unless circumstances exist beyond the employee's control, the employee shall inform the district every two weeks <sup>910</sup> during FMLA leave of their current status and intent to return to work.

#### **Return to Previous Position**

An employee returning from FMLA leave is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An equivalent position must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, and authority.

The employee's right to return to work and/or to the same or an equivalent position does not supersede any actions taken by the District, such as conducting a RIF, which the employee would have been subject to had the employee not been on FMLA leave at the time of the District's actions.

### **Provisions Applicable to Section One**

#### **Employee Notice to District**

Foreseeable Leave:

When the need for leave is foreseeable for reasons 1 through 4 listed above, the employee shall provide the District with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave for the specified reason. An eligible employee who has no reasonable excuse for his/her failure to

provide the District with timely advance notice of the need for FMLA leave may delay the FMLA coverage of such leave until 30 days after the date the employee provides notice.

If there is a lack of knowledge of approximately when the leave will be required to begin, a change in circumstances, or an emergency, notice must be given as soon as practicable. As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.

When the need for leave is for reasons 3 or 4 listed above, the eligible employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the District subject to the approval of the health care provider of the spouse, son, daughter, or parent of the employee.

If the need for FMLA leave is foreseeable less than 30 days in advance, the employee shall notify the District as soon as practicable. If the employee fails to notify as soon as practicable, the District may delay granting FMLA leave for the number of days in advance that the employee should have provided notice and when the employee actually gave notice.

#### **Unforeseeable Leave:**

When the approximate timing of the need for leave is not foreseeable, an employee shall provide the District notice of the need for leave as soon as practicable given the facts and circumstances of the particular case.

Ordinarily, the employee shall notify the District within two (2) working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. Notice may be provided in person, by telephone, telegraph, fax, or other electronic means. If the eligible employee fails to notify the District as required, unless the failure to comply is justified by unusual circumstances, the FMLA leave may be delayed or denied.

#### **Medical Certification**

Second and Third Opinions: In any case where the District has reason to doubt the validity of the initial certification provided, the District may require, at its expense, the employee to obtain the opinion of a second health care provider designated or approved by the employer. If the second opinion differs from the first, the District may require, at its expense, the employee to obtain a third opinion from a health care provider agreed upon by both the District and the employee. The opinion of the third health care provider shall be considered final and be binding upon both the District and the employee.

Recertification: The District may request, either orally or in writing, the employee obtain a recertification in connection with the employee's absence, at the employee's expense, no more

often than every thirty (30) days unless one or more of the following circumstances apply;

- a. The original certification is for a period greater than 30 days. In this situation, the District may require a recertification after the time of the original certification expires, but in any case, the District may require a recertification every six (6) months.
- b. The employee requests an extension of leave;
- c. Circumstances described by the previous certification have changed significantly; and/or
- d. The district receives information that casts doubt upon the continuing validity of the certification.

The employee must provide the recertification in fifteen (15) calendar days after the District's request.

No second or third opinion on recertification may be required.

The District may deny FMLA leave if an eligible employee fails to provide requested certification.

#### **Substitution of Paid Leave**

When an employee's leave has been designated as FMLA leave for reasons 1 (as applicable), 2, 3, or 4 above, the District requires employees to substitute accrued sick, vacation, or personal leave for the period of FMLA leave. <sup>1011</sup>

To the extent the employee has accrued paid vacation or personal leave, any leave taken that qualifies for FMLA leave for reasons 1 or 2 above shall be paid leave and charged against the employee's accrued leave.

Workers Compensation: FMLA leave may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition. To the extent that workers compensation benefits and FMLA leave run concurrently, the employee will be charged for any paid leave accrued by the employee at the rate necessary to bring the total amount of combined income up to 100% of usual contracted daily rate of pay. If the health care provider treating the employee for the workers compensation injury certifies the employee is able to return to a "light duty job," but is unable to return to the employee's same or equivalent job, the employee may decline the District's offer of a "light duty job." As a result, the employee may lose his/her workers' compensation payments, but for the duration of the employee's FMLA leave, the employee will be paid for the leave to the extent that the employee has accrued applicable leave.

#### **Return to Work**<sup>1112</sup>

If the District's written designation determination that the eligible employee's leave qualified as FMLA leave under reason 4 above stated that the employee would have to provide a "fitness-for-duty" certification from a health care provider for the employee to resume work, the employee must provide such certification prior to returning to work. The employee's failure to do so voids the District's obligation to reinstate the employee under the FMLA and the employee shall be terminated.

If the District's written designation determination that the eligible employee's leave qualified as FMLA leave under reason 4 above stated that the employee would have to provide a "fitness-for-duty" certification from a health care provider for the employee to resume work **and** the designation determination listed the employee's essential job functions, the employee must provide certification that the employee is able to perform those functions prior to returning to work. The employee's failure to do so or his/her inability to perform his/her job's essential functions voids the District's obligation to reinstate the employee under the FMLA and the employee shall be terminated.

#### **Failure to Return to Work:**

In the event that an employee is unable or fails to return to work within FMLA's leave timelines, the superintendent will make a determination at that time regarding the documented need for a severance of the employee's contract due to the inability of the employee to fulfill the responsibilities and requirements of their contract.

#### **Intermittent or Reduced Schedule Leave**

To the extent practicable, employees requesting intermittent or reduced schedule leave shall provide the District with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave.

Eligible employees may only take intermittent or reduced schedule leave for reasons 1 and 2 listed above if the District agrees to permit such leave upon request of the employee. If the District agrees to permit an employee to take intermittent or reduced schedule leave for such reasons, the agreement shall be consistent with this policy's requirements governing intermittent or reduced schedule leave. The employee may be transferred temporarily during the period of scheduled intermittent or reduced leave to an alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. The alternative position shall have equivalent pay and benefits but does not have to have equivalent duties.

Eligible employees may take intermittent or reduced schedule FMLA leave due to reasons 3 or 4 listed above when the medical need is best accommodated by such a schedule. The eligible employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider.

When granting leave on an intermittent or reduced schedule for reasons 3 or 4 above that is foreseeable based on planned medical treatment, the District may temporarily transfer eligible employees for the period of scheduled intermittent or reduced leave to an alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. The alternative position shall have equivalent pay and benefits but does not have to have equivalent duties. When the employee is able to return to full-time work, the employee shall be placed in the same or equivalent job as he/she had when the leave began. The employee will not be required to take more FMLA leave than necessary to address the circumstances requiring the need for the leave.



### **Special Provisions relating to Instructional Employees as Defined in This Policy**

The FMLA definition of "instructional employees" covers a small number of classified employees. Any classified employee covered under the FMLA definition of an "instructional employee" and whose FMLA leave falls under Act's special leave provisions relating to "instructional employees" shall be governed by the applicable portions of policy 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE.

## **SECTION TWO**

### **FMLA LEAVE CONNECTED TO MILITARY SERVICE**

#### **Leave Eligibility**

The FMLA provision of military associated leave is in two categories. Each one has some of its own definitions and stipulations. Therefore, they are dealt with separately in this Section of the policy. Definitions different than those in Section One are included under the respective reason for leave. Definitions that are the same as in Section One are NOT repeated in this Section.

#### **QUALIFYING EXIGENCY**

An eligible employee may take FMLA leave for any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. Examples include issues involved with short-notice deployment, military events and related activities, childcare and school activities, the need for financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and other activities as defined by federal regulations. <sup>1213</sup>

#### **Definitions:**

**Covered active duty** means

- in the case of a member of a **regular** component of the Armed Forces, duty during deployment of the member with the armed forces to a foreign country; and
- in the case of a member of a **reserve** component of the Armed Forces, duty during deployment of the member with the armed forces to a foreign country under a call to order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

**Son or daughter on active duty or call to active duty status** means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

#### **Certification** <sup>1344</sup>

The District may require the eligible employee to obtain certification to help the district determine if the requested leave qualifies for FMLA leave for the purposes of a qualifying exigency. The District may deny FMLA leave if an eligible employee fails to provide requested certification.

#### **Employee Notice to District**

#### Foreseeable Leave:

When the necessity for leave for any qualifying exigency is foreseeable, whether because the spouse, son, daughter, or parent of the employee is on covered active duty, or because of notification of an impending call or order to covered active duty, the employee shall provide such notice to the District as is reasonable and practicable regardless of how far in advance the leave is foreseeable. As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.

#### Unforeseeable Leave:

When the approximate timing of the need for leave is not foreseeable, an employee shall provide the District notice of the need for leave as soon as practicable given the facts and circumstances of the particular case. Ordinarily, the employee shall notify the District within two (2) working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. Notice may be provided in person, by telephone, telegraph, fax, or other electronic means. If the eligible employee fails to notify the District as required unless the failure to comply is justified by unusual circumstances, the FMLA leave may be delayed or denied.

#### **Substitution of Paid Leave**

When an employee's leave has been designated as FMLA leave any qualifying exigency, the District requires employees to substitute accrued vacation, or personal leave for the period of FMLA leave.

#### **Intermittent or Reduced Schedule Leave**

Eligible employees may take intermittent or reduced schedule leave for any qualifying exigency. The employee shall provide the district with as much notice as is practicable.

#### **Special Provisions relating to Instructional Employees as Defined in This Policy**

The FMLA definition of "instructional employees" covers a small number of classified employees. Any classified employee covered under the FMLA definition of an "instructional employee" and who's FMLA leave falls under Act's special leave provisions relating to "instructional employees" shall be governed by the applicable portions of policy 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE.

### **SERIOUS ILLNESS**

An eligible employee is eligible for leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury under the following conditions and definitions.

#### **Definitions:**

Covered Service Member is

1. a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
2. a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

Outpatient Status: used in respect to a covered service member, means the status of a member of the Armed Forces assigned to

- A) a military medical treatment facility as an outpatient; or
- B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Parent of a covered servicemember: is a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law."

Serious Injury or Illness:

- (A) in the case of a member of the Armed Forces, including the National Guard or Reserves, it means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating and
- (B) in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during a period as a covered service member defined in this policy, it means a qualifying (as defined by the U.S. Secretary of Labor) injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

Son or daughter of a covered servicemember means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.<sup>2</sup>

Year: for leave to care for the serious injury or illness of a covered service member, the twelve (12) month period begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date.

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a **covered service member** shall be entitled to a total of 26 weeks of leave during one 12-month period to care for the service member who has a serious injury or illness as defined in this policy. An eligible employee who cares for such a covered service member continues to be limited for reasons 1

through 4 in Section One and for any qualifying exigency to a total of 12 weeks of leave during a year as defined in this policy. For example, an eligible employee who cares for such a covered service member for 16 weeks during a 12 month period could only take a total of 10 weeks for reasons 1 through 4 in Section One and for any qualifying exigency. An eligible employee may not take more than 12 weeks of FMLA leave for reasons 1 through 4 in Section One and for any qualifying exigency regardless of how little leave the eligible employee may take to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury.

If husband and wife are both eligible employees employed by the District, the husband and wife are entitled to a combined total of 26 weeks of leave during one 12-month period to care for their spouse, son, daughter, parent, or next of kin who is a **covered service member** with a serious injury or illness as defined in this policy. A husband and wife who care for such a covered service member continues to be limited to a combined total of 12

weeks FMLA leave for reasons 1 through 3 in Section One and for any qualifying exigency during a year as defined in this policy. For example, a husband and wife who are both eligible employees and who care for such a covered service member for 16 weeks during a 12 month period could only take a combined total of 10 weeks for reasons 1 through 3 in Section One and for any qualifying exigency.

### **Medical Certification**<sup>1415</sup>

The District may require the eligible employee to obtain certification of the covered service member's serious health condition to help the District determine if the requested leave qualifies for FMLA leave. The District may deny FMLA leave if an eligible employee fails to provide requested certification.

### **Employee Notice to District**

#### **Foreseeable Leave:**

When the need for leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury is clearly foreseeable at least 30 days in advance, the employee shall provide the

District with not less than 30 days' notice before the date the leave is to begin of the employee's intention to take leave for the specified reason. An eligible employee who has no reasonable excuse for his/her failure to provide the District with timely advance notice of the need for FMLA leave may delay the FMLA coverage of such leave until 30 days after the date the employee provides notice.

If the need for FMLA leave is foreseeable less than 30 days in advance, the employee shall notify the District as soon as practicable. If the employee fails to notify as soon as practicable, the District may delay granting FMLA leave for the length of time that the employee should have provided notice and when the employee actually gave notice.

When the need for leave is to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury, the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the district subject to the

approval of the health care provider of the spouse, son, daughter, or parent of the employee.

#### **Unforeseeable Leave:**

When the approximate timing of the need for leave is not foreseeable, an employee shall provide the District notice of the need for leave as soon as practicable given the facts and circumstances of the particular case. Ordinarily, the employee shall notify the District within two (2) working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. Notice may be provided in person, by telephone, telegraph, fax, or other electronic means. If the eligible employee fails to notify the District as required unless the failure to comply is justified by unusual circumstances, the FMLA leave may be delayed or denied.

#### **Substitution of Paid Leave**

When an employee's leave has been designated as FMLA leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury, the District requires employees to substitute accrued sick, vacation, or personal leave for the period of FMLA leave.

#### **Intermittent or Reduced Schedule Leave**

To the extent practicable, employees requesting intermittent or reduced schedule leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury shall provide the District with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave.

Eligible employees may take intermittent or reduced schedule FMLA leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury when the medical need is best accommodated by such a schedule. The eligible employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider.

When granting leave on an intermittent or reduced schedule to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury that is foreseeable based on planned medical treatment, the District may temporarily transfer eligible employees for the period of scheduled intermittent or reduced leave to an alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. The alternative position shall have equivalent pay and benefits but does not have to have equivalent duties. When the employee is able to return to full-time work, the employee shall be placed in the same or equivalent job as he/she had when the leave began.

#### **Special Provisions relating to Instructional Employees (as defined in this policy)**

The FMLA definition of "instructional employees" covers a small number of classified employees. Any classified employee covered under the FMLA definition of an "instructional employee" and whose FMLA leave falls under Act's special leave provisions relating to "instructional employees" shall be governed by the applicable portions of policy 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE.

Notes: This policy is similar to Policy 3.32. If you change this policy, review 3.32 at the same time to ensure applicable consistency between the two.

Determining whether an absence qualifies as FMLA leave is a **DISTRICT** responsibility and not the employee's. While much of the statutes' language refers to an employee's request for FMLA leave, the employee has **NO** mandatory responsibility for initiating the exchange of information that might relate his/her absence to that of the FMLA. The District has the right and the duty to ask for enough information concerning an employee's absence to make a determination. The employee has the responsibility and duty to respond to questions asked in an effort for the District to make the initial determination. Any issue of medical certification to be provided by the employee is secondary to that of informal questioning to determine whether the absence does in fact, fall under the FMLA umbrella. The

District must fulfill its responsibility for the posting of employee FMLA notice requirements to make those requirements enforceable. This is done through posting the notices available at the link in footnote #<sup>34</sup> **AND** by the employee's receipt of this policy in the employee handbook.

<sup>1</sup> It is possible for a full time employee to be eligible for FMLA leave one year and not the next. For example, if an employee on a 190 day contract takes the full 12 weeks of FMLA leave in year one, that would mean the employee only worked 130 days. Assuming the employee is credited for 8 hours per workday, the employee would have only worked 1040 (130 x 8=1040) which would make the employee ineligible for FMLA leave for the year following the year in which the employee took the leave.

<sup>2</sup> The Wage and Hour Division of the Department of Labor has issued a Guidance to help interpret the scope of the definition of "son or daughter" as it applies to an employee standing "in loco parentis" to a child. The following quote from the Guidance is offered to give an idea of the complexity of the definition. (The Guidance, in full, is available by calling the ASBA office or at the link in footnote #4.)

Congress intended the definition of "son or daughter" to reflect "the reality that many children in the United States today do not live in traditional 'nuclear' families with their biological father and mother. Increasingly, those who find themselves in need of workplace accommodation of their child care responsibilities are not the biological parent of the children they care for, but their adoptive, step, or foster parents, their guardians, or sometimes simply their grandparents or other relatives or adults." Congress stated that the definition was intended to be "construed to ensure that an employee who actually has day-to-day responsibility for caring for a child is entitled to leave even if the employee does not have a biological or legal relationship to that child."

<sup>34</sup> A Department of Labor poster along with several additional forms that are necessary to fulfill FMLA's requirements are available at <http://www.dol.gov/whd/fmla/index.htm>. Please note that the DOL forms lack the required disclaimer required by the Genetic Information Nondiscrimination Act (GINA). We suggest that you include the following

language taken from the final rule implementing the GINA:

*The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. “Genetic information,” as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.*

<sup>45</sup> We suggest you use the Department of Labor’s *Notice of Eligibility and Rights and Responsibilities* form (otherwise known as Appendix D) to help you fulfill the requirements of this section. It’s available at the link in footnote #<sup>34</sup> or by calling the ASBA office. When making the determination, we suggest initially erring on the side of granting it. Retroactively designating leave as FMLA has more potential liability for the district if the employee can demonstrate the initial failure to grant the leave under FMLA caused him/her harm or injury. If due to receipt of the medical certification, it turns out that the leave does not qualify, you will need to readjust the available FMLA leave accordingly.

<sup>56</sup> As used in this policy, “applicable” is a very important word. Some leave taken under FMLA also applies to sick leave and therefore, the employee will get paid for the leave to the extent the employee has sick leave accrued. Other leave taken under FMLA is not applicable to sick leave and therefore the FMLA leave is unpaid. For instance, “applicable leave” in terms of time taken under FMLA due to the birth of a child will vary depending on the language in your District’s policy on sick leave. For instance, if sick leave may be taken “for reason of personal illness or illness in the immediate family” (based on the statutory definition in 6-17-1202, and an employee gives birth to a child, she may take sick leave for the amount of time that her personal physician deems it necessary for her to physically recover from childbirth. Once the medically necessary time has passed, sick leave is no longer appropriate and cannot be used. While under the FMLA, the employee could take additional time off work, she would need to take unpaid FMLA leave for this purpose, unless she had personal days or vacation days available. However, if your district has a much more liberal definition of sick leave in District policy, the results could be entirely different. Another example would be the potential for overlap between pregnancy complications that arise to the level of a “serious health condition.” For instance, pregnancy complications that rose to the level of a “serious health condition” would qualify for both, while missing work for a dentist’s appointment would qualify for sick leave, but would not qualify for FMLA leave. Consult policy 8.5—CLASSIFIED EMPLOYEES SICK LEAVE when making the determination of what sick leave qualifies under both policies.

<sup>67</sup> There are several issues that must be addressed in the written notice. Appendix E of Part 825 available from the Wage and Hour Division of the US Department of Labor is a good way to both give your employee written notice and help ensure you have included the necessary information in the notice. Appendix E is available at the link contained in footnote #<sup>34</sup> or by calling the ASBA office.

<sup>78</sup> The District cannot cancel an employee's insurance for the employee's failure to pay his/her share of the premium until the payment is 30 or more days late. The District must give prior, written notice to the employee at least 15 days prior to the cancelation of the policy stating that the policy will be terminated on a given date if payment is not received by that date which must be at least 15 days from the date of the letter.

<sup>89</sup> Due to the district's liability for meeting the requirement of this paragraph and similar obligations for life insurance premiums or other benefits, the District needs to consider picking up the costs of such premiums during an employee's **unpaid** FMLA leave **if** the employee fails to pay his/her share of the

costs. If the District elects to maintain such benefits during the leave, at the conclusion of leave the District is entitled to recover only the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work. To help you decide if you should choose to pay premium costs in such a situation, the following except from 29 CFR 825.212(c):

*If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. See § 825.215(d)(1) through (5). In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage. If an employer terminates an employee's insurance in accordance with this section and fails to restore the employee's health insurance as required by this section upon the employee's return, the employer may be liable for benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable relief tailored to the harm suffered.*

<sup>910</sup> You may choose the time interval of the required duty to report, but it must be reasonable.

<sup>1011</sup> ASBA model policy 8.5—CLASSIFIED EMPLOYEES SICK LEAVE includes language entitling employees with up to 15 days of sick leave in a school-year for issue relating to the adoption of child. If you have not adopted this provision, delete #2 from this sentence. Include reason #1 if you have a liberal sick leave policy that would permit leave to be taken for bonding with a new born son or daughter.

<sup>1112</sup> The Department of Labor's *Designation Notice* has entries that address this section's requirements. It's very helpful. Unfortunately, the titles of the DOL forms leave a lot to be desired. The Designation notice **and** the *Medical Condition Certification* form are both listed as Appendix E. For this section you will actually need both of them; the *Designation Notice* to fulfill your notice requirements and the medical certification form to enable you to determine if the employee's leave is actually covered under the FMLA. They are both available at the link in footnote #3 or by calling the ASBA office.



<sup>12</sup><sup>13</sup> The types and amounts of leave available for a particular type of qualifying exigency are covered in 29 C.F.R. § 825.126. Call the ASBA office for a copy. While the current CFR has not been updated

since the FMLA law was amended, it can still be helpful to give an idea of the types of circumstances that trigger leave eligibility.

<sup>13</sup><sup>14</sup> You can use Appendix G, *Certification of Qualifying Exigency for Military Family Leave* to obtain the certification. (It hasn't been updated to meet the changes in the FMLA law, but it will work. It's available at the link in footnote #<sup>3</sup><sup>4</sup> or by calling the ASBA office.

<sup>14</sup><sup>15</sup> You can use Appendix H, *Covered Service Member Serious Injury* form to obtain the certification. It's available at the link in footnote #<sup>3</sup><sup>4</sup> or by calling the ASBA office.

Cross Reference: 8.5—CLASSIFIED EMPLOYEES SICK LEAVE

Legal References:        29 USC §§ 2601 et seq.  
                                 29 CFR part 825

Date Adopted: 5-19-03

Last Revised: 4/22/13

## **8.24—SCHOOL BUS DRIVER’S USE OF CELL PHONES**

Any driver of a motor vehicle which is privately owned and operated for compensation, or which is owned, leased or otherwise operated by, or for the benefit of the District, and is operated for the transportation of children to or from school or school sponsored activity shall not operate a cell phone unless the vehicle is safely off the road with the parking brake engaged.

Legal Reference:       A.C.A. § 6 –19 -120  
ADE Rules and Regulations Governing Mobile Phone Usage by School Bus Drivers

Date Adopted: 5-19-03  
Last Revised:

## **8.25— NONCERTIFIED PERSONNEL CELL PHONE USE**

Use of cell phones or other electronic communication devices by employees during their designated work time is strictly forbidden unless specifically approved in advance by the superintendent, building principal, or their designees.

Date Adopted: 5-19-03

Last Revised: 3-19-07

## 8.26 —NONCERTIFIED PERSONNEL RESPONSIBILITIES GOVERNING BULLYING

School employees who have witnessed, or are reliably informed that, a student has been a victim of bullying as defined in this policy, including a single action which if allowed to continue would constitute bullying, shall report the incident(s) to the principal. The principal or his/her designee shall be responsible for investigating the incident(s) to determine if disciplinary action is warranted.

The person or persons reporting behavior they consider to be bullying shall not be subject to retaliation or reprisal in any form.

District staff are required to help enforce implementation of the district's anti-bullying policy and shall receive the training necessary to comply with this policy. The district's definition of bullying is included below. Students who bully another person are to be held accountable for their actions whether they occur on school equipment or property; off school property at a school-sponsored or school-approved function, activity, or event; or going to or from school or a school activity. Students are encouraged to report behavior they consider to be bullying, including a single action which if allowed to continue would constitute bullying, to their teacher or the building principal. The report may be made anonymously.

A school principal or his or her designee who receives a credible report or complaint of bullying shall promptly investigate the complaint or report and make a record of the investigation and any action taken as a result of the investigation.

### **Definitions:**

**Attribute** means an actual or perceived personal characteristic including without limitation race, color, religion, ancestry, national origin, socioeconomic status, academic status, disability, gender, gender identity, physical appearance, health condition, or sexual orientation;

**Bullying** means the intentional harassment, intimidation, humiliation, ridicule, defamation, or threat or incitement of violence by a student against another student or public school employee by a written, verbal, electronic, or physical act that may address an attribute of the other student, public school employee, or person with whom the other student or public school employee is associated and that causes or creates actual or reasonably foreseeable:

- Physical harm to a public school employee or student or damage to the public school employee's or student's property;
- Substantial interference with a student's education or with a public school employee's role in education;
- A hostile educational environment for one (1) or more students or public school employees due to the severity, persistence, or pervasiveness of the act; or
- Substantial disruption of the orderly operation of the school or educational environment;

**Electronic act** means without limitation a communication or image transmitted by means of an electronic device, including without limitation a telephone, wireless phone or other wireless communications device, computer, or pager that results in the substantial disruption of the orderly operation of the school or educational environment.

Electronic acts of bullying are prohibited whether or not the electronic act originated on school property or with school equipment, if the electronic act is directed specifically at students or school personnel and maliciously intended for the purpose of disrupting school, and has a high likelihood of succeeding in that purpose;

**Harassment** means a pattern of unwelcome verbal or physical conduct relating to another person's constitutionally or statutorily protected status that causes, or reasonably should be expected to cause, substantial interference with the other's performance in the school environment; and

**Substantial disruption** means without limitation that any one or more of the following occur as a result of the bullying:

- Necessary cessation of instruction or educational activities;
- Inability of students or educational staff to focus on learning or function as an educational unit because of a hostile environment;
- Severe or repetitive disciplinary measures are needed in the classroom or during educational activities; or
- Exhibition of other behaviors by students or educational staff that substantially interfere with the learning environment.

Examples of "Bullying" may include but are not limited to a pattern of behavior involving one or more of the following:

1. Sarcastic comments "compliments" about another student's personal appearance or actual or perceived attributes,
2. Pointed questions intended to embarrass or humiliate,
3. Mocking, taunting or belittling,
4. Non-verbal threats and/or intimidation such as "fronting" or "chesting" a person,
5. Demeaning humor relating to a student's race, gender, ethnicity or actual or perceived attributes,
6. Blackmail, extortion, demands for protection money or other involuntary donations or loans,

7. Blocking access to school property or facilities,
8. Deliberate physical contact or injury to person or property,
9. Stealing or hiding books or belongings,
10. Threats of harm to student(s), possessions, or others,
11. Sexual harassment, as governed by policy 8.20, is also a form of bullying, and/or
12. Teasing or name-calling based on the belief or perception that an individual is not conforming to expected gender roles (Example: "Slut") or conduct or is homosexual, regardless of whether the student self-identifies as homosexual (Examples: "You are so gay." "Fag" "Queer").

**Notes:** A school employee who has reported violations under the school district's policy shall be immune from any tort liability which may arise from the failure to remedy the reported incident.

Act 907 of 2011 requires all personnel to receive training related to compliance with the district's antibullying policies.

This policy is similar to Policy 3.38. If you change this policy, review 3.38 at the same time to ensure applicable consistency between the two.

Legal Reference: A.C.A. § 6-18-514

Date Adopted: 10-18-04

Last Revised: 3-19-07

4-28-08

6-20-11

4/22/2013

## **8.27—NONCERTIFIED PERSONNEL LEAVE — INJURY FROM ASSAULT**

Any staff member, who, while in the course of their employment, is injured by an assault or other violent act; while intervening in a student fight; while restraining a student; or while protecting a student from harm, shall be granted a leave of absence for up to one (1) year from the date of the injury, with full pay.

A leave of absence granted under this policy shall not be charged to the staff member's sick leave.

In order to obtain leave under this policy, the staff member must present documentation of the injury from a physician, with an estimate for time of recovery sufficient to enable the staff member to return to work, and written statements from witnesses (or other documentation as appropriate to a given incident) to prove that the incident occurred in the course of the staff member's employment.

Legal Reference:       A.C.A. § 6-17-1308

Date Adopted: 10-18-04  
Last Revised:

## **8.28— DRUG FREE WORKPLACE - NONCERTIFIED PERSONNEL**

The conduct of district staff plays a vital role in the social and behavioral development of our students. It is equally important that the staff have a safe, healthful, and professional environment in which to work. To help promote both interests, the district shall have a drug free workplace. It is, therefore, the district's policy that district employees are prohibited from the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances, illegal drugs, inhalants, alcohol, as well as inappropriate or illegal use of prescription drugs. Such actions are prohibited both while at work or in the performance of official duties while off district property; violations of this policy will subject the employee to discipline, up to and including termination.

To help promote a drug free workplace, the district shall establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the district's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance abuse programs, and the penalties that may be imposed upon employees for drug abuse violations. For more info on abuse programs see the superintendent.

Should any employee be found to have been under the influence of, or in illegal possession of, any illegal drug or controlled substance or under the influence of alcohol, whether or not engaged in any school or school-related activity, and the behavior of the employee, if under the influence, is such that it is inappropriate for a school employee in the opinion of the superintendent, the employee may be subject to discipline, up to and including termination.

Possession, use or distribution of drug paraphernalia by any employee, whether or not engaged in school or school-related activities, may subject the employee to discipline, up to and including termination. Possession in one's vehicle or in an area subject to the employee's control will be considered to be possession as though the substance were on the employee's person.

It shall not be necessary for an employee to test at a level demonstrating intoxication by any substance in order to be subject to the terms of this policy. Any physical manifestation of being under the influence of a substance may subject an employee to the terms of this policy. Those physical manifestations include, but are not limited to: unsteadiness; slurred speech; dilated or constricted pupils; incoherent and/or irrational speech; or the presence of an odor associated with a prohibited substance on one's breath or clothing.

Should an employee desire to provide the District with the results of a blood, breath or urine analysis, such results will be taken into account by the District only if the sample is provided within a time range that could provide meaningful results and only by a testing agency chosen or approved by the District. The District shall not request that the employee be tested, and the expense for such voluntary testing shall be borne by the employee.

Any employee who is charged with a violation of any state or federal law relating to the possession, use or distribution of illegal drugs, other controlled substances or alcohol, or of drug paraphernalia, must notify his immediate supervisor within five (5) week days (i.e., Monday through Friday, inclusive, excluding holidays) of being so charged. The supervisor who is notified of such a charge shall notify the Superintendent immediately. If the supervisor is not



available to the employee, the employee shall notify the Superintendent within the five (5) day period.

Any employee so charged is subject to discipline, up to and including termination. However, the failure of an employee to notify his supervisor or the Superintendent of having been so charged shall result in that employee being recommended for termination by the Superintendent.

Any employee convicted of any criminal drug statute violation for an offense that occurred while at work or in the performance of official duties while off district property shall report the conviction within 5 calendar days to the superintendent. Within 10 days of receiving such notification, whether from the employee or any other source, the district shall notify federal granting agencies from which it receives funds of the conviction. Compliance with these requirements and prohibitions is mandatory and is a condition of employment.

Any employee convicted of any state or federal law relating to the possession, use or distribution of illegal drugs, other controlled substances or alcohol, or of drug paraphernalia, shall be recommended for termination.

Any employee who must take prescription medication at the direction of the employee's physician, and who is impaired by the prescription medication such that he cannot properly perform his duties shall not report for duty. Any employee who reports for duty and is so impaired, as determined by his supervisor, will be sent home. The employee shall be given sick leave, if owed any. The District or employee will provide transportation for the employee, and the employee may not leave campus while operating any vehicle. It is the responsibility of the employee to contact his physician in order to adjust the medication, if possible, so that the employee may return to his job unimpaired. Should the employee attempt to return to work while impaired by prescription medications, for which the employee has a prescription, he will, again, be sent home and given sick leave, if owed any; Should the employee attempt to return to work while impaired by prescription medication a third time the employee may be subject to discipline, up to and including a recommendation of termination.

Any employee who possesses, uses, distributes or is under the influence of a prescription medication obtained by a means other than his own current prescription shall be treated as though he was in possession, possession with intent to deliver, or under the influence, etc. of an illegal substance. An illegal drug or other substance is one which is (a) not legally obtainable; or (b) one which is legally obtainable, but which has been obtained illegally. The District may require an employee to provide proof from his physician and/or pharmacist that the employee is lawfully able to receive such medication. Failure to provide such proof, to the satisfaction of the Superintendent, may result in discipline, up to and including a recommendation of termination.

For assistance in constructing a drug awareness program the Department of Labor has the following web site:

<http://www.dol.gov/asp/programs/drugs/workingpartners/materials/materials.asp>.

Legal References: 41 USC § 702, 703, and 706

Date Adopted: 8-15-05

Last Revised: 3-19-07

## **8.28F—DRUG FREE WORKPLACE POLICY ACKNOWLEDGEMENT**

### CERTIFICATION

I, hereby certify that I have been presented with a copy of the Bismarck School District's drug-free workplace policy, that I have read the statement, and that I will abide by its terms as a condition of my employment with District.

Signature \_\_\_\_\_

Date \_\_\_\_\_

## **8.29—NONCERTIFIED PERSONNEL VIDEO SURVEILLANCE**

The board has a responsibility to maintain discipline, protect the safety, security, and welfare of its students, staff, and visitors while at the same time safeguarding district facilities, vehicles, and equipment. As part of fulfilling this responsibility, the board authorizes the use of video/audio surveillance cameras. The placement of video/audio surveillance cameras shall be based on the presumption and belief that students, staff and visitors have no reasonable expectation of privacy anywhere on or near school property, facilities, vehicles, or equipment, with the exception of places such as rest rooms or dressing areas where an expectation of privacy is reasonable and customary.

Signs shall be posted on district property and in or on district vehicles to notify students, staff, and visitors that video cameras may be in use. Violations of school personnel policies or laws caught by the cameras may result in disciplinary action.

The district shall retain copies of video recordings until they are erased which may be accomplished by either deletion or copying over with a new recording.

Videos containing evidence of a violation of district personnel policies and/or state or federal law shall be retained until the issue of the misconduct is no longer subject to review or appeal as determined by board policy or staff handbook; any release or viewing of such records shall be in accordance with current law.

Staff who vandalize, damage, defeat, disable, or render inoperable (temporarily or permanently) surveillance cameras and equipment shall be subject to appropriate disciplinary action and referral to appropriate law enforcement authorities.

Video recordings may become a part of a staff member's personnel record.

Note: This policy is similar to policies 4.48 and 3.41. If you change this policy, review 4.48 and 3.41 at the same time to ensure applicable consistency between the policies.

Date Adopted: 6-16-08

Last Revised:

## **8.30—NONCERTIFIED PERSONNEL REDUCTION IN FORCE**

### **SECTION ONE**

The School Board acknowledges its authority to conduct a reduction in force (RIF) when a decrease in enrollment or other reason(s) make such a reduction necessary or desirable. A RIF will be conducted when the need for a reduction in the work force exceeds the normal rate of attrition for that portion of the staff that is in excess of the needs of the district as determined by the superintendent.

In effecting a reduction in force, the primary goals of the school district shall be: what is in the best interests of the students; to maintain accreditation in compliance with the Standards of Accreditation for Arkansas Public Schools and/or the North Central Association; and the needs of the district. A reduction in force will be implemented when the superintendent determines it is advisable to do so and shall be effected through non-renewal, termination, or both. Any reduction in force will be conducted by evaluating the needs and long- and short-term goals of the school district in relation to the staffing of the district.

If a reduction in force becomes necessary, the RIF shall be conducted separately for each occupational category of classified personnel identified within the district on the basis of each employee's years of service. The employee within each occupational category with the least years of experience will be non-renewed first. The employee with the most years of employment in the district as compared to other employees in the same category shall be non-renewed last. In the event that employees within a given occupational category have the same length of service to the district the one with the earlier hire date, based on date of board action, will prevail.

When the District is conducting a RIF, all potentially affected classified employees shall receive a listing of the personnel within their category with corresponding totals of years of service. Upon receipt of the list, each employee has ten (10) working days within which to appeal his or her total years of service to the superintendent whose decision shall be final. Except for changes made pursuant to the appeals process, no changes will be made to the list that would affect an employee's total after the list is released.

Total years of service to the district shall include non-continuous years of service; in other words, an employee who left the district and returned later will have the total years of service counted, from all periods of employment. Working fewer than 160 days in a school year shall not constitute a year. Length of service in a licensed position shall not count for the purpose of length of service for a classified position. There is no right or implied right for any employee to "bump" or displace any other employee. This specifically does not allow a licensed employee who might wish to assume a classified position to displace a classified employee.

Pursuant to any reduction in force brought about by consolidation or annexation and as a part of it, the salaries of all employees will be brought into compliance, by a partial RIF if necessary, with the receiving district's salary schedule. Further adjustments will be made if length of contract or job assignments change.<sup>1</sup> A Partial RIF may also be conducted in conjunction with any job reassignment whether or not it is conducted in relation to an annexation or consolidation.

If a classified employee is non-renewed under this policy, he or she shall be offered an opportunity to fill a classified vacancy comparable as to pay, responsibility and contract length to the position from which the employee was non-renewed, and for which he or she is qualified for a period of up to two (2) years, with the starting date of the two (2) year period being the date of board action on the non-renewal recommendation. The non-renewed employee shall be eligible to be recalled for a period of two (2) years in reverse order of the non-renewal to any position for which he or she is qualified. No right of recall shall exist for non-renewal from a

stipend, or non-renewal or reduction of a stipend, or non-renewal to reduce contract length. Notice of vacancies to non-renewed employees shall be by first class mail to all employees reasonably believed to be both qualified for and subject to rehire for a particular position and they shall have 10 working days from the date that the notification is mailed in which to conditionally accept or reject the offer of a position with the actual offer going to the qualified employee with the most years of service who responds within the 10 day time period. A lack of response or a non-renewed employee's refusal of an offer of a position or an employee's acceptance of a position but failure to sign an employment contract within two business days of the contract being presented to the employee shall end the district's obligation to rehire the non-renewed employee and no further rights to be rehired shall exist.

## **SECTION TWO**

The employees of any school district which annexes to, or consolidates with, the Bismarck District will be subject to dismissal or retention at the discretion of the school board, on the recommendation of the superintendent, solely on the basis of need for such employees on the part of the Bismarck District, if any, at the time of the annexation or consolidation, or within ninety (90) days after the effective date of the annexation or consolidation. The need for any employee of the annexed or consolidated school district shall be determined solely by the superintendent and school board of the Bismarck District.

Such employees will not be considered as having any seniority within the Bismarck District and may not claim an entitlement under a reduction in force to any position held by a Bismarck District employee prior to, or at the time of, or prior to the expiration of ninety (90) days after the consolidation or annexation, if the notification provision below is undertaken by the superintendent.

The superintendent shall mail or have hand-delivered the notification to such employee of his intention to recommend non-renewal or termination pursuant to a reduction in force within ninety (90) days of the effective date of the annexation or consolidation in order to effect the provisions of this section of the Bismarck District's reduction-in-force policy. Any such employees who are non-renewed or terminated pursuant to Section Two are not subject to recall. Any such employees shall be paid at the rate for each person on the appropriate level on the salary schedule of the annexed or consolidated district during those ninety (90) days and/or through the completion of the reduction-in-force process.

This subsection of the reduction-in-force policy shall not be interpreted to provide that the superintendent must wait ninety (90) days from the effective date of the annexation or consolidation in order to issue notification of his intention to recommend dismissal through reduction-in-force, but merely that the superintendent has that period of time in which to issue notification so as to be able to invoke the provisions of this section.

The intention of this section is to ensure that those Bismarck District employees who are employed prior to the annexation or consolidation shall not be displaced by employees of the annexed or consolidated district by application of the reduction-in-force policy.

Legal Reference:       A.C.A. § 6-17-2407

Date Adopted: 8-15-05  
Revised: 3-19-07;  
6-20-11;

4/22/2013

### **8.31 —NONCERTIFIED PERSONNEL TERMINATION AND NON-RENEWAL**

For procedures relating to the termination and non-renewal of noncertified employees, please refer to the Public School Employee Fair Hearing Act A.C.A. § 6-17-1701 through 1705. The Act specifically is not made a part of this policy by this reference.

A copy of the code is available in the office of the principal of each school building.

Legal Reference: A.C.A. § 6-17-2301

Date Adopted: 8-15-05

Last Revised: 3-19-07

### **8.32 —NONCERTIFIED PERSONNEL ASSIGNMENTS**

The superintendent shall be responsible for assigning and reassigning noncertified personnel.

Legal Reference: A.C.A. § 6-17-2301

Date Adopted: 8-15-05

Last Revised: 3-19-07

## 8.33—NONCERTIFIED PERSONNEL SCHOOL CALENDAR

The superintendent shall present to the PPC a school calendar which the board has adopted as a proposal. The Superintendent, in developing the calendar, shall accept and consider recommendations from any staff member or group wishing to make calendar proposals. The PPC shall have the time prescribed by law and/or policy in which to make any suggested changes before the board may vote to adopt the calendar.

The District shall not establish a school calendar that interferes with any ACTAAP scheduled testing that might jeopardize or limit the valid testing and comparison of student learning gains.

The Bismarck School District shall operate by the Board Adopted 2013-14 school calendar.

BISMARCK SCHOOL DISTRICT									
2013-2014 Calendar									
1ST SEMESTER									
August 15.....Open House (5pm-7pm)									
August 19.....First Day of 13-14 Term									
September 2.....Labor Day Holiday									
October 16.....End of 1st Quarter (42 days)									
October 22.....P/T Conferences (2:30-7:30)									
October 25.....Fall Break Holiday									
November 25-29.....Thanksgiving Holiday									
December 20.....End of 2nd Quarter (41 Days)									
December 23- January 3, 2014.....Christmas Holiday									
2ND SEMESTER									
January 6.....1st Day of 2nd Semester									
February 14.....Winter Holiday Break									
March 11 - 12.....Grade 11 Literacy Exam									
March 13.....P/T Conferences (2:30-7:30)									
March 14.....End of 3rd Quarter (49 days)									
March 17 - May 2.....ELDA Test									
March 24-March 28.....Spring Break									
March 31 - April 11.....Grades 1-2 and Grade 9 Iowa Test									
April 7 - 11.....Grades 3 - 8 Benchmark Test									
April 18.....Good Friday Holiday									
April 22 - 23.....EOC Geometry									
April 29 - 30.....End of Course Biology Exam									



May 13 - 14.....End of Course Algebra I Exam									
May 23.....High School Graduation									
May 26.....Memorial Day Holiday									
May 28.....Last day of school (46 days for 4th Quarter)									
<b>Inclement weather days will be at end of the school year beginning 5/29 and progressing</b>									
<b>in consecutive order.</b>									
Board Approved: 03/25/2013									

Adopted: 3-19-2007

Revised: 3/14/11;

3/25/13

### **8.34—NONCERTIFIED PERSONNEL WHO ARE MANDATORY REPORTERS DUTY TO REPORT CHILD ABUSE, MALTREATMENT OR NEGLECT**

It is the statutory duty of noncertified school district employees **who are mandatory reporters**<sup>1</sup> and who have reasonable cause to suspect child abuse or maltreatment to directly and personally report these suspicions to the Arkansas Child Abuse Hotline, by calling 1-800-482-5964. Failure to report suspected child abuse, maltreatment or neglect by calling the Hotline can lead to criminal prosecution and individual civil liability of the person who has this duty. Notification of local or state law enforcement does not satisfy the duty to report; only notification by means of the Child Abuse Hotline discharges this duty.

The duty to report suspected child abuse or maltreatment is a direct and personal duty for statutory mandatory reporters, and cannot be assigned or delegated to another person. There is no duty to investigate, confirm or substantiate statements a student may have made which form the basis of the reasonable cause to believe that the student may have been abused or subjected to maltreatment by another person; however, a person with a duty to report may find it helpful to make a limited inquiry to assist in the formation of a belief that child abuse, maltreatment or neglect has occurred, or to rule out such a belief<sup>2</sup>. Employees and volunteers who call the Child Abuse Hotline in good faith are immune from civil liability and criminal prosecution.

By law, no school district or school district employee may prohibit or restrict an employee or volunteer **who is a mandatory reporter** from directly reporting suspected child abuse or maltreatment, or require that any person notify or seek permission from any person before making a report to the Child Abuse Hotline.

Notes: For a listing of who qualifies as mandatory reporters refer to A.C.A. § 12-18-402(b).

Act 1236 of 2009, codified at A.C.A. § 6-61-133, requires professional development related to child maltreatment for licensed employees and includes school nurses, school social workers, and school psychologists in the list of “licensed employees” who must receive the required PD.

Legal References:

A.C.A. § 12-18-107

A.C.A. § 12-18-201 et seq.

A.C.A. § 12-18-402

Legal References: A.C.A. § 12-12-504, 507, 517

Date Adopted: 6-16-08

Last Revised: 6-20-11

## 8.35 —OBTAINING AND RELEASING STUDENT’S FREE AND REDUCED MEAL ELIGIBILITY INFORMATION

### Obtaining Eligibility Information

A fundamental underpinning of the National School Lunch and School Breakfast Programs (Programs) is that in their implementation, there will be no physical segregation of, discrimination against, or overt identification of children who are eligible for the Program's benefits. While the requirements of the Programs are defined in much greater detail in federal statutes and pertinent Code of Federal Regulations, this policy is designed to help employees understand prohibitions on how the student information is obtained and/or released through the Programs. Employees with the greatest responsibility for implementing and monitoring the Programs should obtain the training necessary to become fully aware of the nuances of their responsibilities.

The District is required to inform households with children enrolled in District schools of the availability of the Programs and of how the household may apply for Program benefits. However, the District and anyone employed by the district is **strictly forbidden** from **requiring** any household or student within a household from submitting an application to participate in the program. There are NO exceptions to this prohibition and it would apply, for example, to the offer of incentives for completed forms, or disincentives or negative consequences for failing to submit or complete an application. Put simply, federal law requires that the names of the children shall not be published, posted or announced in any manner.

In addition to potential federal criminal penalties that may be filed against a staff member who violates this prohibition, the employee shall be subject to discipline up to and including termination.

### Releasing Eligibility Information

As part of the district’s participation in the National School Lunch Program and the School Breakfast Program, the district collects eligibility data from its students. The data’s confidentiality is very important and is governed by federal law. The district has made the determination to release student eligibility status or information as permitted by law. Federal law governs how eligibility data may be released and to whom. The district will take the following steps to ensure its confidentiality:

Some data may be released to government agencies or programs authorized by law to receive such data without parental consent, while other data may only be released after obtaining parental consent. In both instances, allowable information shall only be released on a need to know basis to individuals authorized to receive the data. The recipients shall sign an agreement with the district specifying the names or titles of the persons who may have access to the eligibility information. The agreement shall further specify the specific purpose(s) for which the data will be used and how the recipient(s) shall protect the data from further, unauthorized disclosures.

The superintendent shall designate the staff member(s) responsible for making eligibility determinations. Release of eligibility information to other district staff shall be limited to as few individuals as possible who shall have a specific need to know such information to perform their job responsibilities. Principals, counselors, teachers, and administrators shall not have routine access to eligibility information or status.

Each staff person with access to individual eligibility information shall be notified of their personal liability for its unauthorized disclosure and shall receive appropriate training on the laws governing the restrictions of such information.

Notes: The Child Nutrition Unit of the ADE website (<http://cnn.k12.ar.us>) has the referenced Commissioner's Memos as well as helpful information to develop your policy statement packet. Additionally, Commissioner's Memos FIN 09-041 has two attachments that will go a long way toward explaining the restrictions on the release of eligibility information and status.

The penalty for improper disclosure of eligibility information is a fine of not more than \$1000 per student name if a violation is by either the district or a person in the disclosure without authorization under federal confidentiality regulations and/or imprisonment of not more than one year.

The district owns the data and has the right to choose whether or not to release it to **anyone**. Therefore, the district must make the decisions concerning its release. With the ownership comes the responsibility to ensure proper security of the data.

Legal References:      Commissioner's Memos IA-05-018, FIN 09-041, IA 99-011, and FIN 13-018  
ADE Eligibility Manual for School Meals Revised July 2012  
7 CFR 210.1 – 210.31  
7 CFR 220.1 – 220.22  
7 CFR 245.5, 245.6, 245.8  
42 USC 1758(b)(6)

Date Adopted: 4/22/13  
Last Revised:

## **8.36 —CLASSIFIED PERSONNEL WORKPLACE INJURIES AND WORKERS' COMPENSATION**

The district provides Workers' Compensation Insurance, as required by law. Employees who sustain **any** injury at work must immediately notify their immediate supervisor, or in the absence of their immediate supervisor notify the superintendent. An injured employee must fill out a Form N and the employee's supervisor will determine whether to report the claim or to file the paperwork if the injury requires neither medical treatment or lost work time. While many injuries will require no medical treatment or time lost at work, should the need for treatment arise later, it is important that there be a record that the injury occurred. All employees have a duty to provide information and make statements as requested for the purposes of the claim assessment and investigation.

For injuries requiring medical attention, the district will exercise its right to designate the initial treating physician and an injured employee will be directed to seek medical attention, if necessary, from a specific physician or clinic.

A Workers' Compensation absence may run concurrently with FMLA leave (policy 3.32) when the injury is one that meets the criteria for a serious health condition. To the extent that workers compensation benefits and FMLA leave run concurrently, the employee will be charged for any paid leave accrued by the employee at the rate necessary to bring the total amount of combined income up to 100% of usual contracted daily rate of pay.

If the health care provider treating the employee for the workers compensation injury certifies the employee is able to return to a "light duty job," but is unable to return to the employee's same or equivalent job, the employee may decline the District's offer of a "light duty job." As a result, the employee may lose his/her workers' compensation payments, but for the duration of the employee's FMLA leave, the employee will be paid for the leave to the extent that the employee has accrued applicable leave.

To the extent an employee has accrued sick leave and a WC claim has been filed:

- the employee will be charged for a day's sick leave for the all days missed until such time as the WC claim has been approved or denied;
- an employee whose WC claim is accepted by the WC insurance carrier as compensable and who is absent for eight or more days shall be charged sick leave at the rate necessary, when combined with WC benefits, to bring the total amount of combined income up to 100% of the employee's usual contracted daily rate of pay;
- an employee whose WC claim is accepted by the WC insurance carrier as compensable and is absent for 14 or more days will be credited back that portion of sick leave for the first seven (7) days of absence that is not necessary to have brought the total amount of combined income up to 100% of the employee's usual contracted gross pay.

Cross Reference:

8.23     —CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE

Legal References:     Ark. Workers Compensation Commission RULE 099.33 - MANAGED CARE  
A.C.A. § 11-9-508(d)(5)(A)  
A.C.A. § 11-9-514(a)(3)(A)(i)

Date Adopted: 4/22/13

Last Revised:

## **8.39—DEPOSITING COLLECTED FUNDS**

From time to time, staff members may collect funds in the course of their employment. It is the responsibility of any staff member to deposit such funds they have collected at least bi-weekly<sup>1</sup> into the appropriate accounts for which they have been collected. The Superintendent or his/her designee shall be responsible for determining the need for receipts for funds collected and other record keeping requirements and of notifying staff of the requirements.

Staff that use any funds collected in the course of their employment for personal purposes, or who deposit such funds in a personal account, may be subject to discipline up to and including termination.

Date Adopted: 6-20-11

Last Revised:

## **8.40—LICENSED PERSONNEL WEAPONS ON CAMPUS**

### Firearms

Arkansas law A.C.A. 5-73-119 forbids the possession of a firearm on any public school campus or in or upon any school bus. All employees of this school district, including those who may possess a “concealed carry permit,” shall strictly abide by this law, with the exception of those employees who may be participating in a school-approved educational course or program involving the use of firearms such as ROTC programs, hunting safety or military education, or before or after-school hunting or rifle clubs. With the exception of firearms located in an employee’s on-campus personal residence and immediately adjacent parking area, The possession of a firearm by a school district employee anywhere on school property, including parking areas and in or upon a school bus, will result in disciplinary action being taken against the employee, which may include termination or nonrenewal of the contract of employment.

### Other Weapons

An employee may carry, for the purpose of self-defense, a small container of tear gas or mace which for the purpose of this policy is defined as having a capacity of 150cc or less.

Legal References:A.C.A. § 5-73-119

A.C.A. § 5-73-120

A.C.A. § 5-73-124(a)(2)

Date Adopted: 4/22/13

Last Revised

## SUPPORTING DOCUMENTS AND INFORMATION FOR POLICY—8.11

This information is offered to assist you in developing your noncertified overtime/comptime policies and is **not** to be included in your district's policy manual.

### Important Points to be Considered in Finalizing Your Policy and Meeting FLSA Requirements

The most basic points of the requirements of the Fair Labor Standards Act (29 USCS § 201 et seq.) are:

- all covered employees shall be paid for **every** hour they work,
- employees shall receive time and a half for all hours over 40 worked in any week,
- employees shall be compensated for overtime on the paycheck immediately following the week in which it was earned,
- each employee shall know the number of hours they are expected to work in a “normal” workweek,
- meticulous records need to be kept of the hours each employee works each week,
- all employees are **hourly** employees unless they clearly meet the requirements for “exempt” employees as specified in the FLSA.

Covered employees are those who are not exempt. Exempt employees as a general rule are those who are required to have a certification as a condition of their employment. There are exceptions, but determinations should be done on a case by case basis. Employees may choose to have their wages paid over the school's full fiscal year. Each employee choosing to do so should have an itemization on his contract stating what his hourly wage is, how many hours per week he is expected to work, and what he can expect to earn if he were to work his normal workweek for the term of his contract. Any overtime earned in a pay period **must** be paid the following paycheck; overtime earnings cannot be worked into the 12 month payout. **Remember** that an announcement that no overtime will be permitted does **not** negate your obligation to pay for the unasked or unauthorized hours worked. A district's only option in such instances is to take disciplinary action.

For employees who have previously been salaried it may take some explaining to get them to be comfortable with being an hourly employee. By having the hourly wage and projected annual earnings listed on employees' contracts they can be shown that the change is not intended to lessen their net pay. Consider including such items as hourly rate of pay; starting date for the year; expected ending date for the year; expected number of hours for per day and per week; and expected annual earnings if all of the “normal” hours are worked.

It is important to distinguish between hours worked and hours not worked, but which have been compensated for, such as sick leave or personal leave. The FLSA refers to such compensation as “payments for hours not worked.” If an employee is sick for a day and receives compensation for that day (let's say it's 8 hours), the sick leave hours for which he is compensated do not count in the number of hours he has worked for the week. Thus, if the same employee worked 40 hours in the remainder of the workweek, his total hours **worked** for the week would be 40 and not 48.

As previously stated, the number of hours each employee is expected to work in their normal workweek has to be determined and stated as part of their contract. If an employee has a normal workweek of 30 hours and works 35 hours in a particular workweek, you have the option of paying him his regular rate for the 5 additional



hours or giving comptime at a one-to-one ratio. Overtime does not kick in unless an employee works more than 40 hours in a workweek.

For those districts which have previously been lax on keeping written records of how many hours each employee worked each and every week, the comptime policy will be a change from the way “it’s always been done.” Once again it is important to stress that the changes are merely a way to have the district in compliance with the law. The lawyers looking for clients are using lax record keeping as a means of getting their foot in the door. Once this happens, the time spent on keeping the records correctly in the first place will seem very tame by comparison.

There is a part of the Code of Federal Regulations (29 CFR § 516.2(c)) which was included in some information districts received from the DOL which makes a record keeping exception for employees on a “fixed schedule.” Lunch breaks are an example of why we are not recommending districts do this. Any lunch break less than 30 minutes in length has to be counted as time worked. With a written record of exactly what time an employee breaks for, and returns from lunch, there can be no subsequent question regarding whether the employee did, in fact, receive a duty free lunch break of at least 30 minutes. Consistency of enforcement for all employees can also help to smooth the transition.

**Note:** as stated in footnote #8 of the policy, the district is also required to keep certain records for exempt employees. 29 CFR § 516.2 –516.6 and (29 CFR § 553.50 states what records a district is required to keep and for how long. They are cited in the supplemental information that follows. The district also must display minimum wage posters in each work site. They can download from the DOL by going to <http://www.dol.gov/esa/regs/compliance/posters/flsa.htm>.

## **Bus Drivers**

There is no specific mention of bus drivers in the policy, but among the implications of the FLSA is that bus drivers will receive different net pay (assuming they receive the same hourly rate of pay) based on the length of their routes which must be measured on a time basis. The hours bus drivers are required to spend inspecting, cleaning, or otherwise dealing with their bus before and/or after their route needs to be included in determining the hours they work in their normal workweek. For non-route purposes such as field trips and/or athletics, bus drivers have to be paid for all the time they are on the job. 29 CFR § 785.16(a) states, in part, “*Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use*

*the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived.*” A rule of thumb for the lower limit to qualify for such duty free time is 3 hours, but note that the code also states that the time must be able to be used *effectively for his own purposes*. It is highly recommended that you have signed agreements with your drivers regarding their on and off the clock hours for their road trips. Overnight trips are treated similarly. So long as the driver knows that they have **no** duty responsibilities you are not obligated to pay for those hours. Should you have any reason to unexpectedly need a driver’s services, you become obligated to pay them for their time.

Employees who work more than one job for the district are to be paid for the total hours worked each week in all their jobs combined. If their wages are different in one or more jobs, they are to be paid for the number of

hours worked at each wage. If they work more than 40 hours in a workweek, they are to be paid for the amount of overtime they work at each wage. To do this, take the total earned from the hours worked at each wage,

divide that number by the total number of hours worked (which gives you the “blended” hourly rate), multiply the quotient by 1/2 and that is the total due in overtime wages for the week.

The hours worked by employees who work “occasionally or sporadically” for the district in a **different capacity** than their regular employment shall not be counted in their hours worked for overtime purposes. Occasional and sporadic is defined as infrequent, irregular, or occurring in scattered instances. Provided the employee does so entirely voluntarily and without any fear of reprisals for not doing so. Consult 29 USCS § 207(p) and 29 CFR § 553.31 in the supplemental information that follows for further clarification.

The following are the pertinent portions of the U.S. Code relating to minimum wage, overtime, and Department of Labor (DOL) inspection rights. Major portions of extraneous code have been deleted. The U.S. Code is the statute itself which is subsequently interpreted in the Code of Federal Regulations (CFR). The CFR is included in this document immediately following the U.S. Code. Refer to the U.S. Code to better understand references in the Code of Federal Regulations (CFR) supporting documents when sections are mentioned such as section 7(e). In the example cited, the reference is to 29 USCS § 207 (e), which is included in the following cites. For each section included, the heading in bold type will be shown as, for example, **Sec. 206**, which is actually 29 USCS § 206.

## UNITED STATES CODE SERVICE

### TITLE 29--LABOR

#### CHAPTER 8--FAIR LABOR STANDARDS

##### **Sec. 206. Minimum wage**

**(a) Employees engaged in commerce;** home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) except as otherwise provided in this section, not less than \$4.25 an hour during the period ending on September 30, 1996, not less than \$4.75 an hour during the year beginning on October 1, 1996, and not less than \$5.15 an hour beginning September 1, 1997; **ASBA note: 6-17-2203 stipulates that full time classified employees (those working 20 or more hours per week) shall receive not less than \$6.25/hour. This figure was increased by Act 1773 of 2003 to 6.38/hour.**

**(d) Prohibition of sex discrimination**

(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of

the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

## **Sec. 207. Maximum hours**

### **(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions**

(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966--

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

### **(b) Employment pursuant to collective bargaining agreement; employment by independently owned and controlled local enterprise engaged in distribution of petroleum products**

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks; or

(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty-hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) of this section or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed;

**(e) ``Regular rate" defined**

As used in this section the ``regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include--

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day of workweek because such hours are hours worked in excess of eight in a day or in excess of the

maximum workweek applicable to such employee under subsection (a) of this section or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium

rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a) of this section), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; or

#### **(g) Employment at piece rates**

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection--

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) of this section are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

#### **(h) Credit toward minimum wage or overtime compensation of amounts excluded from regular rate**

(1) Except as provided in paragraph (2), sums excluded from the regular rate pursuant to subsection (e) of this section shall not be creditable toward wages required under section 206 of this title or overtime compensation required under this section.

(2) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) of this section shall be creditable toward overtime compensation payable pursuant to this section.

#### **(o) Compensatory time**

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only--

(A) pursuant to--

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than--

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee, whichever is higher.

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency--

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) of this section if--

(A) such employee is paid at a per-page rate which is not less than--

(i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,

(ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or

(iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

(B) the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee's attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court reporting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.

(7) For purposes of this subsection--

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

**(p) Special detail work for fire protection and law enforcement employees; occasional or sporadic employment; substitution**

(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(3) If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

**(q) Maximum hour exemption for employees receiving remedial education**

Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is--

(1) provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(2) designed to provide reading and other basic skills at an eighth grade level or below; and

(3) does not include job specific training.

**Sec. 211. Collection of data**

**(a) Investigations and inspections**

The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and

inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter. Except as provided in section 212 of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 of this title, the Administrator shall bring all actions under section 217 of this title to restrain violations of this chapter.

**(b) State and local agencies and employees**

With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and duties under this chapter, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

**(c) Records**

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 207(p)(3) of this title may not be required under this subsection to keep a record of the hours of the substitute work.

**Sec. 213. Exemptions**

**(a) Minimum wage and maximum hour requirements**

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities).

**Sec. 216. Penalties**

**(b) Damages; right of action; attorney's fees and costs; termination of right of action**



Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer

who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) of this title.

**(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions**

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207 of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in section 255(a) of this title, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

**Sec. 218. Relation to other laws**

(a) No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

## **CODE OF FEDERAL REGULATIONS**

The Code of Federal Regulations (CFR) is intended to be the explanation of the code as enacted. The following are CFR excerpts relating to the Fair Labor Standards Act. As we did with the code itself, most of the extraneous portions have been omitted for sanity purposes. For each section included the heading in bold type will be shown as, for example, **Sec. 516.2**, which is actually 29 CFR § 516.2.

### **TITLE 29--LABOR**

#### **CHAPTER V--WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR**

##### **RECORDS TO BE KEPT BY EMPLOYERS (29CFR 516.0 – 516.12)**

###### **Subpart A--General Requirements**

**Sec. 516.2 Employees subject to minimum wage or minimum wage and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Act.**

**(a) Items required.** Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom section 6 or both sections 6 and 7(a) of the Act apply:

- (1) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records,
- (2) Home address, including zip code,
- (3) Date of birth, if under 19,
- (4) Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss., or Ms.) (Employee's sex identification is related to the equal pay provisions of the Act which are administered by the Equal Employment Opportunity Commission. Other equal pay recordkeeping requirements are contained in 29 CFR part 1620.)
- (5) Time of day and day of week on which the employee's workweek begins (or for employees employed under section 7(k) of the Act, the starting time and length of each employee's work period). If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek

beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice,

(6)(i) Regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the Act,

(ii) explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, and

(iii) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate" (these records may be in the form of vouchers or other payment data),

(7) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of 7 consecutive workdays),

(8) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation,

(9) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under paragraph (a)(8) of this section,

(10) Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions,

(11) Total wages paid each pay period,

(12) Date of payment and the pay period covered by payment.

**(b) Records of retroactive payment of wages.** Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division pursuant to section 16(c) and/or section 17 of the Act, shall:

(1) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(2) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour Division, and (i) preserve a copy as part of the records, (ii) deliver a copy to the employee, and (iii) file the original, as evidence of payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

**(c) Employees working on fixed schedules.** With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by paragraph (a)(7) of this section, the schedule of daily and weekly hours the employee normally works. Also,

(1) In weeks in which an employee adheres to this schedule, indicates by check mark, statement or other method that such hours were in fact actually worked by him, and

(2) In weeks in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.

**Sec. 516.3 Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to section 13(a)(1) of the Act.**

With respect to each employee in a bona fide executive, administrative, or professional capacity (including employees employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools), or in outside sales, as defined in part 541 of this chapter (pertaining to so-called "white collar" employee exemptions), employers shall maintain and preserve records

containing all the information and data required by Sec. 516.2(a) except paragraphs (a) (6) through (10) and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites. (This may be shown as the dollar amount of earnings per month, per week, per month plus commissions, etc. with appropriate addenda such as ``plus hospitalization and insurance plan A," ``benefit package B," ``2 weeks paid vacation," etc.)

#### **Sec. 516.4 Posting of notices.**

Every employer employing any employees subject to the Act's minimum wage provisions shall post and keep posted a notice explaining the Act, as prescribed by the Wage and Hour Division, in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy. Any employer of employees to whom section 7 of the Act does not apply because of an exemption of broad application to an establishment may alter or modify the poster with a legible notation to show that the overtime provisions do not apply. For example: Overtime Provisions Not Applicable to Taxicab Drivers (section 13(b)(17)).

#### **Sec. 516.5 Records to be preserved 3 years.**

Each employer shall preserve for at least 3 years:

**(a) Payroll records.** From the last date of entry, all payroll or other records containing the employee information and data required under any of the applicable sections of this part, and

**(b) Certificates, agreements, plans, notices, etc.**

From their last effective date, all written:

(1) Collective bargaining agreements relied upon for the exclusion of certain costs under section 3(m) of the Act,

(2) Collective bargaining agreements, under section 7(b)(1) or 7(b)(2) of the Act, and any amendments or additions thereto,

(3) Plans, trusts, employment contracts, and collective bargaining agreements under section 7(e) of the Act,

(4) Individual contracts or collective bargaining agreements under section 7(f) of the Act. Where such contracts or agreements are not in writing, a written memorandum summarizing the terms of each such contract or agreement,

(5) Written agreements or memoranda summarizing the terms of oral agreements or understandings under section 7(g) or 7(j) of the Act, and

(6) Certificates and notices listed or named in any applicable section of this part.

**(c) Sales and purchase records.** A record of (1) total dollar volume of sales or business, and (2) total volume of goods purchased or received during such periods (weekly, monthly, quarterly, etc.), in such form as the employer maintains records in the ordinary course of business.

#### **Sec. 516.6 Records to be preserved 2 years.**

**(a) Supplementary basic records:** Each employer required to maintain records under this part shall preserve for a period of at least 2 years.

(1) Basic employment and earnings records. From the date of last entry, all basic time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part the pay period earnings or wages of those employees.

(2) Wage rate tables. From their last effective date, all tables or schedules of the employer which provide the piece rates or other rates used in computing straight-time earnings, wages, or salary, or overtime pay computation.

**(b) Order, shipping, and billing records:** From the last date of entry, the originals or true copies of all customer orders or invoices received, incoming or outgoing shipping or delivery records, as well as all bills of lading and all billings to customers (not including individual sales slips, cash register tapes or the like) which the employer retains or makes in the usual course of business operations.

**(c) Records of additions to or deductions from wages paid:**

(1) Those records relating to individual employees referred to in Sec. 516.2(a)(10) and

(2) All records used by the employer in determining the original cost, operating and maintenance cost, and depreciation and interest charges, if such costs and charges are involved in the additions to or deductions from wages paid.

#### **Sec. 516.7 Place for keeping records and their availability for inspection.**

**(a) Place of records.** Each employer shall keep the records required by this part safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be made available within 72 hours following notice from the Administrator or a duly authorized and designated representative.

**(b) Inspection of records.** All records shall be available for inspection and transcription by the Administrator or a duly authorized and designated representative.

#### **Sec. 516.8 Computations and reports.**

Each employer required to maintain records under this part shall make such extension, recomputation, or transcription of the records and shall submit to the Wage and Hour Division such reports concerning persons employed and the wages, hours, and other conditions and practices of employment set forth in the records as the Administrator or a duly authorized and designated representative may request in writing.

#### **Sec. 516.9 Petitions for exceptions.**

**(a) Submission of petitions for relief.** Any employer or group of employers who, due to peculiar conditions under which they must operate, desire authority to maintain records in a manner other than required in this part, or to be relieved of preserving certain records for the period specified in this part, may submit a written petition to the Administrator requesting such authority, setting forth the reasons therefor.

**(b) Action on petitions.** If, after review of the petition, the Administrator finds that the authority requested will not hinder enforcement of the Act, the Administrator may grant such authority limited by any conditions determined necessary and subject to subsequent revocation. Prior to revocation of such authority because of

noncompliance with any of the prescribed conditions, the employer will be notified of the reasons and given an opportunity to come into compliance.

**(c) Compliance after submission of petitions.** The submission of a petition or the delay of the Administrator in acting upon such petition will not relieve any employer or group of employers from any obligations to comply with all the applicable requirements of the regulations in this part. However, the Administrator will provide a response to all petitions as soon as possible.

**Sec. 553.50 Records to be kept of compensatory time.** (This section is from the comptime regulations, but for your convenience we have also included it here.)

For each employee subject to the compensatory time and compensatory time off provisions of section 7(o) of the Act, a public agency which is a State, a political subdivision of a State or an interstate governmental agency shall maintain and preserve records containing the basic information and data required by Sec. 516.2 of this title and, in addition:

- (a) The number of hours of compensatory time earned pursuant to section 7(o) each workweek, or other applicable work period, by each employee at the rate of one and one-half hour for each overtime hour worked;
- (b) The number of hours of such compensatory time used each workweek, or other applicable work period, by each employee;
- (c) The number of hours of compensatory time compensated in cash, the total amount paid and the date of such payment; and
- (d) Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time off. If such agreement or understanding is not in writing, a record of its existence must be kept.

## **COMPENSATORY TIME (29 CFR 553.1 – 553.106)**

### **Subpart A--General**

#### **Sec. 553.3 Coverage--general.**

- (a)(1) In 1966, Congress amended the FLSA to extend coverage to State and local government employees engaged in the operation of hospitals, nursing homes, schools, and mass transit systems.
- (2) In 1972, the Education Amendments further extended coverage to employees of public preschools.
- (3) In 1974, the FLSA Amendments extended coverage to virtually all of the remaining State and local government employees who were not covered as a result of the 1966 and 1972 legislation.
- (b) Certain definitions already in the Act were modified by the 1974 Amendments. The definition of the term "employer" was changed to include public agencies and that of "employee" was amended to include individuals employed by public agencies. The definition of "enterprise" contained in section 3(r) of the Act was modified to provide that activities of a public agency are performed for a "business purpose." The term "enterprise engaged in commerce or in the production of goods for commerce" defined in section 3(s) of the Act was expanded to include public agencies.

### **Section 7(o)--Compensatory Time and Compensatory Time Off**

#### **Sec. 553.20 Introduction.**

Section 7 of the FLSA requires that covered, nonexempt employees receive not less than one and one-half times their regular rates of pay for hours worked in excess of the applicable maximum hours standards. However, section 7(o) of the Act provides an element of flexibility to State and local government employers and an element of choice to their employees or the representatives of their employees regarding compensation for statutory overtime hours. The exemption provided by this subsection authorizes a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, to provide compensatory time off (with certain limitations, as provided in Sec. 553.21) in lieu of monetary overtime compensation that would otherwise be required under section 7. Compensatory time received by an employee in lieu of cash must be at the rate of not less than one and one-half hours of compensatory time for each hour of overtime work, just as the monetary rate for overtime is calculated at the rate of not less than one and one-half times the regular rate of pay.

## **29 CFR 553.21 Statutory Provisions**

### **Section 7(o) provides as follows:**

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only--

(A) pursuant to--

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3). (240 hours for schools)

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than--

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee, whichever is higher.

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency--

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency. 29 USC 207(o)(5)(B)

(6) The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) of this section if--

(A) such employee is paid at a per-page rate which is not less than--

(i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,

(ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or

(iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

(B) the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee's attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court reporting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.

(7) For purposes of this subsection--

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

#### **Sec. 553.22 "FLSA compensatory time" and "FLSA compensatory time off".**

(a) Compensatory time and compensatory time off are interchangeable terms under the FLSA. Compensatory time off is paid time off the job which is earned and accrued by an employee in lieu of immediate cash payment for employment in excess of the statutory hours for which overtime compensation is required by section 7 of the FLSA.

(b) The Act requires that compensatory time under section 7(o) be earned at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by section 7 of the FLSA. Thus, the 480-hour limit on accrued compensatory time represents not more than 320 hours of actual overtime worked, and the 240-hour limit represents not more than 160 hours of actual overtime worked.

(c) The 480- and 240-hour limits on accrued compensatory time only apply to overtime hours worked after April 15, 1986. Compensatory time which an employee has accrued prior to April 15, 1986, is not subject to the overtime requirements of the FLSA and need not be aggregated with compensatory time accrued after that date.

#### **Sec. 553.23 Agreement or understanding prior to performance of work.**



(a) General. (1) As a condition for use of compensatory time in lieu of overtime payment in cash, section 7(o)(2)(A) of the Act requires an agreement or understanding reached prior to the performance of work. This can be accomplished pursuant to a collective bargaining agreement, a memorandum of understanding or any other agreement between the public agency and representatives of the employees. If the employees do not have a representative, compensatory time may be used in lieu of cash overtime compensation only if such an agreement or understanding has been arrived at between the public agency and the individual employee before the performance of work. No agreement or understanding is required with respect to employees hired prior to April 15, 1986, who do not have a representative, if the employer had a regular practice in effect on April 15, 1986, of granting compensatory time off in lieu of overtime pay.

(2) Agreements or understandings may provide that compensatory time off in lieu of overtime payment in cash may be restricted to certain hours of work only. In addition, agreements or understandings may provide for any combination of compensatory time off and overtime payment in cash (e.g., one hour compensatory time credit plus one-half the employee's regular hourly rate of pay in cash for each hour of overtime worked) so long as the premium pay principle of at least "time and one-half" is maintained. The agreement or understanding may include other provisions governing the preservation, use, or cashing out of compensatory time so long as these provisions are consistent with section 7(o) of the Act. To the extent that any provision of an agreement or understanding is in violation of section 7(o) of the Act, the provision is superseded by the requirements of section 7(o).

(b) Agreement or understanding between the public agency and a representative of the employees. (1) Where employees have a representative, the agreement or understanding concerning the use of compensatory time must be between the representative and the public agency either through a collective bargaining agreement or through a memorandum of understanding or other type of oral or written agreement. In the absence of a collective bargaining agreement applicable to the employees, the representative need not be a formal or recognized bargaining agent as long as the representative is designated by the employees. Any agreement must be consistent with the provisions of section 7(o) of the Act.

(2) Section 2(b) of the 1985 Amendments provides that a collective bargaining agreement in effect on April 15, 1986, which permits compensatory time off in lieu of overtime compensation, will remain in effect until the expiration date of the collective bargaining agreement unless otherwise modified. However, the terms and conditions of such agreement under which compensatory time off is provided after April 14, 1986, must not violate the requirements of section 7(o) of the Act and these regulations.

(c) Agreement or understanding between the public agency and individual employees. (1) Where employees of a public agency do not have a recognized or otherwise designated representative, the agreement or understanding concerning compensatory time off must be between the public agency and the individual employee and must be reached prior to the performance of work. This agreement or understanding with individual employees need not be in writing, but a record of its existence must be kept. (See Sec. 553.50.) An employer need not adopt the same agreement or understanding with different employees and need not provide compensatory time to all employees. The agreement or understanding to provide compensatory time off in lieu of cash overtime compensation may take the form of an express condition of employment, provided (i) the employee knowingly and voluntarily agrees to it as a condition of employment and (ii) the employee is informed that the compensatory time received may be preserved, used or cashed out consistent with the provisions of section 7(o) of the Act. An agreement or understanding may be evidenced by a notice to the employee that compensatory time off will be given in lieu of overtime pay. In such a case, an agreement or understanding would be presumed to exist for purposes of section 7(o) with respect to any employee who fails to express to the employer an unwillingness to accept compensatory time off in lieu of overtime pay. However, the employee's decision to accept compensatory time off in lieu of cash overtime payments must be made freely and without coercion or pressure.

(2) Section 2(a) of the 1985 Amendments provides that in the case of employees who have no representative and were employed prior to April 15, 1986, a public agency that has had a regular practice of awarding compensatory time off in lieu of overtime pay is deemed to have reached an agreement or understanding with these employees as of April 15, 1986. A public agency need not secure an agreement or understanding with each employee employed prior to that date. If, however, such a regular practice does not conform to the provisions of section 7(o) of the Act, it must be modified to do so with regard to practices after April 14, 1986. With respect to employees hired after April 14, 1986, the public employer who elects to use compensatory time must follow the guidelines on agreements discussed in paragraph (c)(1) of this section.

**Sec. 553.25 Conditions for use of compensatory time ("reasonable period", "unduly disrupt").**

(a) Section 7(o)(5) of the FLSA provides that any employee of a public agency who has accrued compensatory time and requested use of this compensatory time, shall be permitted to use such time off within a "reasonable period" after making the request, if such use does not "unduly disrupt" the operations of the agency. This provision, however, does not apply to "other compensatory time" (as defined below in Sec. 553.28), including compensatory time accrued for overtime worked prior to April 15, 1986.

(b) Compensatory time cannot be used as a means to avoid statutory overtime compensation. An employee has the right to use compensatory time earned and must not be coerced to accept more compensatory time than an employer can realistically and in good faith expect to be able to grant within a reasonable period of his or her making a request for use of such time.

(c) Reasonable period. (1) Whether a request to use compensatory time has been granted within a "reasonable period" will be determined by considering the customary work practices within the agency based on the facts and circumstances in each case. Such practices include, but are not limited to (a) the normal schedule of work, (b) anticipated peak workloads based on past experience, (c) emergency requirements for staff and services, and (d) the availability of qualified substitute staff.

(2) The use of compensatory time in lieu of cash payment for overtime must be pursuant to some form of agreement or understanding between the employer and the employee (or the representative of the employee) reached prior to the performance of the work. (See Sec. 553.23.) To the extent that the (conditions under which an employee can take compensatory time off are contained in an agreement or understanding as defined in Sec. 553.23, the terms of such agreement or understanding will govern the meaning of "reasonable period".

(d) Unduly disrupt. When an employer receives a request for compensatory time off, it shall be honored unless to do so would be "unduly disruptive" to the agency's operations. Mere inconvenience to the employer is an insufficient basis for denial of a request for compensatory time off. (See H. Rep. 99-331, p. 23.) For an agency to turn down a request from an employee for compensatory time off requires that it should reasonably and in good faith anticipate that it would impose an unreasonable burden on the agency's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services.

**Sec. 553.26 Cash overtime payments.**

(a) Overtime compensation due under section 7 may be paid in cash at the employer's option, in lieu of providing compensatory time off under section 7(o) of the Act in any workweek or work period. The FLSA does not prohibit an employer from freely substituting cash, in whole or part, for compensatory time off; and overtime payment in cash would not affect subsequent granting of compensatory time off in future workweeks or work periods. (See Sec. 553.23(a)(2).)

(b) The principles for computing cash overtime pay are contained in 29 CFR part 778. Cash overtime compensation must be paid at a rate not less than one and one-half times the regular rate at which the employee is actually paid. (See 29 CFR 778.107.)

(c) In a workweek or work period during which an employee works hours which are overtime hours under FLSA and for which cash overtime payment will be made, and the employee also takes compensatory time off, the payment for such time off may be excluded from the regular rate of pay under section 7(e)(2) of the Act. Section 7(e)(2) provides that the regular rate shall not be deemed to include. . . payments made for occasional periods when no work is performed due to vacation, holiday, . . . or other similar cause. As explained in 29 CFR 778.218(d), the term "other similar cause" refers to payments made for periods of absence due to factors like holidays, vacations, illness, and so forth. Payments made to an employee for periods of absence due to the use of accrued compensatory time are considered to be the type of payments in this "other similar cause" category.

#### **Sec. 553.27 Payments for unused compensatory time.**

(a) Payments for accrued compensatory time earned after April 14, 1986, may be made at any time and shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(b) Upon termination of employment, an employee shall be paid for unused compensatory time earned after April 14, 1986, at a rate of compensation not less than--

(1) The average regular rate received by such employee during the last 3 years of the employee's employment, or

(2) The final regular rate received by such employee, whichever is higher.

(c) The phrase last 3 years of employment means the 3-year period immediately prior to termination.

Where an employee's last 3 years of employment are not continuous because of a break in service, the period of employment after the break in service will be treated as new employment. However, such a break in service must have been intended to be permanent and any accrued compensatory time earned after April 14, 1986, must have been cashed out at the time of initial separation. Where the final period of employment is less than 3 years, the average rate still must be calculated based on the rate(s) in effect during such period.

(d) The term "regular rate" is defined in 29 CFR 778.108. As indicated in Sec. 778.109, the regular rate is an hourly rate, although the FLSA does not require employers to compensate employees on an hourly basis.

#### **Sec. 553.28 Other compensatory time.**

(a) Compensatory time which is earned and accrued by an employee for employment in excess of a nonstatutory (that is, non-FLSA) requirement is considered "other" compensatory time. The term "other" compensatory time off means hours during which an employee is not working and which are not counted as hours worked during the period when used. For example, a collective bargaining agreement may provide that compensatory time be granted to employees for hours worked in excess of 8 in a day, or for working on a scheduled day off in a nonovertime workweek. The FLSA does not require compensatory time to be granted in such situations.

(b) Compensatory time which is earned and accrued by an employee working hours which are "overtime" hours under State or local law, ordinance, or other provisions, but which are not overtime hours under section 7 of the FLSA is also considered "other" compensatory time. For example, a local law or ordinance may provide that compensatory time be granted to employees for hours worked in excess of 35 in a workweek. Under section 7(a) of the FLSA, only hours worked in excess of 40 in a workweek are overtime hours which must be compensated at one and one-half times the regular rate of pay.

(c) Similarly, compensatory time earned or accrued by an employee for employment in excess of a standard established by the personnel policy or practice of an employer, or by custom, which does not result from the FLSA provision, is another example of "other" compensatory time.

(d) The FLSA does not require that the rate at which "other" compensatory time is earned has to be at a rate of one and one-half hours for each hour of employment. The rate at which "other" compensatory time is earned may be some lesser or greater multiple of the rate or the straight-time rate itself.

(e) The requirements of section 7(o) of the FLSA, including the limitations on accrued compensatory time, do not apply to "other" compensatory time as described above.

### **Other Exemptions**

#### **Sec. 553.30 Occasional or sporadic employment-section 7(p)(2).**

(a) Section 7(p)(2) of the FLSA provides that where State or local government employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime liability under the Act.

(b) Occasional or sporadic. (1) The term occasional or sporadic means infrequent, irregular, or occurring in scattered instances. There may be an occasional need for additional resources in the delivery of certain types of public services which is at times best met by the part-time employment of an individual who is already a public employee. Where employees freely and solely at their own option enter into such activity, the total hours worked will not be combined for purposes of determining any overtime compensation due on the regular, primary job. However, in order to prevent overtime abuse, such hours worked are to be excluded from computing overtime compensation due only where the occasional or sporadic assignments are not within the same general occupational category as the employee's regular work.

(2) In order for an employee's occasional or sporadic work on a part-time basis to qualify for exemption under section 7(p)(2), the employee's decision to work in a different capacity must be made freely and without coercion, implicit or explicit, by the employer. An employer may suggest that an employee undertake another kind of work for the same unit of government when the need for assistance arises, but the employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision.

(3) Typically, public recreation and park facilities, and stadiums or auditoriums utilize employees in occasional or sporadic work. Some of these employment activities are the taking of tickets, providing security for special events (e.g., concerts, sports events, and lectures), officiating at youth or other recreation and sports events, or engaging in food or beverage sales at special events, such as a county fair. Employment in such activity may be considered occasional or sporadic for regular employees of State or local government agencies even where the need can be anticipated because it recurs seasonally (e.g., a holiday concert at a city college, a program of scheduled sports events, or assistance by a city payroll clerk in processing returns at tax filing time). An activity does not fail to be occasional merely because it is recurring. In contrast, for example, if a parks department clerk, in addition to his or her regular job, also regularly works additional hours on a part-time basis (e.g., every week or every other week) at a public park food and beverage sales center operated by that agency, the additional work does not constitute intermittent and irregular employment and, therefore, the hours worked would be combined in computing any overtime compensation due.

(c) Different capacity. (1) In order for employment in these occasional or sporadic activities not to be considered subject to the overtime requirements of section 7 of the FLSA, the regular government employment

of the individual performing them must also be in a different capacity, i.e., it must not fall within the same general occupational category.

(2) In general, the Administrator will consider the duties and other factors contained in the definitions of the 3-digit categories of occupations in the Dictionary of Occupational Titles (except in the case of public safety employees as discussed below in section (3)), as well as all the facts and circumstances in a particular case, in determining whether employment in a second capacity is substantially different from the regular employment.

(3) For example, if a public park employee primarily engaged in playground maintenance also from time to time cleans an evening recreation center operated by the same agency, the additional work would be considered hours worked for the same employer and subject to the Act's overtime requirements because it is not in a different capacity. This would be the case even though the work was occasional or sporadic, and, was not regularly scheduled. Public safety employees taking on any kind of security or safety function within the same local government are never considered to be employed in a different capacity.

(4) However, if a bookkeeper for a municipal park agency or a city mail clerk occasionally referees for an adult evening basketball league sponsored by the city, the hours worked as a referee would be considered to be in a different general occupational category than the primary employment and would not be counted as hours worked for overtime purposes on the regular job. A person regularly employed as a bus driver may assist in crowd control, for example, at an event such as a winter festival, and in doing so, would be deemed to be serving in a different capacity.

(5) In addition, any activity traditionally associated with teaching (e.g., coaching, career counseling, etc.) will not be considered as employment in a different capacity. However, where personnel other than teachers engage in such teaching-related activities, the work will be viewed as employment in a different capacity, provided that these activities are performed on an occasional or sporadic basis and all other requirements for this provision are met. For example, a school secretary could substitute as a coach for a basketball team or a maintenance engineer could provide instruction on auto repair on an occasional or sporadic basis.

#### **Sec. 553.31 Substitution--section 7(p)(3).**

(a) Section 7(p)(3) of the FLSA provides that two individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked shall be excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under the Act. Where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.

(b) The provisions of section 7(p)(3) apply only if employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee substitute or "trade time" with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward by the employer, and (ii) exclusively for the employee's own convenience.

(c) A public agency which employs individuals who substitute or "trade time" under this subsection is not required to keep a record of the hours of the substitute work.

(d) In order to qualify under section 7(p)(3), an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. This requires that the agency be aware of the arrangement prior to the work being done, i.e., the employer must know what work is

being done, by whom it is being done, and where and when it is being done. Approval is manifest when the employer is aware of the substitution and indicates approval in whatever manner is customary.

### **Recordkeeping**

#### **Sec. 553.50 Records to be kept of compensatory time.**

For each employee subject to the compensatory time and compensatory time off provisions of section 7(o) of the Act, a public agency which is a State, a political subdivision of a State or an interstate governmental agency shall maintain and preserve records containing the basic information and data required by Sec. 516.2 of this title and, in addition:

- (a) The number of hours of compensatory time earned pursuant to section 7(o) each workweek, or other applicable work period, by each employee at the rate of one and one-half hour for each overtime hour worked;
- (b) The number of hours of such compensatory time used each workweek, or other applicable work period, by each employee;
- (c) The number of hours of compensatory time compensated in cash, the total amount paid and the date of such payment; and
- (d) Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time off. If such agreement or understanding is not in writing, a record of its existence must be kept.

### **OVERTIME COMPENSATION (29 CFR 778.0 –603)**

#### **Subpart A--General Considerations**

##### **Sec. 778.5 Relation to other laws generally.**

Various Federal, State, and local laws require the payment of minimum hourly, daily or weekly wages different from the minimum set forth in the Fair Labor Standards Act, and the payment of overtime compensation computed on bases different from those set forth in the Fair Labor Standards Act. Where such legislation is applicable and does not contravene the requirements of the Fair Labor Standards Act, nothing in the act, the regulations or the interpretations announced by the Administrator should be taken to override or nullify the provisions of these laws. Compliance with other applicable legislation does not excuse noncompliance with the Fair Labor Standards Act. Where a higher minimum wage than that set in the Fair Labor Standards Act is applicable to an employee by virtue of such other legislation, the regular rate of the employee, as the term is used in the Fair Labor Standards Act, cannot be lower than such applicable minimum, for the words "regular rate at which he is employed" as used in section 7 must be construed to mean the regular rate at which he is lawfully employed.

#### **Subpart B--The Overtime Pay Requirements**

##### **Introductory**

##### **Sec. 778.100 The maximum-hours provisions.**

Section 7(a) of the Act deals with maximum hours and overtime compensation for employees who are within the general coverage of the Act and are not specifically exempt from its overtime pay requirements. It prescribes the maximum weekly hours of work permitted for the employment of such employees in any workweek without extra compensation for overtime, and a general overtime rate of pay not less than one and one-half times the employee's regular rate which the employee must receive for all hours worked in any workweek in excess of the applicable maximum hours. The employment by an employer of an employee in any work subject to the Act in any workweek brings these provisions into operation. The employer is prohibited from employing the employee in excess of the prescribed maximum hours in such workweek without paying him the required extra compensation for the overtime hours worked at a rate meeting the statutory requirement.

#### **Sec. 778.101 Maximum nonovertime hours.**

As a general standard, section 7(a) of the Act provides 40 hours as the maximum number that an employee subject to its provisions may work for an employer in any workweek without receiving additional compensation at not less than the statutory rate for overtime. Hours worked in excess of the statutory maximum in any workweek are overtime hours under the statute; a workweek no longer than the prescribed maximum is a nonovertime workweek under the Act, to which the pay requirements of section 6 (minimum wage and equal pay) but not those of section 7(a) are applicable.

#### **Sec. 778.104 Each workweek stands alone.**

The Act takes a single workweek as its standard and does not permit averaging of hours over 2 or more weeks. Thus, if an employee works 30 hours one week and 50 hours the next, he must receive overtime compensation for the overtime hours worked beyond the applicable maximum in the second week, even though the average number of hours worked in the 2 weeks is 40. This is true regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, monthly or other basis. The rule is also applicable to pieceworkers and employees paid on a commission basis. It is therefore necessary to determine the hours worked and the compensation earned by pieceworkers and commission employees on a weekly basis.

#### **Sec. 778.105 Determining the workweek.**

An employee's workweek is a fixed and regularly recurring period of 168 hours--seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under the Fair Labor Standards Act, a single workweek may be established for a plant or other establishment as a whole or different workweeks may be established for different employees or groups of employees. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act. The proper method of computing overtime pay in a period in which a change in the time of commencement of the workweek is made, is discussed in Secs. 778.301 and 778.302.

#### **Sec. 778.106 Time of payment.**

There is no requirement in the Act that overtime compensation be paid weekly. The general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends. When the correct amount of overtime compensation cannot be determined until some time after the regular pay period, however, the requirements of the Act will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practicable. Payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may payment be delayed beyond the next payday after such computation can be made. Where retroactive wage increases are made, retroactive overtime compensation is due at the time the increase is paid, as discussed in Sec. 778.303. For a discussion of overtime payments due because of increases by way of bonuses, see Sec. 778.209.

#### **Sec. 778.107 General standard for overtime pay.**

The general overtime pay standard in section 7(a) requires that overtime must be compensated at a rate not less than one and one-half times the regular rate at which the employee is actually employed. The regular rate of pay at which the employee is employed may in no event be less than the statutory minimum. (The statutory minimum is the specified minimum wage applicable under section 6 of the Act, except in the case of workers specially provided for in section 14 and workers in Puerto Rico, the Virgin Islands, and American Samoa who are covered by wage orders issued pursuant to section 8 of the Act.) If the employee's regular rate of pay is higher than the statutory minimum, his overtime compensation must be computed at a rate not less than one and one-half times such higher rate. Under certain conditions prescribed in section 7 (f), (g), and (j), the Act provides limited exceptions to the application of the general standard of section 7(a) for computing overtime pay based on the regular rate. With respect to these, see Secs. 778.400 through 778.421 and 778.601 and part 548 of this chapter. The Act also provides, in section 7(b), (i), (k), and (m) and in section 13, certain partial and total exemptions from the application of section 7(a) to certain employees and under certain conditions. Regulations and interpretations concerning these exemptions are outside the scope of this part 778 and reference should be made to other applicable parts of this chapter.

#### **Sec. 778.108 The ``regular rate''.**

The ``regular rate" of pay under the Act cannot be left to a declaration by the parties as to what is to be treated as the regular rate for an employee; it must be drawn from what happens under the employment contract (*Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446). The Supreme Court has described it as the hourly rate actually paid the employee for the normal, nonovertime workweek for which he is employed--an ``actual fact" (*Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419). Section 7(e) of the Act requires inclusion in the ``regular rate" of ``all remuneration for employment paid to, or on behalf of, the employee" except payments specifically excluded by paragraphs (1) through (7) of that subsection. (These seven types of payments, which are set forth in Sec. 778.200 and discussed in Secs. 778.201 through 778.224, are hereafter referred to as ``statutory exclusions.") As stated by the Supreme Court in the *Youngerman-Reynolds* case cited above: ``Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary `regular rate' in the wage contracts."

#### **Sec. 778.110 Hourly rate employee.**



**(a) Earnings at hourly rate exclusively.** If the employee is employed solely on the basis of a single hourly rate, the hourly rate is his "regular rate." For his overtime work he must be paid, in addition to his straight time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of 40 in the week. Thus a \$6 hourly rate will bring, for an employee who works 46 hours, a total weekly wage of \$294 (46 hours at \$6 plus 6 at \$3). In other words, the employee is entitled to be paid an amount equal to \$6 an hour for 40 hours and \$9 an hour for the 6 hours of overtime, or a total of \$294.

**(b) Hourly rate and bonus.** If the employee receives, in addition to his earnings at the hourly rate, a production bonus of \$9.20, the regular hourly rate of pay is \$6.20 an hour (46 hours at \$6 yields \$276; the addition of the \$9.20 bonus makes a total of \$285.20; this total divided by 46 hours yields a rate of \$6.20). The employee is then entitled to be paid a total wage of \$303.80 for 46 hours (46 hours at \$6.20 plus 6 hours at \$3.10, or 40 hours at \$6.20 plus 6 hours at \$9.30).

#### **Sec. 778.115 Employees working at two or more rates.**

Where an employee in a single workweek works at two or more different types of work for which different nonovertime rates of pay (of not less than the applicable minimum wage) have been established, his regular rate for that week is the weighted average of such rates. That is, his total earnings (except statutory exclusions) are computed to include his compensation during the workweek from all such rates, and are then divided by the total number of hours worked at all jobs. Certain statutory exceptions permitting alternative methods of computing overtime pay in such cases are discussed in Secs. 778.400 and 778.415 through 778.421.

#### **Sec. 778.116 Payments other than cash.**

Where payments are made to employees in the form of goods or facilities which are regarded as part of wages, the reasonable cost to the employer or the fair value of such goods or of furnishing such facilities must be included in the regular rate. (See part 531 of this chapter for a discussion as to the inclusion of goods and facilities in wages and the method of determining reasonable cost.) Where, for example, an employer furnishes lodging to his employees in addition to cash wages the reasonable cost or the fair value of the lodging (per week) must be added to the cash wages before the regular rate is determined.

### **Subpart C--Payments That May Be Excluded From the "Regular Rate"**

#### **Sec. 778.200 Provisions governing inclusion, exclusion, and crediting of particular payments.**

The Statutory Provisions:

(a) Section 7(e). This subsection of the Act provides as follows: (e) "Regular rate" defined

As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include--

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day of workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) of this section or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a) of this section), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; or

(b) Section 7(h). This subsection of the Act provides as follows:

Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) shall be creditable toward overtime compensation payable pursuant to this section.

(c) Only the statutory exclusions are authorized. It is important to determine the scope of these exclusions, since all remuneration for employment paid to employees which does not fall within one of these seven exclusionary clauses must be added into the total compensation received by the employee before his regular hourly rate of pay is determined.

#### **Sec. 778.208 Inclusion and exclusion of bonuses in computing the ``regular rate.''**

Section 7(e) of the Act requires the inclusion in the regular rate of all remuneration for employment except seven specified types of payments. Among these excludable payments are discretionary bonuses, gifts and payments in the nature of gifts on special occasions, contributions by the employer to certain welfare plans and payments made by the employer pursuant to certain profit-sharing, thrift and savings plans. These are discussed in Secs. 778.211 through 778.214. Bonuses which do not qualify for exclusion from the regular rate as one of these types must be totaled in with other earnings to determine the regular rate on which overtime pay must be based. Bonus payments are payments made in addition to the regular earnings of an employee. For a discussion on the bonus form as an evasive bookkeeping device, see Secs. 778.502 and 778.503.

#### **Sec. 778.216 The provisions of section 7(e)(2) of the Act.**

Section 7(e)(2) of the Act provides that the term "regular rate" shall not be deemed to include "payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment ..." However, since such payments are not made as compensation for the employee's hours worked in any workweek, no part of such payments can be credited toward overtime compensation due under the Act.

#### **Sec. 778.217 Reimbursement for expenses.**

**(a) General rule.** Where an employee incurs expenses on his employer's behalf or where he is required to expend sums solely by reason of action taken for the convenience of his employer, section 7(e)(2) is applicable to reimbursement for such expenses. Payments made by the employer to cover such expenses are not included in the employee's regular rate (if the amount of the reimbursement reasonably approximates the expenses incurred). Such payment is not compensation for services rendered by the employees during any hours worked in the workweek.

**(b) Illustrations.** Payment by way of reimbursement for the following types of expenses will not be regarded as part of the employee's regular rate:

(1) The actual amount expended by an employee in purchasing supplies, tools, materials, or equipment on behalf of his employer.

(2) The actual or reasonably approximate amount expended by an employee in purchasing, laundering or repairing uniforms or special clothing which his employer requires him to wear.

(3) The actual or reasonably approximate amount expended by an employee, who is traveling "over the road" on his employer's business, for transportation (whether by private car or common carrier) and living expenses away from home, other travel expenses, such as taxicab fares, incurred while traveling on the employer's business.

(4) "Supper money", a reasonable amount given to an employee, who ordinarily works the day shift and can ordinarily return home for supper, to cover the cost of supper when he is requested by his employer to continue work during the evening hours.

(5) The actual or reasonably approximate amount expended by an employee as temporary excess home-to-work travel expenses incurred (i) because the employer has moved the plant to another town before the employee has had an opportunity to find living quarters at the new location or (ii) because the employee, on a particular occasion, is required to report for work at a place other than his regular workplace.

The foregoing list is intended to be illustrative rather than exhaustive.

**(c) Payments excluding expenses.** It should be noted that only the actual or reasonably approximate amount of the expense is excludable from the regular rate. If the amount paid as "reimbursement" is disproportionately large, the excess amount will be included in the regular rate.

**(d) Payments for expenses personal to the employee.** The expenses for which reimbursement is made must in order to merit exclusion from the regular rate under this section, be expenses incurred by the employee on the employer's behalf or for his benefit or convenience. If the employer reimburses the employee for expenses normally incurred by the employee for his own benefit, he is, of course, increasing the employee's regular rate thereby. An employee normally incurs expenses in traveling to and from work, buying lunch, paying rent, and the like. If the employer reimburses him for these normal everyday expenses, the payment is not excluded from the regular rate as "reimbursement for expenses." Whether the employer "reimburses" the employee for such expenses or furnishes the facilities (such as free lunches or free housing), the amount paid to

the employee (or the reasonable cost to the employer or fair value where facilities are furnished) enters into the regular rate of pay as discussed in Sec. 778.116. See also Sec. 531.37(b) of this chapter.

#### **Sec. 778.218 Pay for certain idle hours.**

(a) **General rules.** Payments which are made for occasional periods when the employee is not at work due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, where the payments are in amounts approximately equivalent to the employee's normal earnings for a similar period of time, are not made as compensation for his hours of employment. Therefore, such payments may be excluded from the regular rate of pay under section 7(e)(2) of the Act and, for the same reason, no part of such payments may be credited toward overtime compensation due under the Act.

(b) **Limitations on exclusion.** This provision of section 7(e)(2) deals with the type of absences which are infrequent or sporadic or unpredictable. It has no relation to regular "absences" such as lunch periods nor to regularly scheduled days of rest. Sundays may not be workdays in a particular plant, but this does not make them either "holidays" or "vacations," or days on which the employee is absent because of the failure of the employer to provide sufficient work. The term holiday is read in its ordinary usage to refer to those days customarily observed in the community in celebration of some historical or religious occasion; it does not refer to days of rest given to employees in lieu of or as an addition to compensation for working on other days.

(c) **Failure to provide work.** The term "failure of the employer to provide sufficient work" is intended to refer to occasional, sporadically recurring situations where the employee would normally be working but for such a factor as machinery breakdown, failure of expected supplies to arrive, weather conditions affecting the ability of the employee to perform the work and similarly unpredictable obstacles beyond the control of the employer. The term does not include reduction in work schedule (as discussed in Secs. 778.321 through 778.329), ordinary temporary layoff situations, or any type of routine, recurrent absence of the employee.

(d) **Other similar cause.** The term "other similar cause" refers to payments made for periods of absence due to factors like holidays, vacations, sickness, and failure of the employer to provide work. Examples of "similar causes" are absences due to jury service, reporting to a draft board, attending a funeral of a family member, inability to reach the workplace because of weather conditions. Only absences of a nonroutine character which are infrequent or sporadic or unpredictable are included in the "other similar cause" category.

### **Subpart D--Special Problems**

#### **Sec. 778.303 Retroactive pay increases.**

Where a retroactive pay increase is awarded to employees as a result of collective bargaining or otherwise, it operates to increase the regular rate of pay of the employees for the period of its retroactivity. Thus, if an employee is awarded a retroactive increase of 10 cents per hour, he is owed, under the Act, a retroactive increase of 15 cents for each overtime hour he has worked during the period, no matter what the agreement of the parties may be. A retroactive pay increase in the form of a lump sum for a particular period must be prorated back over the hours of the period to which it is allocable to determine the resultant increases in the regular rate, in precisely the same manner as a lump sum bonus. For a discussion of the method of allocating bonuses based on employment in a prior period to the workweeks covered by the bonus payment, see Sec. 778.209.

#### **Sec. 778.308 The overtime rate is an hourly rate.**

(a) Section 7(a) of the Act requires the payment of overtime compensation for hours worked in excess of the applicable maximum hours standard at a rate not less than one and one-half times the regular rate. The

overtime rate, like the regular rate, is a rate per hour. Where employees are paid on some basis other than an hourly rate, the regular hourly rate is derived, as previously explained, by dividing the total compensation (except statutory exclusions) by the total hours of work for which the payment is made. To qualify as an overtime premium under section 7(e)(5), (6), or (7), the extra compensation for overtime hours must be paid pursuant to a premium rate which is likewise a rate per hour (subject to certain statutory exceptions discussed in Secs. 778.400 through 778.421).

**Sec. 778.315 Payment for all hours worked in overtime workweek is required.**

In determining the number of hours for which overtime compensation is due, all hours worked (see Sec. 778.223) by an employee for an employer in a particular workweek must be counted. Overtime compensation, at a rate not less than one and one-half times the regular rate of pay, must be paid for each hour worked in the workweek in excess of the applicable maximum hours standard. This extra compensation for the excess hours of overtime work under the Act cannot be said to have been paid to an employee unless all the straight time compensation due him for the nonovertime hours under his contract (express or implied) or under any applicable statute has been paid.

**Sec. 778.316 Agreements or practices in conflict with statutory requirements are ineffective.**

While it is permissible for an employer and an employee to agree upon different base rates of pay for different types of work, it is settled under the Act that where a rate has been agreed upon as applicable to a particular type of work the parties cannot lawfully agree that the rate for that work shall be lower merely because the work is performed during the statutory overtime hours, or during a week in which statutory overtime is worked. Since a lower rate cannot lawfully be set for overtime hours it is obvious that the parties cannot lawfully agree that the working time will not be paid for at all. An agreement that only the first 8 hours of work on any days or only the hours worked between certain fixed hours of the day or only the first 40 hours of any week will be counted as working time will clearly fail of its evasive purpose. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be compensated unless authorized in advance, will not impair the employee's right to compensation for work which he is actually suffered or permitted to perform.

**Sec. 778.318 Productive and nonproductive hours of work.**

**(a) Failure to pay for nonproductive time worked.** Some agreements provide for payment only for the hours spent in productive work; the work hours spent in waiting time, time spent in travel on the employer's behalf or similar nonproductive time are not made compensable and in some cases are neither counted nor compensated. Payment pursuant to such an agreement will not comply with the Act; such nonproductive working hours must be counted and paid for.

**(b) Compensation payable for nonproductive hours worked.** The parties may agree to compensate nonproductive hours worked at a rate (at least the minimum) which is lower than the rate applicable to productive work. In such a case, the regular rate is the weighted average of the two rates, as discussed in Sec. 778.115 and the employee whose maximum hours standard is 40 hours is owed compensation at his regular rate for all of the first 40 hours and at a rate not less than one and one-half times this rate for all hours in excess of 40. (See Sec. 778.415 for the alternative method of computing overtime pay on the applicable rate.) In the absence of any agreement setting a different rate for nonproductive hours, the employee would be owed compensation at the regular hourly rate set for productive work for all hours up to 40 and at a rate at least one and one-half times that rate for hours in excess of 40.

**(c) Compensation attributable to both productive and nonproductive hours.** The situation described in paragraph (a) of this section is to be distinguished from one in which such nonproductive hours are properly counted as working time but no special hourly rate is assigned to such hours because it is understood by the parties that the other compensation received by the employee is intended to cover pay for such hours. For example, while it is not proper for an employer to agree with his pieceworkers that the hours spent in down-time (waiting for work) will not be paid for or will be neither paid for nor counted, it is permissible for the parties to agree that the pay the employees will earn at piece rates is intended to compensate them for all hours worked, the productive as well as the nonproductive hours. If this is the agreement of the parties, the regular rate of the pieceworker will be the rate determined by dividing the total piecework earnings by the total hours worked (both productive and nonproductive) in the workweek. Extra compensation (one-half the rate as so determined) would, of course, be due for each hour worked in excess of the applicable maximum hours standard.

**Sec. 778.321 Decrease in hours without decreasing pay--general.**

Since the regular rate of pay is the average hourly rate at which an employee is actually employed, and since this rate is determined by dividing his total remuneration for employment (except statutory exclusions) for a given workweek by the total hours worked in that workweek for which such remuneration was paid, it necessarily follows that if the schedule of hours is reduced while the pay remains the same, the regular rate has been increased.

**HOURS WORKED (29 CFR 785.1 – 785.50)**

**Subpart A--General Considerations**

**Sec. 785.1 Introductory statement.**

Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) requires that each employee, not specifically exempted, who is engaged in commerce, or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce, or in the production of goods for commerce receive a specified minimum wage. Section 7 of the Act (29 U.S.C. 207) provides that persons may not be employed for more than a stated number of hours a week without receiving at least one and one-half times their regular rate of pay for the overtime hours. The amount of money an employee should receive cannot be determined without knowing the number of hours worked. This part discusses the principles involved in determining what constitutes working time. It also seeks to apply these principles to situations that frequently arise. It cannot include every possible situation. No inference should be drawn from the fact that a subject or an illustration is omitted. If doubt arises inquiries should be sent to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210, or to any area or Regional Office of the Division.

**Subpart B--Principles for Determination of Hours Worked**

**Sec. 785.7 Judicial construction.**

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer of his business." (Tennessee Coal, Iron &

Railroad Co. v. Muscoda Local No. 123, 321 U. S. 590 (1944)) Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that "an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer." (Armour & Co. v. Wantock, 323 U.S. 126 (1944); Skidmore v. Swift, 323 U.S. 134 (1944)) The workweek ordinarily includes "all the time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place". (Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946)) The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Sec. 785.34.

### **Sec. 785.9 Statutory exemptions.**

(a) The Portal-to-Portal Act. The Portal-to-Portal Act (secs. 1-13, 61 Stat. 84-89, 29 U.S.C. 251-262) eliminates from working time certain travel and walking time and other similar "preliminary" and "postliminary" activities performed "prior" or "subsequent" to the "workday" that are not made compensable by contract, custom, or practice. It should be noted that "preliminary" activities do not include "principal" activities. See Secs. 790.6 to 790.8 of this chapter. Section 4 of the Portal-to-Portal Act does not affect the computation of hours worked within the "workday". "Workday" in general, means the period between "the time on any particular workday at which such employee commences (his) principal activity or activities" and "the time on any particular workday at which he ceases such principal activity or activities." The "workday" may thus be longer than the employee's scheduled shift, hours, tour of duty, or time on the production line. Also, its duration may vary from day to day depending upon when the employee commences or ceases his "principal" activities. With respect to time spent in any "preliminary" or "postliminary" activity compensable by contract, custom, or practice, the Portal-to-Portal Act requires that such time must also be counted for purposes of the Fair Labor Standards Act. There are, however, limitations on this requirement. The "preliminary" or "postliminary" activity in question must be engaged in during the portion of the day with respect to which it is made compensable by the contract, custom, or practice. Also, only the amount of time allowed by the contract or under the custom or practice is required to be counted. If, for example, the time allowed is 15 minutes but the activity takes 25 minutes, the time to be added to other working time would be limited to 15 minutes. (Galvin v. National Biscuit Co., 82 F. Supp. 535 (S.D.N.Y. 1949) appeal dismissed, 177 F. 2d 963 (C.A. 2, 1949))

(b) Section 3(o) of the Fair Labor Standards Act. Section 3(o) gives statutory effect, as explained in Sec. 785.26, to the exclusion from measured working time of certain clothes-changing and washing time at the beginning or the end of the workday by the parties to collective bargaining agreements.

## **Subpart C--Application of Principles**

### **Sec. 785.11 General.**

Work not requested but suffered or permitted is work time. For example, an employee may voluntarily continue to work at the end of the shift. He may be a pieceworker, he may desire to finish an assigned task or he may wish to correct errors, paste work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time. (Handler v.

Thrasher, 191, F. 2d 120 (C.A. 10, 1951); Republican Publishing Co. v. American Newspaper Guild, 172 F. 2d 943 (C.A. 1, 1949; Kappler v. Republic Pictures Corp., 59 F. Supp. 112 (S.D. Iowa 1945), aff'd 151 F. 2d 543 (C.A. 8, 1945); 327 U.S. 757 (1946); Hogue v. National Automotive Parts Ass'n. 87 F. Supp. 816 (E.D. Mich. 1949); Barker v. Georgia Power & Light Co., 2 W.H. Cases 486; 5 CCH Labor Cases, para. 61,095 (M.D. Ga. 1942); Steger v. Beard & Stone Electric Co., Inc., 1 W.H. Cases 593; 4 Labor Cases 60,643 (N.D. Texas, 1941))

#### **Sec. 785.12 Work performed away from the premises or job site.**

The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked.

#### **Sec. 785.13 Duty of management.**

In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

### **Waiting Time**

#### **Sec. 785.14 General.**

Whether waiting time is time worked under the Act depends upon particular circumstances. The determination involves ``scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the employee was engaged to wait or they may show that he waited to be engaged." (Skidmore v. Swift, 323 U.S. 134 (1944)) Such questions ``must be determined in accordance with common sense and the general concept of work or employment." (Central Mo. Tel. Co. v. Conwell, 170 F. 2d 641 (C.A. 8, 1948)).

#### **Sec. 785.15 On duty.**

A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, fireman who plays checkers while waiting for alarms and a factory worker who talks to his fellow employees while waiting for machinery to be repaired are all working during their periods of inactivity. The rule also applies to employees who work away from the plant. For example, a repair man is working while he waits for his employer's customer to get the premises in readiness. The time is worktime even though the employee is allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employee is unable to use the time effectively for his own purposes. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employee is engaged to wait. (See: Skidmore v. Swift, 323 U.S. 134, 137 (1944); Wright v. Carrigg, 275 F. 2d 448, 14 W.H. Cases (C.A. 4, 1960); Mitchell v. Wigger, 39 Labor Cases, para. 66,278, 14 W.H. Cases 534 (D.N.M. 1960); Mitchell v. Nicholson, 179 F. Supp. 292,14



#### **Sec. 785.16 Off duty.**

**(a) General.** Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.

**(b) Truck drivers;** specific examples. A truck driver who has to wait at or near the job site for goods to be loaded is working during the loading period. If the driver reaches his destination and while awaiting the return trip is required to take care of his employer's property, he is also working while waiting. In both cases the employee is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Washington, DC to New York City, leaving at 6 a.m. and arriving at 12 noon, and is completely and specifically relieved from all duty until 6 p.m. when he again goes on duty for the return trip the idle time is not working time. He is waiting to be engaged. (*Skidmore v. Swift*, 323 U.S. 134, 137 (1944); *Walling v. Dunbar Transfer & Storage*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Gifford v. Chapman*, 6 W.H. Cases 806; 12 Labor Cases para. 63,661 (W.D. Okla., 1947); *Thompson v. Daugherty*, 40 Supp. 279 (D. Md. 1941))

#### **Sec. 785.17 On-call time.**

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. (*Armour & Co. v. Wantock*, 323 U.S. 126 (1944); *Handler v. Thrasher*, 191 F. 2d 120 (C.A. 10, 1951); *Walling v. Bank of Waynesboro, Georgia*, 61 F. Supp. 384 (S.D. Ga. 1945))

### **Rest and Meal Periods**

#### **Sec. 785.18 Rest.**

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

### **Preparatory and Concluding Activities**

#### **Sec. 785.19 Meal.**

**(a) Bona fide meal periods.** Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty

for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (Culkin v. Glenn L. Martin, Nebraska Co., 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); Thompson v. Stock & Sons, Inc., 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); Biggs v. Joshua Hendy Corp., 183 F. 2d 515 (C. A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); Walling v. Dunbar Transfer & Storage Co., 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); Lofton v. Seneca Coal and Coke Co., 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); Mitchell v. Tampa Cigar Co., 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); Douglass v. Hurwitz Co., 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

**(b) Where no permission to leave premises.** It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

Lectures, Meetings and Training Programs

#### **Sec. 785.27 General.**

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

- (a) Attendance is outside of the employee's regular working hours;
- (b) Attendance is in fact voluntary;
- (c) The course, lecture, or meeting is not directly related to the employee's job; and
- (d) The employee does not perform any productive work during such attendance.

#### **Sec. 785.28 Involuntary attendance.**

Attendance is not voluntary, of course, if it is required by the employer. It is not voluntary in fact if the employee is given to understand or led to believe that his present working conditions or the continuance of his employment would be adversely affected by nonattendance.

### **Traveltime**

#### **Sec. 785.34 Effect of section 4 of the Portal-to-Portal Act.**

The Portal Act provides in section 4(a) that except as provided in subsection (b) no employer shall be liable for the failure to pay the minimum wage or overtime compensation for time spent in "walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities." Subsection (b) provides that the employer shall not be relieved from liability if the activity is compensable by express contract or by custom or practice not inconsistent with an express contract. Thus traveltime at the commencement or cessation of the workday which was originally considered as working time under the Fair Labor Standards Act (such as underground travel in mines or walking from time clock to work-bench) need not be counted as working time unless it is compensable by contract, custom or practice. If compensable by express contract or by custom or practice not inconsistent with an express contract, such traveltime must be counted in

computing hours worked. However, ordinary travel from home to work (see Sec. 785.35) need not be counted as hours worked even if the employer agrees to pay for it. (See *Tennessee Coal, Iron & RR. Co. v. Musecoda Local*, 321 U.S. 590 (1946); *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 690 (1946); *Walling v. Anaconda Copper Mining Co.*, 66 F. Supp. 913 (D. Mont. (1946).)

#### **Sec. 785.35 Home to work; ordinary situation.**

An employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different job sites.

Normal travel from home to work is not worktime.

#### **Sec. 785.37 Home to work on special one-day assignment in another city.**

A problem arises when an employee who regularly works at a fixed location in one city is given a special 1-day work assignment in another city. For example, an employee who works in Washington, DC, with regular working hours from 9 a.m. to 5 p.m. may be given a special assignment in New York City, with instructions to leave Washington at 8 a.m. He arrives in New York at 12 noon, ready for work. The special assignment is completed at 3 p.m., and the employee arrives back in Washington at 7 p.m. Such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment. It was performed for the employer's benefit and at his special request to meet the needs of the particular and unusual assignment. It would thus qualify as an integral part of the "principal" activity which the employee was hired to perform on the workday in question; it is like travel involved in an emergency call (described in Sec. 785.36), or like travel that is all in the day's work (see Sec. 785.38). All the time involved, however, need not be counted. Since, except for the special assignment, the employee would have had to report to his regular work site, the travel between his home and the railroad depot may be deducted, it being in the "home-to-work" category. Also, of course, the usual meal time would be deductible.

#### **Sec. 785.38 Travel that is all in the day's work.**

Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time. However, if the employee goes home instead of returning to his employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked. (*Walling v. Mid-Continent Pipe Line Co.*, 143 F. 2d 308 (C. A. 10, 1944))

#### **Sec. 785.41 Work performed while traveling.**

Any work which an employee is required to perform while traveling must, of course, be counted as hours worked. An employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to

ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when he is permitted to sleep in adequate facilities furnished by the employer.

### **Adjusting Grievances, Medical Attention, Civic and Charitable Work, and Suggestion Systems**

#### **Sec. 785.42 Adjusting grievances.**

Time spent in adjusting grievances between an employer and employees during the time the employees are required to be on the premises is hours worked, but in the event a bona fide union is involved the counting of such time will, as a matter of enforcement policy, be left to the process of collective bargaining or to the custom or practice under the collective bargaining agreement.

#### **Sec. 785.43 Medical attention.**

Time spent by an employee in waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when he is working constitutes hours worked.

#### **Sec. 785.44 Civic and charitable work.**

Time spent in work for public or charitable purposes at the employer's request, or under his direction or control, or while the employee is required to be on the premises, is working time. However, time spent voluntarily in such activities outside of the employee's normal working hours is not hours worked.

### **Subpart D--Recording Working Time**

#### **Sec. 785.48 Use of time clocks.**

**(a) Differences between clock records and actual hours worked.** Time clocks are not required. In those cases where time clocks are used, employees who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for such periods provided, of course, that they do not engage in any work. Their early or late clock punching may be disregarded. Minor differences between the clock records and actual hours worked cannot ordinarily be avoided, but major discrepancies should be discouraged since they raise a doubt as to the accuracy of the records of the hours actually worked.

**(b) "Rounding" practices.** It has been found that in some industries, particularly where time clocks are used, there has been the practice for many years of recording the employees' starting time and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that the employees are fully compensated for all the time they actually work. For enforcement purposes this practice of computing working time will be accepted, provided that it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.

