

The Basics of School Law

A Guide for
School Directors

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Washington State
School Directors' Association

The Basics of School Law A Guide for School Directors

Washington State School Directors' Association

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INTRODUCTION

This guide is intended to give individual school board directors an introduction to some of the legal issues they may encounter in their board service.

The law is constantly changing. Indeed, nearly every day a state or federal court somewhere in the United States may decide a legal question about schools and that decision may have a profound impact on school districts everywhere. In addition, school districts are highly regulated by the state legislature, regulatory agencies and, to some extent, by Congress. There are laws regulating how to conduct board meetings; when to elect board officers; and when to form director districts and fill vacant board positions. The legislature gives taxing powers to the district, but closely regulates how funds may be used. There are laws on textbook adoption, required curriculum, basic education minimums, graduation requirements and student health. There are laws regarding emergency drills and saluting the flag. Laws govern how districts acquire property, manage it and dispose of it.

Laws establish a duty for the district to bargain with recognized employee groups; set wage rates; hire and fire a superintendent; provide in-service training; protect “whistle blowers” rights; act without discrimination; and accommodate the special needs of students, employees and patrons.

Finally, school directors are responsible for the quality of education provided by the district, accountable for the financial health of the district and the morale of the employees, and the educational opportunity provided to students no matter what their ability and potential without regard to their race, creed, color, sex, national origin, physical or mental disability.

The laws governing districts are of three kinds: statutes, regulations and court decisions. Statutes are passed by the legislature and signed

into law by the governor. They are collected together and published as the Revised Code of Washington (RCW). Every time the legislature meets, of course, it adopts new statutes and may amend or repeal old ones. Consequently, the laws governing districts are likely to change. Once statutes become law with the governor's signature, they often require certain state agencies to write regulations to implement them. These regulations are then gathered together and published as the Washington Administrative Code (WAC). Regulations of the Office of the Superintendent of Public Instruction are found at Chapter 392 WAC, and those of the State Board of Education are found at Chapter 180 WAC.

In the United States there are two court systems: state and federal. Both have trial courts where the matter is first tried and a decision rendered. If suit is filed in the state court system, it is filed first in the Superior Court for the applicable county. If an appeal is taken, it goes to the state Court of Appeals. Appeal may be taken from that court to the Washington State Supreme Court. In a proper case, an appeal may then go directly to the United States Supreme Court. That is when it ends.

If suit is filed originally in the federal court system — as sometimes happens — it is filed in the United States District Court, the basic trial court of the federal system. If an appeal is taken, it goes to the Ninth U.S. Circuit Court of Appeals. From there an appeal may be taken to the United States Supreme Court.

These materials are not intended to answer every question, even in the subject matter areas they cover. They are merely intended to alert you to the legal issues that you will encounter and where you need to obtain competent legal advice from the school district's attorney. Generally, each district will have an established, ongoing relationship with one or more attorneys. Individual board members do not ordinarily deal directly with the attorney, but rather work through the superintendent. The attorney represents the board, acting as a board, though, in case of a conflict between board and superintendent, the

school director should consult the attorney directly. For personal legal concerns, especially those that might put a school director in conflict with the school district, the director should retain his or her own attorney.



LEGAL REQUIREMENTS FOR SCHOOL BOARD MEETINGS

When do you need to hold regular board meetings?

Your board must hold a regular meeting at least monthly. (RCW 28A.343.380) The day, time and place of the meeting, must be set by board resolution or by policy. If a regular meeting falls on a holiday, the meeting must be held on the next business day. This should be stated in your policy setting the time of the regular meeting.

Where may board meetings be held?

Districts must hold all regular meetings within the district boundaries. (RCW 28A. 330.070) Special meetings may be held anywhere, provided the notice requirements are met.

What kind of minutes are required?

Minutes of all regular and special meetings are required to be recorded promptly (RCW 42.32.030). Executive sessions only require notice that the board held the session by noting the general purpose. The minutes should not reflect any details of the executive session. As public records, the minutes of an executive session could not be held confidential, defeating the purpose of holding an executive session. Board minutes, once approved, become the official record of board action and are open to public inspection and copying. Accurate recording of board action is important because the minutes may become evidence in legal proceedings.

Open Public Meetings Act

The Open Public Meetings Act (OPMA) requires that almost all school board meetings must be open to the public. (Ch. 42.30 RCW) The intent of the law could hardly be made any clearer:

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

RCW 42.30.010

Statutory definitions of terms

The definitions in the OPMA are written in such a way as to assure that the legislative intent will be satisfied. Thus:

- “Public agency” means ... any school district ...
- “Governing body” means the multimember board ... or other policy or rulemaking body of a public agency ... or any committee thereof ...
- “Action” means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. “Final action” means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.
- “Meeting” means meetings at which action is taken.

RCW 42.30.020

If the board forms any committee which acts on behalf of the board, conducts hearings or takes testimony or public comment, all meetings of that committee are subject to the same requirements as special board meetings.

A majority of the board may travel together or gather for purposes other than a regular or special meeting as long as they do not discuss any official business nor take any action on official matters. (RCW 42.30.070). This allows board members to travel together to the WSSDA Annual Conference, county or regional director meetings or other such gatherings.

Regular meetings and special meetings

Regular meetings are those held at the same time and place and on the same day(s) each month as set by board resolution or policy. (RCW 42.30.075) (Example: 1st and 3rd Monday of each month, 7:30 p.m., at the district office.) Any other meeting is a special meeting. (RCW 42.30.080) Regular meetings require no notice other than the board policy, and the board may consider any official business and take action on any matter.

Special meetings require 24-hour written notice to each member of the board and to any news media that have filed a request to receive such notices. A special meeting notice must contain the time and place of the meeting and the business to be conducted. This notice must be delivered personally or by mail, fax or electronic mail at least 24 hours before the time specified for the meeting. Final action may be taken only on matters specified in the notice. Any action taken at a meeting for which proper notice was not given is null and void.

Exception: A special meeting may be called without notice to consider and act in “an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase likelihood of such injury or damage.” The courts have interpreted this exception very narrowly.

In order to dispense with the notice required by RCW 42.30.080, therefore, an emergency must exist which involves or threatens physical damage. The circumstances must be unexpected and must call so

urgently for action that even the 1-day delay the notice entails would substantially increase a likelihood of such injuries.

Mead School Dist. v. Mead Education, 85 Wn.2d 140 at 145 (1975)

In this case, the Court went on to hold that, since no emergency existed, the action was taken at a meeting held without the required notice being given, and was “null and void.” (RCW 42.30.060)

What does the law say about handling disturbances?

According to RCW 42.30.050, if a meeting is interrupted by a patron or group of patrons to the point that orderly conduct of the meeting is not possible, members of the board may:

- Order the interrupter(s) to remove themselves from the meeting room, or;
- Order the room cleared, except for members of news media which are not involved in the disturbance and continue in session, or;
- Adjourn and reconvene at a place selected by a majority vote, again admitting members of the news media who were not involved in the disturbance.

If the public is excluded from the meeting, final action can be taken only on those items appearing on the agenda.

Exceptions to OPMA – Private Meetings

The Open Public Meetings Act provides that it simply does not apply to certain meetings. Consequently, these meetings need not be held in public or with public notice:

- Holding a quasi-judicial hearing to decide a matter “between named parties as distinguished from a matter having general effect on the public ...” (RCW 42.30.140)

- Establishing collective bargaining strategies or holding collective bargaining sessions, including contract negotiations, or grievance meetings (RCW 42.30.140)

Executive sessions

The OPMA recognizes that certain subjects are better discussed in private if the public interest is to be served or if the rights of individuals are to be guarded. These subjects, therefore, may be discussed privately in executive session. (RCW 42.30.110) Before a board goes into executive session, the president or chairman must publicly announce the general purpose of the executive session and the time when the session is expected to end.

Those subjects, as they relate to school districts, are:

- To consider site selection or acquisition of real estate.
- To consider the minimum price to offer real estate for sale or lease.
- To review performance on public contracts.
- To receive and evaluate complaints or charges brought against a public officer or employee.*
- To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee.*
- To evaluate the qualifications of a candidate for appointment to elective office (interviews must be conducted in public).
- To confer with legal counsel on matters relating to agency enforcement actions or litigation or potential litigation.

* NOTE: There is no exception for “personnel matters.” This is a common misconception, and may result in a violation of the OPMA.

Final action on any matter deliberated in executive session must be taken in public. Matters discussed in executive session should be kept confidential. Any breach of the confidentiality of an executive session can have serious repercussions. Boards should limit who, besides board members, attends executive sessions. Often it is important for the superintendent to be present to provide information and insight into the issue under discussion, but on other occasions it may be inappropriate for the superintendent to attend. Any outside professionals and other administrative staff who have specific input to a matter under consideration can be asked to attend an executive session, but the attendance should not become too large. Staff members should be excused when their participation is no longer needed.

Penalties

Any board member who attends a meeting and knows that it is in violation of the Open Public Meetings Act can be held personally liable for a \$100.00 civil fine. Any person can bring legal action for violations of the OPMA and recover costs, including attorney's fees. The district may recover its costs if a frivolous case is brought against it. (But don't count on it.)



POLICY ADOPTION AND THE LAW

Policies

A major function of the board is to adopt policy governing all facets of school operations. Just as the legislature passes laws, school districts adopt policies. In doing so, they act “quasi-legislatively” -like a legislature. Policies are the written statements by which districts govern themselves. They provide binding guidance to directors, administrators, staff, students, parents and the public about how district programs should work.

The board adopts the policies and they include the legal requirements imposed on the district by federal and state laws and regulations and court decisions. Within that legal framework, the policies express the local philosophy and direction that district programs and services will take. Once adopted, local policies are as binding on the district, including the school board, as any other legal requirement. They can be changed, of course, but that must be done according to proper procedures.

Policies create continuity and consistency in the governance and administration of a school district. They also establish a legal record and a standard of conduct against which the district’s performance will be measured. Policies are a vital part of the bridge between the district’s philosophy and the everyday administration of programs.

Adoption requirements

There are few statutory requirements limiting the way a school board adopts policy, although constitutional due process requires some public accountability. The Washington State School Directors’ Association’s Policy Service recommends a two-step “reading” process for policy adoption. A proposed policy is introduced to the board at a meeting, and preliminary discussion takes place. That is the first “reading.” Then, at a subsequent meeting, the board takes final action

on the policy. That is the second “reading.” Policy adoption, like any other board action, can only take place at properly held open public meetings. When appropriate, public hearings should be part of the policy adoption process, especially when the policy is of special public concern, and the public should have adequate notice that a particular policy is under consideration.

When necessary, a policy can be adopted at the first meeting it is on the agenda. This should be done rarely, and only when the best interest of the district requires expedient action.

Historically, school boards could only adopt policies or institute programs that were specifically authorized by state statute, or were within the implied powers granted to school districts by state law. In 1992, the legislature changed that restriction to allow school boards to adopt written policies not in conflict with other laws that will promote the education of kindergarten through twelfth grade public school students, or the effective, efficient or safe operation of the schools. (RCW 28A.320.015) That provision modified the policy adoption process.

When a school district is considering a policy that will improve education or the operation of the schools, but is not specifically authorized by state law, notice of the proposed policy must be given in any meeting notice required by the Open Public Meetings Act. The board must also provide an opportunity for public written and oral comment and an opportunity for the board to consider the comments that it receives before it acts.



FINANCIAL CONFLICT OF INTEREST

Chapter 42.23 RCW, Code of Ethics for Municipal Officers, (the conflict of interest statute) bars local officials — school directors and superintendents — from most financial interests in school district business. Specifically:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.

RCW 42.23.030

Example:

A school director or superintendent would have a beneficial interest in a spouse's employment contract by operation of the state's community property law. The law is less clear about other relationships. For example, consider a district superintendent who wishes to employ his adult daughter as a teacher. A conflict of interest does not arise simply by virtue of the parent-child relationship. Suppose further, however, that the daughter has agreed to rent an apartment from her father, but only if she is hired as a teacher. In the latter case, the father arguably has an indirect beneficial interest in the employment contract. Advice of legal counsel should always be obtained if there is any question whether a conflict may exist.

Exceptions:

There are exceptions to the restrictions of the statute:

- A bank or other public financial depository may be selected by a school board despite a connection with a director or superintendent.

- A publication may be chosen to publish required legal notices, despite a connection to a school director or superintendent, if it is chosen by public bid, or does not charge rates higher than those prescribed by law or charged to members of the general public.
- A school director may be designated the clerk and/or purchasing agent of his or her school district.
- A second class school district (2,000 students or fewer) may hire a person otherwise barred from employment by this statute for unskilled day labor at wages not exceeding \$200 in any calendar month. For example, a minor child of a director could be hired to do yard work part-time in the summer, so long as the child did not earn more than \$200 per month.
- A director or superintendent can do business with a school district if the value of the business does not exceed \$1,500 in any calendar month. The contract must be publicly disclosed, and, if the interested party is a school director, he or she may not vote to authorize the contract.
- Persons otherwise excluded from employment under this statute may work as bus drivers in second class school districts, if they are paid on the same plan or under the same collective bargaining agreement as other bus drivers.
- In school districts with fewer than 200 FTE students, the spouse of a director or superintendent may be hired for employment. The spouse must be paid on the same plan or under the same collective bargaining agreement as similar district employees.
- In any school district, the spouse of a director or superintendent may be employed as a substitute teacher, if the district has a written policy, and the board has made a finding that there is a shortage of substitutes. The pay

must be consistent with compensation paid to other district substitutes.

- If a person is under contract with the school district at the time that his or her spouse becomes either a director or superintendent of the district, the person may remain employed by the district.

If a director's spouse is employed by the district, the director should refrain from participating in or attempting to influence any board action affecting that employment including: hiring, establishing compensation and fringe benefits, setting working conditions, conducting performance evaluations, considering or imposing discipline and termination. The director must disclose the interest, may not vote on the issue and the interest should be reflected in the board's minutes. The superintendent is required to maintain a log of any contract subject to this statute and should inform the board about each of those contracts annually and when a new board member takes office.

Remote Interests

Remote interests are those where a municipal officer may have an interest in a contract that is so tenuous as not to amount to a conflict of interest. If a municipal officer has such a "remote interest," the interest must be disclosed to the board, and the officer may not "... influence or attempt to influence any other officer of the municipality ... to enter into the contract." RCW 42.23.040.

Remote interests are defined as:

- That of a non-salaried officer of a nonprofit corporation;
- That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
- That of a landlord or tenant of a contracting party;

- That of a holder of less than one percent of the shares of a corporation or cooperative, which is a contracting party.

A director or superintendent with a remote interest in a transaction under consideration must disclose the interest to the board, the minutes should reflect the disclosure, and a director with a remote interest may not participate in discussion or vote on the transaction.

Any contract made or business done in violation of the terms of the conflict of interest statute is void, and the district cannot be made to pay for goods or services provided under such an agreement. A director or superintendent who violates the act is subject to the district for a \$500 fine, other penalties that may be provided by law, and the violation may be grounds for forfeiture of the office. RCW 42.23.050.



PERSONNEL

Personnel matters are among the most common sources of legal challenges confronting school districts. Both state and federal laws regulate personnel actions by school districts. Collective bargaining agreements also influence personnel decisions. Most aspects of public school employment are codified in RCW 28A and other laws governing public employment. The various statutory schemes dealing with employment contain specific responsibilities for principals, the superintendent and the board. In this area, the role of the board is limited. Basically the board's role is to approve or disapprove hiring decisions, to set policies regarding employee evaluations and ensure that those policies are followed and to take action to terminate classified employees. As we will see, the law places the responsibility for non-renewal of certificated employees with the superintendent, not with the board. Employment issues are addressed in the education statutes. The next chapter addresses collective bargaining law. For any specific question be sure to consider general employment laws and collective bargaining issues.

General employment authority

The general grant of authority for school boards to employ staff is located in RCW 28A.400.300 which provides that:

Every board of directors, unless otherwise specially provided by law, shall:

- (1) Employ for not more than one year, and for sufficient cause discharge all certificated and classified employees;

In practice, personnel are hired upon the recommendation of the administration and upon approval of the board of directors. Selection for a position should result from a careful screening process, including many interviews, verification of credentials and background checks.

Classified employees

Classified employees are those employees whose duties do not require a teaching or other professional certificate. Their employment is governed by the general employment statute (RCW 28A.400.300) referred to above. These employees are employed “for not more than one year,” and may be discharged during the term of their employment for “sufficient cause.” Classified employees have a property interest in their employment during the term of employment. Unlike certificated employees, the law does not provide for a specific hearing process as a prerequisite to discharge. We must look to court decisions for guidance in this regard.

If an employee has a property interest in continued employment, the employee is entitled to due process before the interest can be adversely affected. In *Cleveland Bd. of Education v. Loudermill*, the United States Supreme Court held that if a property interest was involved, a hearing must be held before the employee is discharged. A formal evidentiary hearing is not required. The informal “hearing” should be considered, at a minimum, as “an initial check against mistaken decisions essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.” *Danielson v. Seattle*, 108 Wn.2d 788 (1987).

If a collective bargaining agreement does not cover the classified employee, or the collective bargaining agreement does not end in binding arbitration, the employee may contest his or her discharge by filing a lawsuit within thirty days of the discharge. The employee is entitled to a trial before a jury on the discharge.

Contracts-certificated personnel

Certificated staff is employed under a contract for a term of not more than one year. However, a certificated employee is, by law, conclusively presumed to have been re-employed for the next contract term un-

less the employee receives notice of probable cause not to renew the contract for the next year. The determination of probable cause not to renew the contract must be made by the superintendent. The notice must be served upon the employee on or before May 15 preceding the new contract year or the contract will automatically continue. However, if the legislature has not adopted its budget, the district has until June 1 to provide the employee notice. (RCW 28A.405.210)

Non-renewal of certificated contracts

Washington law provides for two similar but distinct methods to terminate the employment of a certificated employee. As discussed above, certificated employees are presumed to be re-employed under the same terms and conditions, unless timely notice of probable cause is received. Non-renewal of contracts typically occurs because of the need to reduce staff or because of unsatisfactory performance. Unsatisfactory performance must be determined under evaluation criteria and procedures specified by statute. (RCW 28A.405.100) After the employee's performance has been determined to be unsatisfactory, the employee must be placed on probation. If, at the conclusion of the probationary period, the employee's performance is still deemed to be unsatisfactory, then the superintendent may issue the notice of probable cause not to renew the contract.

Discharge of certificated employees

Certificated employees may be discharged for sufficient cause at any time during the term of the employment contract. "Sufficient cause" has been held to be conduct which is not a "remedial teaching deficiency," and either materially and substantially affects his or her performance or lacks any positive aspect or legitimate professional purpose.

The law requires that the superintendent make the determination of probable cause for discharge of certificated employees. (RCW 28A.405.300) The notice of probable cause must specify the causes

for discharge. The district must be prepared to prove its case by a preponderance (majority) of the evidence.

Right to appeal

A certificated employee receiving either a notice of non-renewal or a discharge, may appeal the superintendent's determination. The appeal is by means of a hearing held before an independent hearing officer. At the hearing, the district has the burden of proof. The district must also pay all fees and costs of the hearing officer.

The board of directors is not included at any stage of the process. The law specifically states that the superintendent shall make the determination of probable cause. The final determination that an employee's contract shall not be renewed, or that the employee be discharged, is made by the statutory hearing officer.

Miscellaneous provisions

Provisional employees.

A certificated employee in the first three years of employment with a school district is considered a "provisional employee." Provisional employees must be observed once, for at least thirty minutes, during the first ninety calendar days of their employment period. A provisional employee whose performance is determined to be unsatisfactory need not be placed on probation before being given notice of probable cause to non-renew his or her employment contract, unless that right has been included in the collective bargaining agreement.

A provisional employee's appeal rights are limited to meeting with the superintendent to attempt to convince him or her to reinstate the employee. If the superintendent does not reinstate the employee, the superintendent must prepare a written recommendation to the board of directors for consideration at its next regular meeting. The employee may submit to the board written documentation in support of reinstatement. The board then notifies the employee in writing of its decision.

Transfer of an administrator to “subordinate certificated position.”

Specific provisions exist for the transfer of administrators to subordinate positions. Administrators are defined as “assistant superintendent, director, principal, assistant principal, coordinator,” or “any other supervisory or administrative position.” The superintendent may make a determination that a transfer is in the district’s best interest, and notify the administrator of the transfer in writing by May 15. Appeal is limited to an informal meeting with the board.



SCHOOL DISTRICTS AND COLLECTIVE BARGAINING

Since 1935, the relations between private employers and labor unions in the United States have been regulated by federal legislation. That legislation has never applied to the state governments, which were left free to develop their own methods of regulating public employment. In 1975, the Washington state legislature adopted its own comprehensive labor legislation governing the rights of public employers and employee unions. The Public Employment Relations Commission (PERC) administers that legislation.

Labor law is a field of very wide scope and complexity. Its historical roots go back to colonial times and it is a subject upon which reasonable people hold sharply conflicting views and deeply felt convictions. No attempt can be made here to describe all of the facets of labor relations, nor all of the complexities of labor law. It must suffice to merely draw an outline and add a caution: no single school board member can act alone with respect to the district's labor relations. To do so will almost surely result in the violation of some legal restriction and can jeopardize labor peace in the district for years to come.

Definition of terms

Some terms are widely used in labor relations and their meanings are as follows:

1. Arbitration

A quasi-judicial method of resolving labor disputes. The arbitrator gives the parties a definite decision, resolving the dispute. Often in labor relations, the arbitrators are a panel of three: one arbiter represents management, one represents the union, and the third is a professional arbiter beholden to neither labor nor management. The panel's decision is by majority rule. Many collective bargaining agreements provide

for binding arbitration as the method of resolving employee grievances.

2. Bargaining representative

Any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

3. Bargaining unit

The group of employees represented by the bargaining representative.

4. Collective bargaining

The performance of the mutual obligations of the public employer and the bargaining representative to meet at reasonable times and to confer and negotiate in good faith in an effort to reach agreement with respect to the wages, hours and terms and conditions of employment. Collective bargaining results in a collective bargaining agreement, which is a contract between the bargaining unit and employer and is binding on the members of the bargaining unit. The collective bargaining agreement is part of the “law” of the district and may create additional rights for employees and responsibilities for the district.

5. Educational employees

Certificated employees (teachers) of a school district, except: the district’s chief executive officer, chief administrative officers (including principals and assistant principals), confidential employees participating or assisting the employer in labor relations policy and employees with supervisory authority over other employees.

6. Grievance

Complaint by a member of the bargaining unit or the bargaining representative that the collective bargaining

agreement, or the employee's rights under the agreement, has been violated. The grievance is resolved through a procedure in the collective bargaining agreement called the grievance procedure, often culminating in arbitration.

7. Mediation

A structural, orderly process of conflict resolution in which the disputants meet with a neutral third party, the mediator, who helps the parties themselves to generate a mutually-acceptable solution to their problem. The mediator is an impartial person who suggests ways of resolving a dispute but, unlike an arbitrator, cannot impose a settlement on the parties. Mediation often is a substitute for arbitration and litigation.

Organization of bargaining units

The process by which employers and representatives of their employees meet and negotiate in good faith about wages, hours and the terms and conditions of employment is called “collective bargaining.” The employees are free to choose their own representatives without interference by the employer. There are some legal restrictions on the formation of those bargaining units and who can be in them. For instance, certificated and classified employees may not be in the same bargaining unit. All non-supervisory certificated employees — mainly teachers — must be in one bargaining unit. While the superintendent, assistant superintendents and other administrative staff, including principals and assistant principals, may be certificated, they may not belong to the teachers' bargaining unit. Supervisors also may not be members of the unit for the same reason. Also, “confidential employees” who assist in developing and administering the district's labor relations policy are excluded. A good example of a confidential employee would be the superintendent's secretary or executive assistant.

Unfair Labor Practices (ULPs)

Because of the long history of strife in American labor relations, both federal and state labor laws prohibit certain practices by both employers and unions. These are known as unfair labor practices (ULPs).

Employer ULPs

It is an unfair labor practice for an employer to do any of the following:

- Interfere, restrain or coerce employees in the exercise of their collective bargaining rights.
- Control, dominate or interfere with a bargaining representative.
- Discourage or encourage membership in an employee organization.
- Refuse to engage in collective bargaining.

Union ULPs

It is an unfair labor practice for the union to do any of the following:

- Interfere, restrain or coerce employees in the exercise of their collective bargaining rights.
- Induce an employer to commit an ULP.
- Discriminate against an employee who has filed an ULP.
- Refuse to engage in collective bargaining.

PERC has the authority to investigate, prevent and issue remedial orders to stop ULPs. School directors should take special note of employer ULPs, since an individual director's off-hand inappropriate comment about collective bargaining to an employee can be construed as an ULP.

The School Director's Role

The superintendent, a staff member or a district team (staff and attorney) represents the district in the bargaining process. The board's role is to set the district's bargaining parameters for the negotiations. Throughout the negotiation process, the individual or team bargaining on behalf of the district keeps the board informed of the status of negotiations and any issues that arise. When negotiations are completed, the contract proposal will be presented to the board and union for final approval.



STUDENT RIGHTS AND RESPONSIBILITIES

Issues regarding the rights and responsibilities of students have received a great deal of attention in the wake of the school shootings. Public schools must walk a fine — and at times uncertain — line between protecting the rights of students, and placing appropriate restrictions on their behavior, in order to provide a safe environment. Many of the situations facing school boards involve complex questions of constitutional law, which are beyond the scope of this presentation. The purpose of this monograph is to discuss the general contours of the subject.

Chapter 392-400 WAC sets forth the basic structure of student rights and responsibilities. This chapter of the code was first written in the late 1970's, and reflects the generally liberal approach to student discipline of that time. Student rights are enumerated as follows:

Student rights

In addition to other rights established by law, each student served by or on behalf of a common school district shall possess the following substantive rights, and no school district shall limit these rights except for good and sufficient cause:

1. No student shall be unlawfully denied an equal educational opportunity or be unlawfully discriminated against because of national origin, race, religion, economic status, sex, pregnancy, marital status, previous arrest, previous incarceration, or a physical, mental or sensory handicap.
2. All students possess the constitutional right to freedom of speech and press, the constitutional right to peaceably assemble and to petition the government and its representatives for a redress of grievances, the constitutional right to the free exercise of religion and to have their schools free from sectarian control or influence, subject to reasonable

limitations upon the time, place, and manner of exercising such right.

3. All students possess the constitutional right to be secure in their persons, papers, and effects against unreasonable searches and seizures.
4. All students shall have the right to be free from unlawful interference in their pursuit of an education while in the custody of a common school district.
5. No student shall be deprived of the right to an equal educational opportunity in whole or in part by a school district without due process of law.

The foregoing enumeration of rights shall not be construed to deny or disparage other rights set forth in the constitution and the laws of the state of Washington or the rights retained by the people.

WAC 392-400-215

Student responsibilities and duties

... it shall be the responsibility and duty of each student to pursue his/her course of studies, comply with written rules of a common school district which are adopted pursuant to and in compliance with WAC 392-400-225 and RCW 28A.600.010, and submit to reasonable corrective action or punishment imposed by a school district and its agents for violation(s) of such rules.

WAC 392-400-210

Most sanctions imposed for violations of school regulations involve the exclusion of the student from school, and/or school activities. Definitions are provided for the various degrees of sanction.

Superintendent of Public Instruction definitions

1. “Discipline” shall mean all forms of corrective action or punishment other than suspension and expulsion and shall include the exclusion of a student from a class by a teacher or administrator for a period of time not exceeding the balance of the immediate class period: Provided, That the student is in the custody of a school district employee for the balance of such period. Discipline shall also mean the exclusion of a student from any other type of activity conducted by or in behalf of a school district.
2. “Suspension” shall mean a denial of attendance (other than for the balance of the immediate class period for “discipline” purposes) at any single subject or class, or at any full schedule of subjects or classes for a stated period of time. A suspension also may include a denial of admission to or entry upon real and personal property that is owned, leased, rented, or controlled by the school district.
3. “Short-term suspension” shall mean a suspension for any portion of a calendar day up to and not exceeding ten consecutive school days.
4. “Long-term suspension” shall mean a suspension which exceeds a “short-term suspension” as defined in subsection (3) of this section.
5. “Expulsion” shall mean a denial of attendance at any single subject or class or at any full schedule of subjects or classes for an indefinite period of time. An expulsion also may include a denial of admission to or entry upon real and personal property that is owned, leased, rented, or controlled by the school district.

WAC 392-400-205

Special education students

The provision of services to disabled students is very complex. In short, a disabled student may not be disciplined for conduct that is a manifestation of the disability. Even if a special education student is properly suspended, the district must provide educational services. There are processes that can lead to emergency action against a very dangerous special education student. The rules regarding discipline for special education students may be found at WAC 392-172A-05140 through -05175.

The School Director's Role

The role of the school board is two-fold. First, the board sets, by policy, the expectations for student behavior. Second, the board may act as an appellate board to review the actions of the administration regarding discipline, suspension and expulsions.

The appeal process for both “discipline” and “short term suspensions” consists of an informal grievance procedure, which culminates with the right to present a verbal or written grievance to the board or appeals council at the “next regular meeting.”

The appeal process for “long term suspensions” and expulsions is more involved, because both sanctions entail a more serious disruption of the student’s education. In these cases, a hearing officer, or designee, conducts a very formal hearing. The student has the right to be represented by legal counsel, and the right to cross-examine witnesses. The hearing officer, or designee, must prepare a written decision setting forth findings of facts, conclusions, and the corrective action or punishment to be imposed. Upon appeal to the board, it may either make its decision on the record of the case, or hear the case de novo, rehearing the witnesses and reviewing the evidence. The rules also allow boards to create a disciplinary appeals council to hear appeals instead of the school board.

School searches, including locker searches

Schools have broad, but not unlimited, authority to conduct searches of students and their belongings. Unlike law enforcement agents, school officials do not require probable cause and a warrant to conduct a search. Reasonable suspicion that the search will yield evidence of violation of the law or school rule is sufficient. In addition, the search must be reasonable in its inception and its scope. The standards for a proper search are set forth at RCW 28A.600.230, which prohibits strip searches or body cavity searches. Searches are mandatory if there are reasonable grounds to suspect the student possess a firearm.

As a general rule, individualized suspicion is required for a search of a student or the student's belongings. *Kuehn v. Renton School District*, 103 Wn.2d 594 (1985). The legislature has carved out a statutory exception to this rule, as to locker searches. RCW 28A.600.220 states that no expectation of privacy exists as to the use of any locker, and that the locker shall be subject to search for illegal drugs, weapons and contraband, at any time. RCW 28A.600.210 through .240.

Weapons in the schools

With certain exceptions, a student who has carried onto, or has possessed a firearm on, school premises, school provided transportation or facilities being used exclusively for school purposes shall be expelled for at least one year. (RCW 28A.600.420)

Gang membership

A student who is a member of a gang, and knowingly engages in gang activity on school premises, may be suspended or expelled. (RCW 28A.600.455)



STATUTES ADDRESSING THE AUTHORITY OF SCHOOL DIRECTORS

The following statutes relate to the authority of school directors' duties:

RCW 28A.320.015

School boards of directors — Powers — Notice of adoption of policy.

- (1) The board of directors of each school district may exercise the following:
 - (a) The broad discretionary power to determine and adopt written policies not in conflict with other law that provide for the development and implementation of programs, activities, services, or practices that the board determines will:
 - (i) Promote the education and daily physical activity of kindergarten through twelfth grade students in the public schools; or
 - (ii) Promote the effective, efficient, or safe management and operation of the school district;
 - (b) Such powers as are expressly authorized by law; and
 - (c) Such powers as are necessarily or fairly implied in the powers expressly authorized by law.
- (2) Before adopting a policy under subsection (1)(a) of this section, the school district board of directors shall comply with the notice requirements of the open public meetings act, chapter 42.30 RCW, and shall in addition include in that notice a statement that sets forth or reasonably describes the proposed policy. The board of directors shall provide a reasonable opportunity for public written and oral comment and consideration of the comment by the board of directors.

Chapter 28A.330 RCW

PROVISIONS APPLICABLE TO FIRST-CLASS DISTRICTS

28A.330.010

Board president, vice president or president pro tempore — Secretary.

At the first meeting of the members of the board they shall elect a president and vice president from among their number who shall serve for a term of one year or until their successors are elected. In the event of the temporary absence or disability of both the president and vice president, the board of directors may elect a president pro tempore who shall discharge all the duties of president during such temporary absence or disability.

The superintendent of such school district shall act as secretary to the board in accordance with the provisions of RCW 28A.400.030.

28A.330.020

Certain board elections, manner and vote required — Selection of personnel, manner.

The election of the officers of the board of directors or to fill any vacancy as provided in *RCW 28A.315.530, and the selection of the school district superintendent shall be by oral call of the roll of all the members, and no person shall be declared elected or selected unless he or she receives a majority vote of all the members of the board. Selection of other certificated and classified personnel shall be made in such manner as the board shall determine.

28A.330.030

Duties of president.

It shall be the duty of the president to preside at all meetings of the board, and to perform such other duties as the board may prescribe.

28A.330.040**Duties of vice president.**

It shall be the duty of the vice president to perform all the duties of president in case of the president's absence or disability.

28A.330.050**Duties of superintendent as secretary of the board.**

In addition to the duties as prescribed in RCW 28A.400.030, the school district superintendent, as secretary of the board, may be authorized by the board to act as business manager, purchasing agent, and/or superintendent of buildings and janitors, and charged with the special care of school buildings and other property of the district, and he or she shall perform other duties as the board may direct.

28A.330.060**Superintendent's bond and oath.**

Before entering upon the discharge of the superintendent's duties, the superintendent as secretary of the board shall give bond in such sum as the board of directors may fix from time to time, but for not less than five thousand dollars, with good and sufficient sureties, and shall take and subscribe an oath or affirmation before a proper officer, that he or she will support the Constitution of the United States and of the state of Washington and faithfully perform the duties of the office, a copy of which oath or affirmation shall be filed with the educational service district superintendent.

28A.330.070**Office of board — Records available for public inspection.**

The board of directors shall maintain an office where all records, vouchers and other important papers belonging to the board may be

preserved. Such records, vouchers, and other important papers at all reasonable times shall be available for public inspection. The regular meetings shall be held within the district boundaries.

28A.330.080

Payment of claims — Signing of warrants.

Moneys of such school districts shall be paid out only upon orders for warrants signed by the president, or a majority of the board of directors and countersigned by the secretary: PROVIDED, That when, in the judgment of the board of directors, the orders for warrants issued by the district monthly shall have reached such numbers that the signing of each warrant by the president personally imposes too great a task on the president, the board of directors, after auditing all payrolls and bills as provided by RCW 28A.330.090, may authorize the issuing of one general certificate to the county treasurer, to be signed by the president, authorizing said treasurer to pay all the warrants specified by date, number, name and amount, and the funds on which said warrants shall be drawn; thereupon the secretary of said board shall be authorized to draw and sign said orders for warrants.

28A.330.090

Auditing committee and expenditures.

All accounts shall be audited by a committee of board members chosen in such manner as the board so determines to be styled the “auditing committee,” and, except as otherwise provided by law, no expenditure greater than three hundred dollars shall be voted by the board except in accordance with a written contract, nor shall any money or appropriation be paid out of the school fund except on a recorded affirmative vote of a majority of all members of the board: PROVIDED, That nothing herein shall be construed to prevent the board from making any repairs or improvements to the property of

the district through their shop and repair department as otherwise provided in RCW 28A.335.190.

28A.330.100

Additional powers of board.

Every board of directors of a school district of the first class, in addition to the general powers for directors enumerated in this title, shall have the power:

- (1) To employ for a term of not exceeding three years a superintendent of schools of the district, and for cause to dismiss him or her, and to fix his or her duties and compensation;
- (2) To employ, and for cause dismiss, one or more assistant superintendents and to define their duties and fix their compensation;
- (3) To employ a business manager, attorneys, architects, inspectors of construction, superintendents of buildings and a superintendent of supplies, all of whom shall serve at the board's pleasure, and to prescribe their duties and fix their compensation;
- (4) To employ, and for cause dismiss, supervisors of instruction and to define their duties and fix their compensation;
- (5) To prescribe a course of study and a program of exercises which shall be consistent with the course of study prepared by the superintendent of public instruction for the use of the common schools of this state;
- (6) To, in addition to the minimum requirements imposed by this title establish and maintain such grades and departments, including night, high, kindergarten, vocational training and,

except as otherwise provided by law, industrial schools, and schools and departments for the education and training of any class or classes of youth with disabilities, as in the judgment of the board, best shall promote the interests of education in the district;

- (7) To determine the length of time over and above one hundred eighty days that school shall be maintained: PROVIDED, That for purposes of apportionment no district shall be credited with more than one hundred and eighty-three days' attendance in any school year; and to fix the time for annual opening and closing of schools and for the daily dismissal of pupils before the regular time for closing schools;
- (8) To maintain a shop and repair department, and to employ, and for cause dismiss, a foreman and the necessary help for the maintenance and conduct thereof;
- (9) To provide free textbooks and supplies for all children attending school;
- (10) To require of the officers or employees of the district to give a bond for the honest performance of their duties in such penal sum as may be fixed by the board with good and sufficient surety, and to cause the premium for all bonds required of all such officers or employees to be paid by the district: PROVIDED, That the board may, by written policy, allow that such bonds may include a deductible proviso not to exceed two percent of the officer's or employee's annual salary;
- (11) To prohibit all secret fraternities and sororities among the students in any of the schools of the said districts; and
- (12) To appoint a practicing physician, resident of the school district, who shall be known as the school district medical inspector, and whose duty it shall be to decide for the board of directors all questions of sanitation and health affecting

the safety and welfare of the public schools of the district who shall serve at the board's pleasure: PROVIDED, That children shall not be required to submit to vaccination against the will of their parents or guardian.

28A.330.110

Insurance reserve — Funds.

School districts of the first class, when in the judgment of the board of directors it be deemed expedient, shall have power to create and maintain an insurance reserve for said districts, to be used to meet losses specified by the board of directors of the school districts.

Funds required for maintenance of such an insurance reserve shall be budgeted and allowed as are other moneys required for the support of the school district.

PROVISIONS APPLICABLE ONLY TO SECOND-CLASS DISTRICTS

28A.330.200

Organization of board — Assumption of superintendent's duties by board member, when.

The term of office of directors of districts of the second class shall begin, and the board shall organize, as provided in *RCW 28A.315.500. At the first meeting of the members of the board they shall elect a chair from among their number who shall serve for a term of one year or until his or her successor is elected. The school district superintendent as defined in RCW 28A.150.080 shall serve as secretary to the board. Whenever a district shall be without the services of such a superintendent and the business of the district necessitates action thereby, the board shall appoint any member thereof to carry out the superintendent's powers and duties for the district.

28A.330.210**Notice to ESD superintendent of change of chairman or superintendent.**

Every school district superintendent in districts of the second class shall within ten days after any change in the office of chair or superintendent, notify the educational service district superintendent of such change.

28A.330.220**Attorney may be employed.**

The board of directors of every second-class district in addition to their other powers are authorized to employ an attorney and to prescribe the attorney's duties and fix the attorney's compensation.

28A.330.230**Drawing and issuance of warrants.**

Second-class school districts, subject to the approval of the superintendent of public instruction, may draw and issue warrants for the payment of moneys upon approval of a majority of the board of directors, such warrants to be signed by the chair of the board and countersigned by the secretary: PROVIDED, That when, in the judgment of the board of directors, the orders for warrants issued by the district monthly shall have reached such numbers that the signing of each warrant by the chair of the board personally imposes too great a task on the chair, the board of directors, after auditing all payrolls and bills, may authorize the issuing of one general certificate to the county treasurer, to be signed by the chair of the board, authorizing said treasurer to pay all the warrants specified by date, number, name and amount, and the funds on which said warrants shall be drawn; thereupon the secretary of said board shall be authorized to draw and sign said orders for warrants.

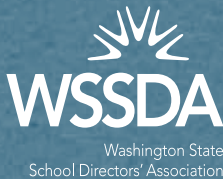
28A.330.240**Employment contracts.**

The board of directors of each second-class school district shall adopt a written policy governing procedures for the letting of any employment contract authorized under RCW 42.23.030. This policy shall include provisions to ensure fairness and the appearance of fairness in all matters pertaining to employment contracts so authorized.



NOTES

The Washington State School Directors' Association provides leadership, advocacy and services to support public school directors' efforts to improve student learning.



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