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## **Perry Law Firm Annual Policy Update Service**

**To:** Paul Calvert, Administrator, ESU 15  
**From:** Gregory H. Perry and Justin J. Knight  
**Date:** May 31, 2017

This is the Second and Final Installment of our Annual Policy Update. As a reminder, we distributed the First Installment on December 3, 2016.<sup>1</sup> For policies that are not entirely new, we have provided a clean and red-lined version for your review.

### **A. Policy Updates**

#### **1. #3130: Purchasing Policies (OPTIONAL)**

Years and years ago, our Policy Template listed purchases between \$15,000.00 and \$40,000.00 as the amount that requires an RFP process, while purchases above \$40,000.00 require a sealed bid process. We have received feedback from Boards and Superintendents that the \$40,000.00 amount is outdated. As a result, we have replaced the \$40,000.00 amount with \$90,000.00. Your Board can determine what amount you prefer.

#### **2. #3131: Procurement Policy**

NDE is requiring that schools have a procurement policy in the form of Policy 3131.

#### **3. #1200: Anti-Harassment Policy (REQUIRED) #4003: Employee Anti-discrimination (REQUIRED)**

Our current policy template includes an anti-discrimination policy but the policy does not include a specific reference to the Nebraska Equal Opportunity in Education Act, Neb. Rev. Stat. § 79-2,115 to § 79-2,124. Recently, a civil rights attorney complained that a school district's anti-discrimination policy did not satisfy the Act's requirement that the district have a policy to carry out the Act. We have added a legal reference to the Act to the policy to show that the anti-discrimination policy is adopted to comply with the Act, as well as other laws.

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<sup>1</sup> The policies included in the "First Installment" were as follows: "Wellness Policy," "Local Meal Charge Policy," and "Safety Plan."

**4. #3570: Business Operations (REQUIRED)**

NDE has required districts to include “suspension and disbarment” language in contracts reimbursed with federal funds. This requirement is aimed at preventing the government from paying federal funds to unethical or irresponsible companies or individuals. Although contract language generally does not rise to the level of Board Policy, we have included language to this effect in Policy 3570 because of NDE’s emphasis on this requirement. In addition, by having a Policy on this topic, your District has a defense if your District ever forgets to include this language in a covered contract.

**5. #4028: Employee Fundraising (OPTIONAL)**

Districts have struggled to restrict or manage teachers from fundraising online (e.g. crowdfunding) and in the community. Policy 4028 requires that a district employee receive permission if the employee seeks to use their position as a school employee to fundraise.

**6. #5001 Form: Summary of School Immunization Rules and Regulations (REQUIRED)**

The Nebraska Department of Health and Human Services has updated its Summary of School Immunization Rules and Regulations for the 2017-2018 School Year. The January 25, 2017 update is attached and it replaces page 9 in the forms attached to our Policy 5001, Admissions Requirements.

**7. #5004: Part Time Enrollment (REQUIRED)**

This year, the Nebraska School Activities Association voted to continue to require home-school or exempt students to be enrolled continuously in 20 credit hours each semester. However, the NSAA changed the existing rule to provide that a student needs to be enrolled in only 10 credit hours in the member school. As such, we eliminated the exception that existed under the old rule.

**8. #5202 Attachment: FERPA Notification of Rights (REQUIRED)**

Regulations went into effect making the Office of the Chief Privacy Officer (“OCPO”) the governmental agency charged with overseeing and enforcing FERPA, rather than the Family Policy Compliance Office (“FCPO”). The policy has been revised to reflect this change.

**9. #5413: Student Interviews (REQUIRED)**

Last year, the Legislature amended several laws related to juveniles. The amended laws give law enforcement more authority to take a student into temporary custody without a warrant or order of the court. These changes will go into effect on July 1, 2017. As such, the student interview Policy has been updated to reflect the current state of the law.

**10. #5418: Every Student Succeeds Act – Homeless (REQUIRED)**

The Nebraska Department of Education has released a “sample policy” on homeless students under the Every Student Succeeds Act. We have accepted their “sample policy” in Policy 5418 and recommend replacing your existing homeless policy with this version.

**11. #6800: Internet Safety Policy (REQUIRED)**

The Legislature passed LB 512, the Education Omnibus bill. LB 512 included the Nebraska Student Online Personal Protection Act (“SOPPA”). The SOPPA imposes requirements to maintain the online privacy of students. Just as Policy 6800 confirms the District’s intent to comply with other privacy laws, Policy 6800 now references the SOPPA.

**12. #8130: Annual Organization Meeting (OPTIONAL)**

Earlier this year, Omaha Public Schools struggled to elect a Board President. The Board remained deadlocked on a 4-4 vote for hours. A state statute provided a remedy for OPS’s problem. Neb. Rev. Stat. § 79-567 provides: “The members of the board of education of a Class V school district, at their regular meeting in January each year, shall elect a president and vice president from their own members, who shall serve for terms of one year or until their successors are elected and qualified.” (Emphasis supplied). As such, this law prevented an absence of leadership on the OPS board, because no matter how many meetings and votes ended up 4-4, the existing President remained in office.

However, this statute only applies to OPS. For Class II and III school districts, Neb. Rev. Stat. § 79-564 provides: “At the first meeting of each school board or board of education elected in a Class II or III school district, and annually thereafter, the board shall elect from among its members a president and vice president.” Thus, there is no default rule for a Class III school district that the existing Board President continues to serve until a successor is elected.

A solution to this potential issue is for the Board’s motions to elect officers to read similarly to the OPS statute. We have thus inserted the ideal motion into the policy on annual organizational meetings.

In addition, we are aware that boards sometimes do not act on each of the items specified in the annual organizational meetings. For example, the policy calls for approval of policies and regulations, and for the dissemination of the conflict of interest statutes, but these actions are sometimes not taken. To avoid a violation of the policy, we have revised the policy by changing the statement that the board “shall” take the prescribed actions to state that the board “should” take those actions.

Finally, this policy calls for dissemination of the conflict of interest laws. We have provided these laws to accompany the policy.

**13. #9330: Parliamentary Procedure (OPTIONAL)**

During this past year, the Lincoln City Council was locked in a heated debate over the budget. At one meeting, a Councilmember invoked an uncommon procedure under Robert's Rules of Order. After news outlets reported on this meeting, we were asked to revisit the Policy on parliamentary procedure to ensure that no Board is absolutely bound by all of Robert's Rules of Order.

**B. Non-Policy Updates**

In addition to these Policy Updates, there are several legal updates that your District should know:

**1. Student Pregnancy**

You may have heard that the Legislature passed a law (LB 427) requiring every school district to pass a policy on pregnant students. The Law gives the Nebraska Department of Education until December 1, 2017 to decide if the Department will release a "model policy" for districts across the state. Districts do not need to adopt a policy until May 1, 2018. As a result, we will wait to see if NDE distributes a model policy on this topic. In any event, we will provide a policy for schools prior to the May 1, 2018 deadline.

**2. Veterans' Preference**

The Legislature passed a law (LB 639) that requires political subdivisions (including school districts) to give preference to the spouse of a servicemember (defined as "a person who serves on active duty in the armed forces of the United States except for training") in employment-related matters, including hiring. Although this change does not rise to the level of changing Board Policy, districts should review their application forms to ensure that they are in compliance with this new law. We have provided updated application forms to include for veteran spousal purposes.

**3. Swim Training**

LB 512 (the Education Omnibus bill) includes a requirement that every swimming pool owned, rented, leased, or otherwise used by a school district for practice, competition, or any other school function must have at least one person present, who is currently certified by a nationally recognized aquatic training program in first aid, cardiopulmonary resuscitation, and drowning risk prevention.

Therefore, any district that owns, rents, leases or otherwise uses a swimming pool must ensure that they meet these personnel training requirements.

**4.     Medicaid Fraud**

Any school district that receives more than \$5,000,000.00 annually in Medicaid-based funds are required to have a written policy on detecting and preventing fraud, waste and abuse of federal funds. We assume that no district receives this much in Medicaid-based funds but, if your district does receive this much, please let us know and we will provide you with the applicable policy.

**5.     Solar Eclipse**

As you may know, on August 21, 2017, the total solar eclipse's path will cross the state of Nebraska. Many schools are either hosting viewings of the solar eclipse or traveling to watch this unique experience. With such an opportunity comes several risks, including the possibility that a student may suffer an eye injury as a result of staring too long into the sun. As a result, we strongly recommend that all districts intending to facilitate students viewing the eclipse have either a (1) waiver/release or (2) opt-out form for parents to sign.

Should you have any questions about any of these policies or the underlying legal regulations and requirements, please do not hesitate to contact us.