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## **OHIO LOCAL UPDATE OVERVIEW AND COMMENTS**

### **VOLUME 41 NUMBER 1**

### **AUGUST 2022**

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#### **Notice Regarding Legal Accuracy**

Neola is vigilant in providing policy language to clients that has been vetted for legal accuracy by outside legal counsel. Should questions arise as to the legal compliance or accuracy of Neola materials, it is our expectation that Neola's counsel would have the opportunity to assist in the resolution of such a claim. Please notify the Neola corporate office if an issue arises in which such a review or assistance is necessary.

Policies in this update have been reviewed by either Ennis Britton Co., L.P.A. or Peters Kalail & Markakis Co., L.P.A. for consistency with Federal and State law.

#### **Textbooks, Instructional Materials, and Library Materials**

During the past several months, public discussion at Board meetings has shifted away from COVID-19 issues and mask mandates to the matter of selection of appropriate learning materials such as textbooks, instructional materials, and library/media center materials, and challenges to those selections. Be sure to check current policies and administrative guidelines and their implementation at the start of the new school year. The following templates have been reviewed and have been determined to be accurate and compliant with State law:

- **Policy/AG 2510 - Adoption of Textbooks**
- **Policy 2520/AG 2520A - Selection of Instructional Materials and Equipment**
- **Policy 9130 - Public Complaints**

#### **IRS Mileage Reimbursement Rate**

The Internal Revenue Service (IRS) issued Notice 2022-124 on June 9, 2022 which provides an increase in the standard mileage reimbursement rate for the final 6 months of 2022.

For the final 6 months of 2022, the standard mileage rate for business travel will be 62.5 cents per mile, up 4 cents from the rate effective at the start of the year (58.5 cents). The new rate became effective July 1, 2022. The IRS provided legal guidance on the new rate in [Announcement 2022-13](#) [PDF](#).

In recognition of recent gasoline price increases, the IRS made this special adjustment for the final months of 2022. The IRS normally updates the mileage rates once a year in the fall for the next calendar year.

#### **Legal Alerts**

Included with this update are several legal alerts. These include:

03 - Update on Title IX - Notice of Proposed Rule Making and Two Recent Sixth Circuit Decisions

04 - Reminder about Employer Requirements for Nursing Mothers

05 - H.B. 583 Delays Implementation of Ohio's Dyslexia Law

06 - Ohio's "New" Graduation Requirements in Full Effect for Class of 2023

07 - Ohio Passes Bill Reducing Requirements to Arm School Staff

08 - State Board Approves Changes to Preschool Definitions

09 - Extension of Substitute Teacher Qualifications Flexibility

10 - Sample Resolution: Employment of Substitute Teachers

11 - U.S. Supreme Court Ruling on Employee Private Religious Expression

## **BYLAWS AND POLICIES**

### **Policy 1617/3217/4217/7217 - Weapons (Revised)**

These policies have been revised to reflect the changes required by recent legislative actions, including S.B. 215 and H.B. 99. Senate Bill 215 became effective June 13, 2022, and authorized “qualified” individuals to carry certain weapons without a carry-concealed license or permit. The law defines “qualifying adult” as a person who is twenty-one (21) years of age or older, is not legally prohibited from possessing or receiving a firearm under specified federal or state law, and satisfies specified criteria necessary to obtain a concealed handgun license. Importantly, however, the law still requires an individual to have a concealed-carry permit or be an active service member to lawfully carry a weapon onto school grounds and either remain in their vehicle with it, or leave it in their locked vehicle.

“Permitless” carriers are still not allowed to carry weapons into a school safety zone. A violation of this law remains a felony offense in Ohio. Language in the policies has been updated to reflect SB 215 changes, and a drafting note has been added to clarify current requirements.

H.B. 99 permits a board of education and governing board of a nonpublic school to authorize individuals to have weapons in a school safety zone provided that both of the following apply:

- Either the individual has successfully completed the new curriculum and training established under the bill (described below), or the person has received a certificate of satisfactory completion of an approved basic peace officer training program or is a law enforcement officer.

The initial training for those who have not completed the peace officer training will be up to twenty-four (24) hours in length, with an additional annual requalification training requirement of up to eight (8) hours. School boards may require training beyond this amount, and must pay all costs of the training. The training must be provided by the newly formed Mobile Training Team, or alternatively be a training adopted by the board of education and approved by the newly formed Ohio School Safety and Crisis Center (“OSSCC”).

and

- The board must notify the public through their regular channels of communication if they have authorized one (1) or more individuals to carry weapons, and must also provide a current list of designated individuals to the OSSCC. The notice to the public is a public record, although other records pertaining to designated individuals are expressly exempt from the Ohio Public Records Act.

Revisions to these policies reflect current Ohio law. Options provided in these policies should be carefully considered and choices selected should be included in any revisions to these policies.

### **Policy 2220 - Adoption of Courses of Study (Revised)**

This policy has been revised to reflect the provisions of O.R.C. 3313.60 which requires the Board to prescribe the curriculum for the District, including references to courses of study. While districts may choose to work with their affiliate education service center (ESC) in the development of courses of study and related curriculum guides, Ohio law no longer requires such oversight.

This revised policy reflects current Ohio law and should be adopted to maintain accurate policies.

### **Policy 2413 - Career Advising (Revised)**

This policy has been revised to reflect the provisions of S.B. 135, effective July 121, 2022, which added several requirements to K-12 Career Advising. The policy summarizes the district's obligation to provide career advising to an at-risk student after a Student Success Plan has been developed which aligns with the district's career advising plan. The policy also includes additional information that must be provided to students, specifically about how costs of postsecondary education may be offset, as well as information about certain career fields that require industry-recognized credentials, certificates, and college degrees. Legal citations have been updated as well.

Reminder: This policy must be reviewed/updated at least once every two (2) years and posted on the District website.

This revised policy reflects current Ohio law and should be adopted to maintain accurate policies.

### **Policy 2430 - District-Sponsored Clubs and Activities (Revised)**

### **Policy 2431 - Interscholastic Athletics (Revised)**

These policies have been revised to include the provision of S.B. 181. The bill prohibits districts as well as nonpublic schools and interscholastic conference governing bodies from adopting any type of rule that limits a student from wearing religious apparel while participating in an extracurricular activity unless the apparel poses a danger to the student or others. And even if there is some safety risk involved, a school district must offer "all reasonable accommodations" to the student participant.

Language has been added to PO 2430 and PO 2431 to include a statement that students may not be prohibited from wearing religious apparel while participating in athletics and school-sponsored activities unless the apparel poses a legitimate danger to the health and safety of participants. The law became effective on May 30, 2022.

These revised policies reflect current Ohio law and should be adopted to maintain accurate policies.

### **Policy 3120.08 - Employment of Personnel for Co-Curricular/Extra-Curricular Activities (Revised)**

This policy has been updated in order to clarify that a non-teaching staff member who does not have an active teaching license must obtain a pupil activity permit to serve as a paid coach or advisor through a pupil services/supplemental contract regardless of whether the extracurricular program involves athletics, physical activity or health and safety risks. Licensure requirements under R.C. 3319.303 and accompanying regulations are different for individuals who have a valid teaching license. These individuals need only to obtain a Pupil Activity Permit when they oversee athletics, other physical activities, or activities that may present a health or safety risk.

This revised policy reflects current Ohio law and should be adopted to maintain accurate policies.

### **Policy 5111 - Eligibility of Resident/Nonresident Students (Revised)**

Revisions to this policy reflect changes to the Secretary of State's Safe at Home Program implemented by House Bill 93.

Under the previous version of the law, program participants were not required to provide government entities with a copy of their program authorization card. The current version of the law now requires program participants to provide their program authorization card issued by the Secretary of State as proof of their enrollment in the program.

This revision is recommended for adoption.

### **Policy 5335 - Care of Students with Chronic Health Conditions (Revised)**

### **Policy 5336 - Care of Students with Diabetes (Revised)**

Last year the Ohio Legislature passed legislation (HB 231) concerning the procurement of glucagon (a medication used by persons with diabetes). The identified policies/AGs have been revised to reflect recent changes in the area of student health care, including medication management and responding to food allergies, in a school setting.

The suggested revisions are consistent with the current state of the law and should be adopted.

### **Policy 5460.01 - Diploma Deferral (Revised)**

Policy 5460.01 has been modified to recognize that students with disability who are approved for social graduation and then remain in school to continue to work on their transition-related IEP goals do not need to master/complete those transition-related IEP goals before accepting their diploma and leaving school; in fact, the purpose of transition-related goals are to begin to address issues/topics that the student will be working on well after they exit services. As such, students who have completed their academic requirements may receive their diploma and exit services when the IEP team determines the student has made sufficient progress on the student's transition-related IEP goals, or the student reaches the age of 22, whichever occurs first.

This proposed revision is consistent with the current state of the law and should be adopted.

### **Policy 6550 - Travel Payment & Reimbursement/Relocation Costs (Revised)**

Several client districts have notified Neola that their auditors are requesting a policy that prohibits them from paying relocation costs for existing or new employees. Given that the payment of certain relocation costs is expressly permitted under federal law in specific circumstances, Neola is offering optional revisions to Policy and AG 6550.

The optional revisions either expressly allow the Board to pay relocation costs in certain circumstances or blanketly prohibit the payment of such costs. It is important to note, however, that a board of education does not need a policy in order to pay relocation costs. Rather, it could simply include such compensation in the board's employment agreement with a certain employee and pass a board resolution authorizing the employment agreement. Alternatively, the Board does not need the policy to prohibit the payment of relocation fees; instead, it could just not offer such compensation to any new or existing employees. Also, if the board is considering payment of relocation fees to employees covered by a collective bargaining agreement, such a benefit would be subject to labor negotiations.

### **Policy 6700 - Fair Labor Standards Act (FLSA) (Revised)**

More than a decade ago, Congress passed a law amending Section 7 of the Fair Labor Standards Act ("FLSA"), mandating that eligible employees be provided reasonable breaks and private facilities to express breast milk during the first year after the birth of their child. It is important to keep in mind that the FLSA overtime and lactation provisions only apply to certain employees in an organization, but not all of them. For public schools, typically nonteaching employees such as bus drivers, custodians, and secretaries are covered by the FLSA. However, professional employees like teachers, administrators, and IT staff are usually exempt from overtime and other FLSA provisions including those mandating breaks for lactation. However, school employers may elect to provide this type of benefit and support for exempt employees. Therefore, language has been added that summarizes a board of education's obligation to provide reasonable breaks and private facilities for FLSA-eligible employees to express breast milk, and also includes optional language that provides the same benefit to FLSA-exempt employees to the extent the employees may be accommodated without materially disrupting school operations or employee duties.

A legal alert accompanies this change and summarizes a board of education's duties with regard to this topic.

### **Policy 7440 - Facility Security (Revised)**

Some Neola clients have expressed an interest in using metal detectors to search for more than just weapons; in particular, some school districts want to use metal detectors to alert their staff if a student is carrying a vape pen or other vaping-related equipment/devices. In response to these inquiries, Neola developed optional revisions to the identified documents to allow the use of metal detectors to alert school staff to students in possession of other unauthorized objects (which may include but not be limited to vape pens/other vaping-related equipment/devices).

### **Policy 7440.03 - Small Unmanned Aircraft Systems (Technical Correction/Revised)**

Policy and AG 7440.03 have been updated to incorporate changes in federal regulations pertaining to the operation of drones at night or over people.

The proposed revision to the policy adds the new federal regulation citation to the policy. If, in reviewing the policy template, a change to the current policy would be considered a revision or the addition of a new policy. Otherwise, the change would be considered a Technical Correction. The proposed revisions to the AG are consistent with the current state of the law and should be adopted.

### **Policy 8210 - School Calendar (Revised)**

The School Calendar policy has been updated to include an option for districts to approve a school calendar either annually, or biannually, based on their typical approval process. The previous version of the policy included only annual approval, although many boards approve calendars every two years. Language has also been added to recognize the

deadline of August 1st for school boards to approve a plan for use of online lessons or blizzard bags. School districts were provided some flexibility during the pandemic for online lessons. As of this school year, that flexibility has expired.

City, exempted village, and local school districts are still limited to only three (3) makeup days under a blizzard bag plan. However, with the recent passage of Senate Bill 89, which became effective March 2, 2021, joint vocational school boards of education are authorized to incorporate other options to make up any number of additional hours in which an affiliate school district is closed due to a calamity. This is not available to traditional school districts, including those that operate their own vocational programming.

A few additions have been made to the administrative guideline, specifically to recognize that seniors and kindergarteners have some additional flexibility to meet minimum hour requirements. Language was added to clarify that make up time may be building specific if school is unexpectedly close for whatever reason. Finally, a modification was made to specify that a board must pass a resolution if it plans to reduce hours of operation in a succeeding year.

Revisions to this policy are recommended for adoption.

### **Policy 8320 - Personnel Files (Revised)**

### **Policy 8330 - Student Records (Revised)**

Revisions to these policies reflect changes to the Secretary of State's Safe at Home Program implemented by House Bill 93.

Under the previous version of the law, program participants were not required to provide government entities with a copy of their program authorization card. The current version of the law now requires program participants to provide their program authorization card issued by the Secretary of State as proof of their enrollment in the program.

These revisions are recommended for adoption.

### **Policy 8600 – Transportation (Revised)**

This policy underwent major revisions in the Volume 40 Number 1 Update (August 2021) due to HB 110, which contained several significant changes for school transportation. Policy 8600 and AG 8600 were updated accordingly.

These revisions provide additional clarification and direction for districts, as ODE guidance has been issued during the past several months, as the 2021-22 school year provided for phase-in of the notification requirements. These provisions are in full force and effect for the 2022-23 school year and moving forward.

Revisions to this policy should be adopted in order to maintain accurate policies.

## **ADMINISTRATIVE GUIDELINES**

### **AG 5111 - Admission to the District (Revised)**

See note on Policy 5111.

### **AG 5330.02 - Epinephrine Auto-Injectors: Maintenance and Use (Revised)**

See note on Policy 5335/5336.

### **AG 6550 - Travel Payment and Reimbursement/Relocation Costs (Revised)**

See note on Policy 6550.

### **AG 6700 - Fair Labor Standards Act (FLSA) (Revised)**

See note on Policy 6700.

**AG 7440.01 - Video Surveillance and Electronic Monitoring (Revised)**

See note on Policy 7440.

**AG 7440.03 - Small Unmanned Aircraft Systems (Revised)**

See note on Policy 7440.03.

**AG 8210 - School Calendar (Revised)**

See note on Policy 8210.

**AG 8320 - Personnel Records (Revised)****AG 8330 - Student Records (Revised)**

See note on Policy 8320/8330.

**COMMENTS****Reviewing Board Minutes**

A feature of your subscription to the Update Service is the review of your District's Board minutes to identify action that results in new policy or revision to existing policy. If such action has been taken and copies of the related materials have not been submitted to the Production Office, the District will be contacted and additional information regarding the action will be requested. Please take advantage of this valuable service by sending copies of your Board minutes to the Production Office for review.

Last Modified by Beth Harman on September 6, 2022