

CHAPTER 9

The Legal World of Human Resources Administration

*Policy and Regulation
Development*

Learning Objectives

After reading this chapter, you will be able to

- Define and identify policies, regulations, and bylaws in relation to school governance.
- Describe the benefits of a viable set of governance policies and regulations for the school district and the human resources function.
- Implement a codification system for classifying governance policies and regulations for the human resources function.
- Identify several strategies for developing policies and regulations in a school setting.
- Identify the characteristics of effective school policies.
- Explain the compliance aspects of school policy as related to federal and state laws and court rulings.
- Discuss several of the rulings of the courts that have greatly influenced the human resources function.
- Discuss court rulings related to due process, sexual harassment, teacher dismissal, drug-free workplace, and other important legal considerations for personnel practices in education.
- Describe much of the civil rights legislation and related laws concerning the liberty and property rights of employees.

Legal Considerations and the Human Resources Function

Organizations today are regulated and controlled by legislation, court rulings, and local policies and regulations, and school systems are no exception. The human resources function in school systems operates within a legal world. A statewide study of human resources directors revealed the following results (Norton, 2005):

1. The need for legal skill was ranked second only to human relations skill as a necessary job skill for the HR director.
2. Legal matters, including litigation, ranked third among those HR processes that consumed the greatest amount of the HR director's time.
3. Legal impacts on personnel ranked among the top 10 serious problems facing HR directors in the study.
4. Legal impacts on personnel tied for second among the frequent problems facing HR directors.
5. Lawsuits and litigation of personnel issues were listed among the top five issues, should they intensify, that would likely lead to directors leaving their position.

The following section discusses several rights of employees in school systems. First, it discusses rights related to the following six areas: (1) academic freedom, (2) sexual harassment, (3) employee dismissal, (4) drug-free workplace, (5) teacher transfers, and (6) due process. Second, it identifies and describes several laws specifically related to human resources legislation.

Employee Rights

An employee **right** is “the ability to engage in conduct that is protected by law or social sanction, free from interference by another party.” Employees’ **statutory rights** “are protected by specific laws enacted by government,” and **contractual rights** “are based on the law of contracts” (Gómez-Mejía, Balkin, & Cardy, 2007, p. 467).

The following section discusses employee rights, responsibilities, and duties related to academic freedom of teachers and other educational personnel.

Rights, Responsibilities, and Duties: Academic Freedom

“Academic freedom includes the right of teachers to speak freely about their subjects, to experiment with new ideas, and to select appropriate teaching materials and methods. Courts have held that academic freedom is based on the First Amendment and is fundamental to our democratic society” (Fischer, Schimmel, & Stellman, 2003, p. 134). Academic freedom protection for teachers and the responsibility of

teaching personnel to use good judgment in the classroom are included here. In one sense, academic freedom permits teachers to teach in a manner that they deem appropriate, yet the teacher must always be sensitive to the matter of indoctrination; teachers must be particularly careful about the students' freedom when teaching controversial issues and when conflicting values are present.

Administrators attempting to implement academic freedom policies need to proceed with judgment and caution. Figure 9.1 gives an example of a policy statement concerning academic freedom.

Policies Relating to Staff Protection: Sexual Harassment

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin. In 1980, the Equal Employment Opportunity Commission (EEOC) provided guidelines that have served to define sexual harassment and clarify the responsibility of organizations concerning such activities. In brief, these guidelines defined **sexual harassment** as unwelcome sexual advances, requests, or demands for sexual favors and other verbal or physical conduct of a sexual nature that explicitly or implicitly are suggested as a term or condition of an individual's employment, are used as the basis for employment or academic decisions, have the purpose or result of unreasonably interfering with an individual's performance in the workplace or in a school setting, or result in a hostile or offensive work environment.

Sexual harassment in the workplace is considered a form of sexual harassment under Title VII of the Civil Rights Act of 1964. Sexual harassment of students is considered sexual harassment under Title IX of the Educational Amendments of 1972. "What this means . . . is that all employers—both large and small—must have a sexual harassment policy in place. They must train all employees on the policy. They must have clear procedures for reporting such behavior—including allowing

Garland School District

Code: GBE

Personnel Academic Freedom

This school district supports the teachers' freedom to think and to express ideas, to select appropriate instructional materials and methods of instruction, and to be free to take action within their professional domain. Such freedom carries with it the responsibility of using judgment and prudence to the end that it promotes the free exercise of intelligence and pupil learning. Through the use of good taste and professional judgment, teachers are free to conduct discussions of various issues that offer students experience in examining respective views of controversial questions.

Academic freedom must be exercised with the basic ethical responsibilities of the teaching profession and the level of student maturity in mind. These responsibilities are undergirded with a sincere concern for the welfare, growth, and development of students and the use of professional ethics and good judgment in selecting and employing materials and methods of instruction.

Figure 9.1 Sample Policy Concerning Personnel Academic Freedom

employees access to management other than their supervisor. And they must communicate policy effectively and openly” (Cole, 2000).

Sexual harassment can fall into one of two general areas, *quid pro quo* and hostile environment. **Quid pro quo** harassment occurs when an employee or applicant is asked to provide sexual favors in order to obtain or retain employment. When individuals are harassed by intimidating conditions in the workplace, a **hostile environment** exists. In such cases, a female employee might be subject to unwelcome touching or placed in situations where she must listen to stories of the sexual exploitations of other employees.

The human resources unit of the school district should assume the leadership for establishing specific policies and regulations relating to sexual harassment involving both students and staff. Without a written policy prohibiting sexual harassment and outlining specific procedures for reporting and handling complaints, an employer is likely to be found just as guilty as if he or she had condoned the harassment. At least two other responsibilities accompany this leadership role: (1) the human resources unit should lead in the development of effective education programs that focus on the nature of sexual harassment, the district’s policies on harassment, and individual employee’s responsibilities for eliminating sexual harassment in the school district; and (2) the human resources unit should make certain that employee assistance programs and services are available for employees who have experienced sexual harassment and need psychological counseling.

Employee training activities that include programs for educating employees about the subject of harassment and serve to gather information about the status of harassment within the school setting are direct responsibilities of the human resources unit and administrators in the district. Such training programs serve as a preventative measure against sexual harassment and can result in focusing the attention of all employees on the problem and their responsibilities in such matters.

Wolkinson (2000) recommended six specific features of a comprehensive policy on sexual harassment: (1) it should identify what constitutes sexual harassment, (2) it should clearly communicate the message that sexual harassment will not be tolerated at the workplace, (3) it should designate a particular employee as EEO officer who can advise employees and to whom complaints may be made, (4) it should emphasize the need to investigate complaints immediately and thoroughly with all facts documented, (5) it should set forth vigorous disciplinary measures, and (6) it should include a plan for training all personnel, both administrators and employees (p. 818). Most authorities point out that remediation of sexual harassment in the workplace is largely a matter of good management. That is, systems that are practicing good management by placing emphasis on such matters as task accomplishment, individual and unit work responsibilities, and positive work conditions rather than matters such as personality issues will by themselves reduce sexual harassment and discrimination (Cole, 2000).

Cohan, Hergenrother, Johnson, Mandel, and Sawyer (1996) suggested the following strategies to combat sexual harassment in schools:

1. Establish a district-wide sexual harassment committee that includes members of the entire school community.

2. Create and disseminate a sexual harassment policy, including a grievance procedure for reporting incidences of alleged sexual harassment.
3. Include in the district mission the goal to eradicate sexual harassment and promote gender equity.
4. Become aware of attitudes and assumptions about sexual harassment and educate to change attitudes and behaviors.
5. Identify intolerable behaviors.
6. Distinguish between flirting and sexual harassment.
7. Educate the school community on an ongoing basis on recognizing and responding to sexual harassment; challenge gender stereotypes.
8. Educate all staff, students, and parents about the school district sexual harassment policy.
9. Communicate the school district commitment to ending sexual harassment.
10. Expect changes in attitudes and behaviors.
11. Incorporate messages against sexual harassment and in favor of gender equity into the entire school—classroom, hallway, and playground.
12. Demonstrate appropriate behavior. (pp. 74–75)

Figure 9.2 provides an example of a school district sexual harassment policy statement.

Employee Dismissal and Legal Considerations

Dismissal has been a much-discussed topic in human resources administration. “To secure the best results in our schools, we must have able-bodied, energetic, active, industrious teachers—teachers who can control themselves under the most trying circumstances” (Bloss, 1882, p. 82). As indicated by this statement made more than 100 years ago, teacher quality historically has been recognized as critical to effective teaching and learning. Dismissal has been a matter of historical importance as well. In 1882, Bloss reported to the governor of Indiana that, “the [county] superintendent may take every precaution, yet occasionally it happens that one is licensed who is unworthy to exercise the functions of a teacher” (p. 84). The 1882 School Law reference, Section 36 stated

The county superintendent shall have the power to revoke licenses, granted by him or his predecessor, for incompetency, immorality, cruelty, or general neglect of the business of the school, and the revocation of the license of any teacher shall terminate the school which the said teacher may have been employed to teach. (Bloss, 1882, p. 84)

**Policy
4880**

HUMAN RESOURCES

Anti-Discrimination and Harassment

Lincoln Public Schools is committed to providing a workplace and learning environment free of discrimination and harassment for students and employees. Accordingly, discrimination or harassment of any kind by supervisors or coworkers is prohibited. In addition, the District will endeavor to protect employees from reported discrimination or harassment in the workplace by students and other non-employees. Discrimination or harassment based on a person's race, color, religion, national origin, sex, disability, age, marital status, veteran status, or sexual orientation is specifically prohibited by Board of Education policy and/or federal and state law.

Date of Adoption (or Last Revision):

8-10-2004

Related Policies and Regulations:

**Section 703 of Title VII of the
Civil Rights Act**

Legal References:

**LINCOLN PUBLIC SCHOOLS
LINCOLN, NEBRASKA**

POLICY AND REGULATION MANUAL

Figure 9.2 Sample Antidiscrimination and Harassment Policy

SOURCE: Reprinted with permission from the Lincoln, Nebraska Public School District.

More than 80 years ago, Tead and Metcalf (1920) underlined the momentous effects of dismissal on the discharged worker as follows:

So heavy a penalty as the dismissal of a workman (involving to him a serious dislocation of his life, the perils and demoralization attendant on looking for work, probably uprooting of his home and the interruption of his children's schooling, possibly many weeks of penury or semi-starvation for his family and himself) ought to be regarded as a very serious matter. (p. 245)

Today, employee dismissal continues to be a difficult and often traumatic personnel action. Norton (2004) found that personnel directors in one state viewed dismissing incompetent staff as one of the 10 leading problems facing them as school administrators. Fischer and colleagues (2003) note that, "State laws, school board policies, and collective bargaining agreements set forth the specific reasons why teachers can be dismissed" (p. 36). The grounds of incompetence, willful neglect of duty, immorality, misconduct, and insubordination commonly are used for dismissal by most states.

A school board continuity policy remains only as a written statement until it is put into practice. Young (2008) points out clearly that, "Once the goals for maintaining continuity of personnel service have been set forth, implementation by school officials follows. . . . One of these actions is the preparation of a series of policy statements to guide members in designing and implementing specific programs" (p. 292).

The second step is to develop a set of related administrative procedures. The purpose of this discussion is to emphasize the need and significance of sound school board policy and regulations in this area that serve as significant legal documents in teacher dismissal cases. It is necessary to keep reviewing them and one's related responsibilities thoroughly before any dismissal hearings are held.

Often, a dismissal hearing charges a teacher with violating school system policy or school regulations. It is not enough to cite the rule or policy the teacher allegedly violated; it will be necessary to present a copy of the rule to the hearing officer or board. The administrative representative must be prepared to establish that the teacher in question was also furnished with a copy before the infraction took place or at least was well aware of the rule or policy. Authorities recommend that school officials keep records of policy distribution procedures and contract clauses whereby teachers agree to follow school system policy and regulations.

State statutes set forth both policies and regulations for teacher nonrenewal and dismissal. When a teacher's contract is not renewed at the end of the contract time, state statutes most often set forth the specific procedures to be followed. In such instances, state laws for tenure govern the procedures to be followed. **Tenure** is the protection given to teachers against arbitrary actions by school officials in the dismissal process. That is, tenured teachers can be dismissed only for those reasons set forth in the law. In any case, this does not mean that teachers have the right to lifetime employment. Rather, if being dismissed for cause, tenured teachers have the right of **due process**, a procedure that includes the notice of charges, a hearing on the charges, and the right to reply to the charges. However, in the case of non-tenured teachers, most states simply require a notice to the teacher that the contract will not be renewed. Tenure cases are quite different. State statutes generally set forth procedures for dismissal of tenured teachers that include such features as notice, the right of a hearing, the right to be represented by counsel, and other provisions related to due process.

School board dismissal policies commonly include a brief board policy statement, followed by the specific statute as stated in law. Policy development guidelines usually recommend that statements from state statutes not be rewritten verbatim as board policy. Rather, a policy based on the statute should be written. However, because of the sensitive nature of dismissals and the high potential for litigation in the courts, the use of specific state statutes as district policy is common. It is clear that dismissal procedures and requirements will differ as laws of the various states differ. Figure 9.3 provides a dismissal policy based strictly on a state statute.

EPS File: GCQF Suspension and Dismissal of Certificated Staff Members (Including Reprimand)

Suspension and Dismissal

Employees are expected to comply with the policies adopted by the Governing Board or as set forth in approved administrative regulations. Dismissal shall be in accordance with the laws of the state. The procedures for suspension and dismissal of teachers shall be those prescribed by the State's Revised Statutes.

Legal Refs: A.R.S. 15-508; 15-521; 15-536; 15-550

Adopted: Date of Manual Adoption OC 2578
Tempe Elementary Schools, Tempe, Arizona

Log No. 166

EPS File: GCPD-R1

Rules and Procedures for Disciplinary Action Involving a Teacher

1. *Purpose.* These rules are prescribed pursuant to Arizona Revised Statutes, Section 15-341(A)(26) and are intended to be utilized as a disciplinary mechanism to deal with violations of statutory duties, School District regulations, Governing Board policies, and the duties of a teacher that do not constitute cause for dismissal or certificate revocation. The Governing Board reserves the right to initiate termination proceedings or to non-renew contract for serious or multiple violations of these rules or for any incident of insubordination, unprofessional conduct, or other reasons that it determines sufficient to constitute cause for severance of the employer-employee relationship. Dismissal procedures for teachers are governed by the contract of employment, District policy, and the statutory provisions contained in A.R.S. Title 15, Article 5, Chapter 3.

2. *General Provisions.* These rules are intended to preserve the orderly and efficient administration of the school system and to serve as guidelines for the imposition of minor discipline not to exceed suspension without pay for a period of ten (10) days. Discipline may, but need not be imposed for violation of any of the following rules, that include statutory teaching duties, components of a teacher's job responsibility or any violation of Board policy, administrative rules or regulations, and any provision of the teacher or student handbooks.

Each teacher employed by the Governing Board in this District shall:

Statutory duties—A.R.S. 15-521.A.:

1. Enforce the course of study for his or her assigned class or classes.
2. Enforce the use of the adopted textbooks for his or her assigned class or classes.
3. Enforce the rules and regulations governing the schools prescribed by the Governing Board, the Arizona Department of Education, and any other lawfully empowered authority.
4. Hold pupils to strict account for disorderly conduct.
5. Exercise supervision over pupils on the playgrounds and during recess if assigned to such duty.
6. Make the decision to promote or retain a pupil in grade in a common school or to pass or fail a pupil in a course in high school.
7. Present his or her certificate to the County School Superintendent before assuming charge of a school, except as provided in Arizona Revised Statutes 15-502, Subsection B.
8. Make such reports as may be reasonably required by the Superintendent of Public Instruction, County School Superintendent, Governing Board, or School Administration.

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3. Procedures

A. Disciplinary action alternatives. Appropriate discipline is at the discretion of the Supervisor. The alternatives available include:

1. Verbal warning;
2. Verbal reprimand;
3. Written reprimand;
4. Suspension with pay;
5. Suspension with pay and required remedial action, i.e., observation of other teacher, mandated in-service or educational program;
6. Suspension without pay. A teacher may be given a suspension without pay for a period not to exceed ten (10) days;
7. Termination. This remedy is reserved by law to the Governing Board, and procedures are described in applicable statutory provisions. The Governing Board may, if appropriate, determine that termination be imposed for serious or repeated violations of these rules. Notice of the Board's intent to dismiss and applicable procedures are not covered by these rules.

B. Notice of discipline

1. An administrator, after a reasonable investigation, is authorized to impose minor discipline in any category described in Paragraph A.3 through A.6 above subject to notice, hearing, and appeal rights described below. A reasonable investigation shall include some discussion with the employee to ascertain if grounds exist to justify imposition of discipline.
2. When it is determined that grounds exist for disciplinary action, a written notice shall be sent to the teacher. The notice shall identify:
 - a. The date the infraction occurred;
 - b. The rule or duty violated;
 - c. A summary of the factual information supporting the recommended discipline;
 - d. The nature of the disciplinary action to be imposed.

C. Request for hearing. A teacher who has received notice of discipline has the right to request a hearing in writing within five (5) school days after the date the teacher receives the notice. The request for a hearing shall be in writing and filed with the Personnel Office and shall contain the prior written notice of discipline.

D. Hearing tribunal. The hearing will be held before the Superintendent or designee.

E. Hearing procedure

1. The hearing shall be scheduled within ten (10) school days after receipt of the teacher's request unless extended by mutual agreement of the parties.
2. Notice of the hearing shall be served on the teacher and Supervisor by the Hearing Officer and shall contain:
 - a. The time and place of the hearing.
 - b. A copy or summary of the written disciplinary notice previously served on the teacher.
 - c. Notice that disciplinary action will be imposed if the teacher fails to appear.
 - d. A statement to advise the parties that they may present oral or written evidence relevant to the alleged violation of rules or policies.
 - e. State that the hearing will be conducted informally without adhering to the rules of evidence.

- f. State that within seven (7) school days after the hearing a written decision shall be served on the parties.
 - g. Advise the parties that they may, if they desire, be represented by another employee at the hearing.
3. The hearing shall be held at the time and place stated in the notice. The designated person or persons shall conduct the hearing in an informal and orderly fashion recognizing the rights of all parties. A statement should be made by the Hearing Officer as to the purpose of the hearing. Parties shall be advised if a record shall be made by tape, stenographer, or the notes of the Hearing Officer. Any party may tape the hearing for his own use, but it will not be the official record.
 4. Subsequent to the hearing, the Hearing Officer shall prepare a written decision to be served on the parties within fifteen (15) calendar days.
- F. *Decision.* The decision shall contain a brief summary of the hearing and a finding of whether the teacher committed a violation and if the discipline was appropriate. If it is found that the teacher committed the violation, the teacher's right to appeal the written decision to the Governing Board for review of the record shall be provided as part of the decision.
- G. *Appeal to governing board*
1. Any appeal to the Governing Board via the Superintendent must be in writing, filed within five (5) school days after service of the hearing decision, list the issue or issues upon which review is requested, and specify the relief sought from the Governing Board.
 2. All evidence the teacher wishes to have the Governing Board review shall be attached to the appeal. No new information, other than that already submitted at the hearing, will be allowed.
 3. The supervisor shall be served with a copy of the appeal and have five (5) days after service to file material and information submitted at the hearing and which are deemed appropriate in support of the discipline imposed.
 4. When the Superintendent receives the appeal, it shall be transmitted to the Governing Board.
 5. The Governing Board has no obligation to conduct another hearing or to receive new evidence not previously presented to the Hearing Officer in a minor discipline matter.
 6. The Board shall schedule an executive session to review the appeal. No additional testimony or input shall be allowed unless expressly requested by the Board.
 7. Written notice of the Board's decision shall be served on the parties. The Board shall have a reasonable time, not to exceed thirty (30) school days to review the matter and render its decision.
 8. Discipline shall be held in abeyance during the hearing and appeal procedures under these rules.

Cross refs: KK-R
GBCB
GBCC

Legal References: A.R.S. 15-34

Issued: _____ Tempe Elementary Schools
Tempe, Arizona

Figure 9.3 Suspension and Dismissal Policy Based on State Statute

SOURCE: Reprinted with permission from the Tempe Elementary School District, Classified Personnel Document, Tempe, Arizona.

Drug-Free Workplace Legislation

The cost of drug and alcohol abuse to industry was estimated to be almost \$200 billion in 1996 (Harvey & Bowin, 1996), and the cost has likely increased since that date. Decreased productivity, increased absenteeism, increased threats to the safety of self and others, and increased loss or damage to property are among the major problems and costs associated with employee drug and alcohol abuse (Bolton, 1997). The schools have not been immune to the problems related to drug and alcohol abuse among employees. One study in education found that 90 of the 91 responding districts reported drinking and alcoholism to be the leading problem of troubled workers, and 63 of the 91 districts listed drugs or chemical dependency as a major problem area for troubled workers.

The 1988 Federal Drug-Free Workplace Act requires federal contractors and grantees who receive more than \$25,000 in federal funds to certify that they will maintain a drug-free workplace and to adopt a drug-free work environment policy, disseminate it to all employees, and notify employees that a drug-free state is a condition of employment. School districts have attempted to meet this goal by adopting alcohol and substance abuse policies, instituting drug awareness programs, and increasing employee assistance program services directed at drug and alcohol use and abuse. The act specifically permits employers to adopt drug testing and drug-free workplace policies and to prohibit employees from using illegal drugs. Some districts have adopted mandatory drug testing for certain “safety-sensitive” positions (e.g., bus drivers). When these are adopted, the school district should notify employees that such testing is to be conducted and set forth in writing the testing procedures. In all cases, specific steps must be taken to safeguard the testing samples, follow up with additional tests in case of positive results, and maintain a status of confidentiality for the overall procedure.

School board policies and approved regulations related to drug and alcohol use have focused primarily on the elimination of alcohol or drug use on school district property, the establishment of disciplinary action in cases of the violation of alcohol and drug policies, the implementation of alcohol and drug awareness programs, procedures for alcohol and drug testing, employee assistance programs, and the establishment of employee rights, including appeal procedures. Figure 9.4 shows a sample policy with accompanying regulations in the area of a drug-free workplace.

The courts have been somewhat consistent in rulings relative to possession and use of alcohol and drugs by employees. For example, the courts might not support the dismissal of a teacher based solely on a conviction of possession of a small amount of marijuana without any evidence of unfitness of the teacher. However, they probably would uphold a dismissal based on evidence of a widely publicized conviction, combined with substantial evidence that the teacher’s conduct had seriously undermined his or her fitness to teach (Fischer et al., 2003).

Legal Considerations Relative to Teacher Transfer

Human resources administration is faced with changes in personnel assignments, the placement of staff, the condition of having surpluses in some staff positions, voluntary and involuntary transfers, reduction in force (RIF), dismissals, and

Drug-Free Workplace

Codes: GBEC & ADB

The governing Board recognizes that drug dependency is a major health problem and its effect has serious safety and security repercussions for both students and staff. Therefore, it is this District's intent and obligation to provide a Drug-Free workplace.

No employee shall consume or use alcohol or a drug(s) (without medical authorization) while on District property, on the job or while responsible for the supervision of students. (Drug means any dangerous drug as defined in A.R.S. § 13-34-1).

Employees shall not report to work having consumed alcohol or drug(s) (without medical authorization) when such consumption can be detected or impair their ability to perform their assigned job.

Any employee who violates this policy is subject to disciplinary action in accordance with established policies and regulations.

The Superintendent shall establish a Drug-Free Awareness Program and inform all employees regarding that program and their rights, responsibilities and privileges under the law.

Adopted: 03/05/____

Legal Ref. A.R.S. § 13-2911 13-3401 ET SEQ 15-341 (A) (1)
P.L. 100-690, Title V. Subtitle D.
P.L. 101-226 34 C.F.R. Part 86

- I. It is the District's intent and obligation to provide a drug-free workplace. Workplace includes:
 - Any school building or District premises;
 - Any property leased or used by the District for any educational or District business purposes during the time the employee is on duty;
 - Any school sponsored or approved activity, event or function where students or staff members are under the jurisdiction of the District; and
 - Any District-owned vehicles or District-approved vehicles used to transport staff members or students for school activities or District business.

- II. The unlawful manufacture, distribution, dispensation, possession, sale or consumption of intoxicating beverages, narcotics and any other illicit drug(s) is prohibited.

- III. All employees shall receive information about:
 - Dangers of alcohol and drug abuse in the workplace
 - Policies and regulations of the District for maintaining a drug-free workplace
 - Supervisory responsibilities in administering this policy and regulations
 - Alcohol and drug testing procedures
 - Penalties that may be imposed for alcohol and drug abuse violations occurring in the workplace
 - Alcohol and drug counseling and rehabilitation reentry programs available to staff

- IV. All employees must sign a statement indicating that they have received a copy of the current drug-free workplace policy and regulations. The signed statement will be placed in their personnel file.
Employees must, as a condition of employment, abide by the terms of this policy and report any conviction under a criminal drug statute occurring in the workplace, as defined in I. above, not later than five (5) calendar days after such conviction. Failure to report a drug conviction under this paragraph may result in disciplinary action up to and including termination.

- V. Use of prescription and/or over-the-counter drugs
 - A. Employees shall report to their supervisor use of prescription drugs which may impair job performance and/or affect the safety of themselves and others.
 - B. Employees are expected to act responsibly with regard to use of over-the-counter drugs. It is the employee's responsibility to request reassignment or leave if use of over-the-counter drugs impairs job performance and/or affects the safety of themselves or others.

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VI. Procedures when an employee appears impaired

- A. If the supervisor of an employee has probable cause that the employee's job performance has been impaired by the use of alcohol or drugs, and the Superintendent/designee concurs, the employee shall submit to alcohol/drug(s) testing.
- B. Probable cause exists where the facts and circumstances are sufficient to warrant the belief that the employee has consumed alcohol or used a drug(s) during a period of time when such consumption or use could affect job performance.
- C. If the supervisor is directed to have the employee evaluated, the supervisor or designee will contact the Office of Personnel Services to arrange for an immediate physical evaluation of the employee.

VII. Procedures for alcohol and drug testing

- A. The annually selected medical facilities shall be licensed and certified by the appropriate state or federal agency or by the College of American Pathologists. The collection facility shall comply with acceptable standards of the medical field relating to collection, storage and transportation of samples.
- B. Prior to testing, the director or supervisor shall confidentially inform the employee and provide a written affidavit of the reason(s) for testing referral. The employee shall be given an opportunity to provide an explanation of the facts and circumstances giving rise to the referral. The District may require the employee to immediately submit to testing.
- C. An employee who refuses to submit to alcohol and drug testing may be subject to termination of employment.
- D. When testing is required, the District shall assume the cost of the test provided the results are negative. The employee may elect to have a blood sample drawn and retained at the employee's expense.
- E. The employee may not be allowed to perform normal job responsibilities until test results are known.
- F. Immediately upon receipt of test results, the District shall notify the employee.
- G. If test results are negative, the sample(s) shall be destroyed.
- H. Employees with positive samples shall be informed of the right to a second testing of the reserved sample at a certified laboratory of their choice at their expense.
- I. The employee shall be informed of the right to a second testing of the reserved sample at a certified laboratory.

VIII. Appeal of test results

The following procedures shall apply to any appeal of the test results:

1. Any appeal of test findings shall postpone a recommendation pending outcome of the appeal.
2. Any appeal shall be made in writing to the Superintendent/designee within two (2) working days following receipt of test results by the employee.
3. The appeal shall specify the basis of the employee's challenge to the test findings.
4. Any employee appealing the test findings shall arrange for a second testing of the sample at the employee's cost. In the event of a negative second test result, the District shall assume the cost of both tests.
5. The Superintendent/designee shall meet with the employee and their representative and the person most able to respond to the employee's challenge, to determine if there is any validity to the employee's appeal.

6. If the Superintendent/designee determines that the employee's challenge is valid, any pay withheld during suspension, between the time test results are known and the time the Superintendent/designee makes a determination, shall be reinstated.
7. If the Superintendent/designee determines that the employee's challenge to the test findings is valid, disciplinary action shall not be taken unless there are documented independent grounds for such action.

IX. Disciplinary sanctions and appeals

Disciplinary sanctions may include the successful completion of an appropriate rehabilitation program, suspension and/or immediate termination of employment, and referral for prosecution.

- A. Employees recommended for disciplinary action shall be advised of their due process rights, including the right to a hearing before the Superintendent/designee.
 - B. When an employee tests positive for alcohol/drug(s), and is disciplined but not dismissed, the employee will be referred to the employee's health care provider for assessment, counseling and rehabilitation or to an Employee Assistance Program.
 - C. Participation in rehabilitation or treatment may be required of an employee who has violated this policy. Failure to begin or complete a treatment or rehabilitation program may subject the employee to disciplinary action, including termination.
- X. Employee Assistance Program Employees are encouraged to seek assistance if they have concerns about alcohol/drug(s) use. A staff member who requests assistance prior to the detection of a problem shall be directed to an appropriate Employee Assistance Program. An employee who is referred to an Employee Assistance program may be placed on some category of leave until the District receives medical and/or professional Certification of the employee's ability to resume job responsibilities.

XI. Confidentiality

- A. An employee with an alcohol/drug(s) problem is entitled to confidentiality. Information relating to any testing incident shall be officially communicated within the District only on a need-to-know basis. Employees who violate this provision shall be subject to disciplinary action.
- B. Employee records pertaining to this regulation shall be subject to normal District procedures relating to confidential personnel records and state law. Any report of a negative test shall be destroyed after final disposition of the matter.

XII. Convictions

All convictions, when known by the District, involving employees engaged in the performance of a Grant from the United States Government shall be processed by the District as follows: Within ten (10) days of receiving any notice of conviction, the District shall notify the U.S. Department of Education of such notice. Within thirty (30) days of receiving notice of conviction, the District shall take appropriate personnel action against the employee up to and including termination.

Adopted: 03/05/____

Figure 9.4 Policy and Administrative Regulation Concerning a Drug-Free Workplace

SOURCE: Used with permission from the Creighton Elementary School District #14, Phoenix, AZ.

resignations. In each of these situations, legal rulings, guiding policy, and administrative regulations are of primary importance. Figure 9.5 is an example of a voluntary transfer administrative regulation. The specific procedures for the school district's posting of vacancies and application for the vacancies by internal district personnel are set forth in the regulation.

One basic legal ruling dictates how a teacher can be assigned to teach in a school or school system.

Without consent, a school board cannot compel a teacher to teach subjects or grades other than called for in the contract of employment. If a contract states that a teacher is employed to teach second grade, the teacher cannot be made to teach first; if it states that a teacher is to teach mathematics, he or she cannot be made to teach biology. (Peterson, Rossmiller, & Volz, 1978, p. 428–429)

As early as 1936, the courts ruled that teachers may be transferred to other schools within the school district; however, such transfers are justified only in cases of emergency and not because the transfer is expedient (*White vs. Board of Education of Lincoln County*, 184 S.E. 264, 103 A.L.R. 1376 [W.VA. 1936]).

6–4 Voluntary Transfer

- a. An updated list of present vacancies and known vacancies for the following school year will be posted in all school buildings, at least every two weeks starting March 15. The posting of vacancies will continue up to 30 calendar days prior to the first contract day of the building with the vacancy. If all surplused teachers have not been assigned, posting shall continue past 30 days prior to the first contract day. The vacancy list shall include:
 - (1) Position title
 - (2) Building location
 - (3) Status, i.e., permanent, temporary, part-time or itinerant
 - (4) Qualifications: Courses to be taught and if elementary, grade and subject matter emphasis.

At all times, an updated list shall be available at the Human Resources Office.

- b. Posting: If posted, no vacancy shall be permanently filled within five (5) working days of the date of posting.
- c. Procedures: Every employee on continuing contract shall have the right to apply for any vacancy for which he/she is certificated and endorsed by contacting the Human Resources Office within the five (5) day posting period. All certificated employees applying for a voluntary transfer shall, after contacting the Human Resources Department, be allowed to submit a letter of application and resume to the principal or supervisor where the vacancy exists. All applicants shall receive written notification within five (5) days from the principal indicating receipt of their application for the position. The Human Resources Department will notify all applicants, in writing, within ten (10) days of the closing date for the application when the screening process and subsequent interviewing will occur. Applicants selected for an interview will be notified by the Human Resources Department. Other applicants will be notified, in writing, by the Human Resources Department within ten (10) days that they have not been selected for an interview. Interviewees not selected for the position will be notified by Human Resources within ten (10) days from the time the position has been filled.
- d. Certificated employees exchange shall be defined as the exchange of assignments between two staff members in different buildings with the approval of both principals. Such exchange shall be for a one (1) year trial. At the end of one (1) year, a request for discontinuation of the exchange by any of the affected teachers or principals will be honored. An exchange extended beyond one (1) year shall become permanent.

Figure 9.5 Administrative Regulation for Voluntary Transfer

SOURCE: Professional Agreement, Voluntary Transfer Regulation. Reprinted with permission from the Lincoln, Nebraska Public Schools.

In a situation whereby a teaching vacancy occurs within a school district, direction is needed for determining just how the vacancy is to be filled and how the eligibility of current teachers within the system will be treated. Considerations must be given to how vacancies will be posted and made known to current teaching staff members, the nature of the vacancy, the length of the position posting, procedures for application for the opening, communication procedures regarding follow-up contacts, interview procedures, and a related addendum that focuses on teacher exchanges.

The reorganization of school districts, whereby some teachers of an original school district become employees of a reorganized school district, gives rise to the question of teachers' job security rights. A court in New Mexico ruled that a teacher who has acquired tenure in a district that has been consolidated into another school district does not lose tenure because of the result of a merger or consolidation of school districts. The teacher is entitled to all the benefits that were granted in the original district (*Hensley v. State Board of Education*, 376 P.2d, 968 [N.M. 1962]).

Legal Considerations Regarding the Use of Network and Internet

Rapid advancements in information technology are having major impacts on the human resources function. Although information technology has contributed positively to each of the major human resources processes, it brings about new responsibilities for the integration of data, information, methods of record storage and retrieval, and moral and ethical considerations related to uses of electronic technology. How is information to be collected? What information is to be collected and how is it to be stored and accessed? How are personnel records to be managed and by whom? How is the security of personnel records to be safeguarded? It is not the purpose here to set forth detailed responses to these kinds of questions.

To protect against abuses in the use of computers, school districts must develop viable policies and regulations for dealing with information technology in general and the human resources function specifically, including stipulations that allow computers to be used only for specified educational purposes. School board policies and regulations regarding records management minimally should include the following: (1) a statement of purpose, which provides guidelines for making information management decisions and improving the district's information effectiveness, increased efficiency, and improved information flow; (2) integration provisions that focus on a plan for coordinating the district's information system with all other sub-units within the system; (3) personnel and unit assignments of responsibility, which are job responsibilities and the assignments of accountability for the information management system in the district; (4) input and retrieval processes that identify opportunities and set forth limitations of the system, including restrictions and ethical guidelines for users; (5) funding considerations that include the initiation of new programs and their maintenance; and (6) data, information, and files, with due attention to what information is to be collected and stored and how such information is to be retrieved and safeguarded. Figure 9.6 is an example of a district's statement for use of the computer network and Intranet. The statement is regulatory in nature and places emphasis on the user's responsibilities and personal ethics.

BB. Use of District Computer Network and Internet

District employees have access to the district computer network and the Internet for the enhancement and support of student instruction. It is important to remember that the equipment and the software are the property of the school district.

In using the computers and the Internet, employees are agreeing to the following:

1. Since copyright laws protect software, employees will not make unauthorized copies of software found on school computers by any means.
2. Employees will not give, lend, or sell copies of software to others unless the original software is clearly identified as shareware or in the public domain.
3. If an employee downloads public domain programs for personal use or non-commercially redistributes a public domain program, the employee assumes all risks regarding the determination of whether a program is in the public domain.
4. Employees are not permitted to knowingly access information that is profane, obscene or offensive toward a group or individual based upon race, gender, national origin or religion. Further, employees are prohibited from placing such information on the Internet.
5. Employees will protect the privacy of other computer users' areas by not accessing their passwords without written permission.
6. Employees will not copy, change, read, or use another person's files.
7. Employees will not attempt to gain unauthorized access to system programs or computer equipment.
8. Employees will not use computer systems to disturb or harass other computer users by sending unwanted mail or by other means.
9. Employees will not disclose their passwords and account names to anyone or attempt to ascertain or use anyone else's password and account name.
10. Employees will not attempt to login to the system as a system administrator.
11. Employees understand that the intended use of all computer equipment is to meet instructional objectives.
12. Employees will not waste or take supplies, such as paper, printer ribbons, toner, and diskettes that are provided by Lincoln Public Schools.
13. Employees will not use the network for financial gain or for any commercial or illegal activity.
14. Attempts to bypass security systems on computer workstations or servers, or vandalism will result in cancellation of privileges. Malicious attempts to harm or destroy data of another employee, or data that resides anywhere on the Lincoln Public Schools network or on the Internet, or the uploading or creation of computer viruses are forbidden.
15. Lincoln Public Schools will not be responsible for any liabilities, costs, expenses, or purchases incurred by the use of LPS telecommunications systems such as the Internet. This includes, but is not limited to, the purchase of on-line services or products. The employee is solely responsible for any such charges. The employee's signed application for an email account states that the employee is agreeing to indemnify the district for any expenses, including legal fees, arising out of their use of the system in violation of the agreement.
16. The Internet will be supplied for your use on an "as is, as available" basis. The Lincoln Public Schools does not imply or expressly warrant that any information you access will be valuable or fit for a particular purpose or that the system will operate error-free.

17. The Lincoln Public Schools is not responsible for the integrity of information accessed, or software downloaded from the Internet.
18. The system administrators reserve the right to refuse posting of files, and to remove files.

Any violation of any part of this agreement or any other activity which school authorities deem inappropriate will be subject to disciplinary action consistent with LPS due process procedures. Discipline could include but would not be limited to, the immediate suspension or termination of the employee's Internet account and computer privileges.

Figure 9.6 District Statement on Use of the District's Computer Network and Internet

SOURCE: Certificated Personnel Handbook. Use of District Computer Network and Internet. Reprinted with permission from the Lincoln, Nebraska Public Schools.

Can the school restrict the use of school computers? According to Fischer and colleagues (2003), "It depends on the message and the consequences" (p. 426). To protect against improper computer use, these authors recommend that policies be adopted that allow computers to be used only for educational purposes and that inappropriate uses be stipulated in the policy (e.g., harassment of students or staff, copyright violations, commercial purposes, access to pornographic material, etc.). In addition, those persons using computers in the school should agree to sign a statement that they understand the policy before being given authorization to do so.

Summary of Selected Legal Statutes, Including Various Civil Rights Acts, Relating to the Work of the Human Resources Function

Civil rights of employees are founded on both the rights set forth in the U.S. Constitution and other statutory rights determined by various courts and other official regulatory bodies. Such rights are stipulated in the First, Fifth, Ninth, and Fourteenth Amendments and in the provisions stated in various civil rights acts. Such provisions guarantee such rights as the freedom of speech, freedom of the press, the right to peaceful assembly, and protection against discrimination because of race, sex, religion, national origin, and other such reasons.

Civil Rights Act of 1870. This act stated that all persons should have the same rights as white citizens to make and enforce contracts, to be a party to litigation, and to the full and equal benefit of laws pertaining to security of persons and property.

Social Security Act (August 14, 1935). This act provides for the general welfare by establishing a system of federal old-age benefits, and by enabling the several states to make more adequate provisions for aged persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment laws; to establish a Social Security Board; to raise revenue; and for other purposes.

Fair Labor Standards Act (June 25, 1938). This act establishes minimum wage, overtime pay, record keeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments.

Civil Rights Act of 1960. This act prohibited certain discriminatory actions and practices against black persons.

Equal Pay Act of 1963. This act declared that women and men must receive equal pay for equal work. It stated that “no employer having employees subject [to pay provisions] 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 . . . 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.”

Civil Rights Act of 1964 and Title VII (P.L. 88-362). Title VII of the Civil Rights Act protects individuals against employment discrimination on the basis of race, color, religion, sex, or national origin and prohibits employers from limiting, segregating, or classifying employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of his or her race, color, religion, sex, or national origin.

The act prohibits discrimination against any individual in regard to recruiting, hiring and promotion, transfer, work assignments, performance measurements, the work environment, job training, discipline and discharge, wages and benefits, or any other term, condition, or privilege of employment. The act applies to employers with 15 or more employees, including state and national governments.

Age Discrimination in Employment Act (1967). This act protects individuals who are 40 years of age or older against discrimination because of age. However, the state or school boards may establish a retirement age for teachers. Furthermore, the retirement age for elementary and secondary teachers does not necessarily have to apply to other state employees (*Lewis v. Tucson School District No. 1*, 531 P.2d 199 [Ariz. 1975]).

The act set forth a broad ban against age discrimination and specifically prohibits (1) discrimination in hiring, promotions, wages, or firing or layoffs; (2) statements or specifications in job notices of age preference and limitations; (3) denial of benefits to older employees; and (4) mandatory retirement in most sectors. Age limits may be legally specified in circumstances where age has been shown to be a “bona fide” occupational qualification reasonably necessary to normal operation of the particular business (e.g., when public safety is at stake, such as airline pilots, bus drivers, etc.).

The Occupational Safety and Health Administration (OSHA) was created in 1970 when President Nixon signed the Occupational Safety and Health Administration Act. Its mission is to prevent work-related injuries, illnesses, and deaths by issuing and enforcing standards and rules for workplace safety and health. The agency is currently headed by Assistant Secretary of Labor Edwin G. Foulke, Jr. It has had far-reaching impacts on school district operations. The act covers a wide range of safety and health requirements, including overtime mandates, protection of individual privacy in records, equal access to justice, and health and safety standards relating to such occupations as agriculture and construction.

Rehabilitation Act of 1973. This national law protects qualified individuals from discrimination based on their disability. It was amended in 1992 to stipulate that the term “individuals with a disability” does not include individuals who are currently engaging in the illegal use of drugs.

Employee Retirement Income Security Act (1974). This federal legislation was established to prevent the retirement benefits of employees from being mismanaged.

Privacy Act of 1974. This act guaranteed the privacy of the files of employees of the U.S. federal government.

Workers' Compensation. Workers' compensation laws are designed to ensure that employees who are injured or disabled on the job are provided with fixed monetary awards, eliminating the need for litigation. All states require employers to provide workers' compensation in case of personal injury, disability, or death related to one's occupation. State workers' compensation statutes establish this framework for most employment. Related federal compensation acts include the Merchant Marine Act, the Black Lung Benefits Act, the Longshore and Harbor Workers' Compensation Act, and others.

Pregnancy Discrimination Act (1978). This act provides equal protection for female workers who are pregnant. Pregnancy is to be treated the same as any other disability in relation to all aspects of employment.

The Fourteenth Amendment to the Constitution provides that no state shall “deprive any person of life, liberty, or property without due process of law.”

Consolidated Omnibus Budget Reconciliation Act (1986). This act states that the employee's health insurance coverage must be continued following termination and paid by the employee.

Immigration Reform and Control Act (1986). This law makes it illegal to knowingly hire an unauthorized alien, to continue to employ a person who becomes unauthorized, or to employ any person without taking steps to verify employability and identity of that person.

Family and Medical Leave Act (1993). Eligible employees are given the right to take 12 weeks of leave per year without pay in relation to the birth or first year of a child, adoption or foster placement of a child, or the illness of the employee or spouse, child, or parent. The Act applies to both sexes.

Health Insurance Portability and Accountability Act of 1996 (HIPAA). This act provides rights and protections for participants and beneficiaries in group health plans. The law identifies and clarifies transactions, enforcements, security, privacy, code sets, industry discussion and collaboration, and other resources.

The Development of Personnel Policies and Regulations

School boards are extensions of state legislatures and thus are legal bodies representing school districts within the many states. As such, school policies officially adopted by the local school board are considered as legal decisions as long as they do not conflict with the legal rulings set forth by state or national governance bodies. Therefore, it is imperative that human resources administrators have the necessary knowledge of and skills in policy drafting and implementation related to the important work of the HR function.

Many people express the belief that a school district's personnel policies and regulations are a direct reflection of how it values its human resources. Governing board policies directly affect the work and life of the school employees and the school district's clients. One premise of this text is that schools are people; the school's human resources determine in large part the extent to which the school system will achieve its purposes. The formal adoption of policy by the board of education gives the professional staff the necessary support and direction for the implementation of program initiatives. In a statewide study of HR directors by Norton (2004), personnel policy and regulation development tied with human resources record keeping as their third highest rated job responsibility; only the recruitment of personnel and human resources planning ranked higher.

This chapter emphasizes the development of policies and regulations that guide and facilitate the human resources function. It gives primary consideration to important differences between governing board policies and administrative regulations; the purposes served by a viable set of policies and regulations, the responsibilities of the school board, the human resources director, and other professional staff and laypersons in the development of policies and regulations; and ways in which personnel policies and regulations are developed. It discusses the characteristics of effective policies and regulations and gives examples of policies and regulations in selected personnel areas, along with court rulings that affect various personnel practices. The contents of this chapter are based on the assumption that the HR director's position in education will continue to move toward an executive role. As such, recommendations and development of viable personnel policy become increasingly important leadership roles for school administrators.

Goals, Policies, and Regulations

The terms goals, policies, and regulations are defined in various ways in the literature. It is important to differentiate among these terms and to clarify other terms often used in relation to them. **Goals** are statements that set forth the purposes of the school system. Goals serve to clarify the aims of the school system; they provide a focus for the organization and give it a meaningful direction. Goals express what is important to the school system overall and are supported by the beliefs, values, traditions, and culture of the school system's community. School goals are developed through cultural sanctions embedded in the school community, through lay judgments expressed through such bodies as the district's school board, and through the professional judgments of professional and support staffs of the school district.

Governing board policies are comprehensive statements of decisions, principles, or courses of action that serve toward the achievement of stated goals. They answer the question of *what* the school system is to do; essentially, they serve as guidelines for the administration of the school district. Thus, "It is important that the procedures should fulfill the policy, and the policy should clearly state the purpose and desire of the organization" (McConnell, 2005, p. 4). Policies are local adaptations of stated goals; they are developed through the actions of the school board with the leadership of the professional staff.

An **administrative regulation** or rule is a precise statement that answers the question of *how* a policy is to be applied or implemented. Regulations serve as methods for accomplishing policies. As McConnell (2005) stated, a policy "is a statement of the organization's position regarding a specific condition of employment—what the organization believes is the correct approach to fulfilling that condition of employment" (p. 16). Although administrative regulations are approved generally by the governing board, they are developed primarily through the professional judgments of the school district's staff with representative community input and ultimately by administrative decision. For our purposes, the terms regulation, rule, and procedure are used interchangeably.

Bylaws are procedures by which the school board governs itself. They are regulations that apply to the internal operations of the school board. Such matters as the election of board officers, voting procedures, agenda development, parliamentary procedure, and the order of business are examples of topics included in the bylaws of the governing board.

Compliance Aspects of Policy

Governing board policies, regulations, and bylaws are subject to state and national laws. A **law** is a rule recognized by the nation or state as binding on its members. Law emanates from actions by governing bodies such as the U.S. Congress or state legislatures or from rulings by courts of law.

It is not unusual for state laws or court actions to mandate school policy; that is, state statutes and court rulings often mandate what school systems must do regarding a specific educational matter. Seldom is the specific law written verbatim in the

school district's policy manual. Rather, a policy statement based on the requirements of the law is written as a school policy and is accompanied by specific statute references or citations. There are exceptions to this provision. For example, in many states, policies and regulations concerning personnel dismissal are written verbatim from state statutes because dismissal cases frequently are litigated in court. Specific language is important as are the specific procedures that must be followed. As a result, school districts take all precautions to ensure that their policies and regulations are in compliance with federal and state laws. It should be clearly understood that local school district policy is inextricably related to the "laws of the land" as determined by the U.S. Constitution, U.S. Congress, state legislatures, the courts, and other agencies and legal bodies that implement legislative acts and court rulings. As we discussed earlier in this chapter, local school district policy must be in compliance with federal and state legislation exemplified by such acts as Title VII of the Civil Rights Act of 1964, which prohibits discrimination in hiring, compensation, and terms and conditions of employment on the basis of race, color, religion, national origin, or sex, and the EEOA of 1972, which extended race coverage stipulated in Title VII to include employees of state and local governments and educational institutions and created the EEOC with authority to prohibit discrimination and file suits against organizations believed to be discriminatory.

Statutes such as OSHA affect human resources policy by requiring schools and other organizations to comply with specific safety requirements within the working environment; governmental agencies such as the Department of Labor serve to enforce fair labor practices such as compensation for overtime work by employees. Both are specific examples of how law and agency regulations affect the development and adoption of local school district policy. The implications regarding compliance of school districts with federal and state laws are far-reaching. Policies of a school district that are not in compliance with federal and state statutes or with court rulings are likely to be challenged and declared unconstitutional. Noncompliance can result in litigation and possible monetary penalties.

The Benefits of Personnel Policies and Regulations

A viable set of personnel policies and regulations benefits the school system and the human resources function in numerous ways. Viable policies and regulations help to establish the division of labor between the school board and the professional staff. The school board, as the legislative body of the school system, has the responsibility of adopting policies that serve to guide the school program. In this way, the board of education "controls" the direction of the system through adopting policies that focus on what the school system is to do and what it wants to accomplish. The development and adoption of appropriate school policy are the primary responsibilities of the school board.

Viable school district policy fosters a more effective and accountable professional staff. School board policy serves to foster the compliance of the professional and support staff regarding the major aims of the school district; thus, staff accountability becomes more attainable. Without question, policy development is

the school board's primary tool for ensuring district compliance and personal performance.

The school superintendent and the professional staff represent the executive body of school governance. A comprehensive set of well-developed policies and regulations is one of the human resources administrator's most valuable management tools. Viable school policies allow for discretionary actions by the professional staff. The implementation of board policy is administered through the development of specific regulations primarily through the leadership of the professional staff. Thus, good policies and regulations help the school board focus on its major legislative role and the professional staff to focus on its executive responsibilities. Policy provides the control that the school board must have to guide the school system and gives the professional staff the discretion it needs to operate the school program effectively.

School policies and regulations also serve to establish the basis for intelligent decision making and help to direct decision making at proper levels within the system. Without the direction that effective policies and regulations can provide, various units in the system invariably must seek a decision from a higher level unit before actions can be implemented. As a result, administrative effectiveness often is inhibited and organization efficiency and initiative are reduced.

A comprehensive set of school policies and regulations is the most important source of information about the goals and objectives of the school system. Policy statements and accompanying regulations serve to inform the public and the professional staff of the goals and objectives of the school system and serve as a foundation for effective system communication.

Viable policies and regulations help to avoid costly trial and error and serve to bring a sense of continuity to the organization. Board policies and regulations support the system's decision-making capability by providing a definite idea of what is to be accomplished and how to proceed administratively. Thus, viable policies release the strength and creativity of the school administrators and other employees. Employees understand the priorities set forth by the governing board and are able to implement their professional judgment with some degree of assurance and personal security.

District policies in such areas as personnel recruitment, selection, assignment, and staff development are vital to the quality of teaching and learning in the school district. These policies and administrative procedures have an impact on such matters as homework, student grading, instructional materials selection, student retention, student attendance, student discipline, early childhood programs, and other aspects of curriculum development in the school community as well.

In view of the fact that school boards are extensions of other legislative bodies, viable policies and regulations serve an important legal function for the board and the school district. In relation to governance practices and litigation stemming from personnel lawsuits, school policies and their dissemination serve as key evidence to document school board decisions and administrative practices. "In many, if not all, hearings and lawsuits regarding employees, the organization's policies and procedures become a key piece of evidence (sometimes for the employee and sometimes for the employer). Their absence also can affect a court's decision" (McConnell, 2005, p. 61).

Criteria That Identify Policies, Regulations, and Bylaws

A school policy was defined earlier as a comprehensive statement of decisions, principles, or courses of action that serve toward the achievement of stated goals.

A **policy** is

1. An assertion of the intent and goals of the school system.
2. Related to a general area of major importance to the school system and citizenry.
3. Equivalent to legislation.
4. A broad statement that allows for freedom of interpretation and execution.
5. Applicable over long periods of time.
6. Mainly the concern of the school board, that is, only the school board can adopt policy.
7. An action undertaken to resolve or to give direction in ameliorating a problem of importance.
8. Related to the question, "What to do?"

An **administrative regulation** is

1. Related to a specific area or problem (it is a procedure to carry out or implement a policy).
2. Mainly the concern of the professional staff (it is executive in nature).
3. A precise statement calling for specific interpretation and execution.
4. Able to be altered without formal board action.
5. Related to the question, "How to do?"

A bylaw is a rule governing the school board's internal operations. It is a method by which the school board governs itself. A **bylaw** is

1. A combination of parliamentary procedures and state laws that apply to school boards.
2. Like any other rule in that it sets forth specific procedures, leaving little room for personal discretion.
3. A rule that applies to the internal operations of the school board only.
4. Related to the question, "How will the school board govern itself?"

Consider the following policy statement:

The school superintendent and persons delegated by the superintendent are given the responsibility to determine the personnel needs of the school district

and to recruit qualified candidates to recommend for employment to the board. The school board will employ and retain the highest qualified personnel available. Concerted efforts shall be made to maintain a variation in staff relative to educational preparation, personal background, and previous experience. There shall be no discrimination against any candidate by reason of race, national origin, creed, marital status, age, or sex. It is the responsibility of the school superintendent to certify that persons nominated for employment shall meet all qualifications established by law and by the school board for the position for which the nomination is made.

The employment of any individual is not official until the contract is signed by the candidate and approved by the governing school board.

The above district policy specifies *what* ends the board desires concerning practices for employment and sets forth *what* is to be done relative to employee qualifications. The governance policy represents a broad statement that allows the professional staff discretion over specific recruiting and selection procedures. The policy is legislative in nature and is directly related to the question of *what* to do relative to the important end results of hiring school district personnel. Finally, although specific procedures regarding recruitment and selection might be changed and improved, the policy that guides the new procedures could remain as stated for a substantial period of time. The question of “what is to be accomplished?” could remain unchanged even though the question “how to do it?” might be altered to improve current practices.

Next, consider the administrative procedure illustrated in Figure 9.7 that sets forth steps for position application. This regulation relates specifically to the policy for personnel recruitment and selection; it is executive in nature, calling for specific procedures to be followed; it is possible to revise these procedures without having to change board policy; and it serves to answer the question of how selection of personnel is to be implemented.

Topical Headings for Personnel Policies and Regulations

Policy and regulation development in human resources administration is an ongoing process. Because of the ever-changing nature of the human resources function, new policies and regulations become necessary, current ones need revision, and some become obsolete and must be deleted. The most viable topical headings for policies and regulations evolve from the vision and needs of the local school district. Because policies are comprehensive statements of decisions, principles, or courses of action that serve toward the achievement of stated goals, ideally they evolve from local school and community initiatives.

The NEPN/NSBA Policy Codification System

The National Educational Policy Network of the National School Boards Association (NEPN/NSBA) and the Davies-Brickell System (DBS) are examples of

Code: 4111 Recruitment and Selection

To aid in obtaining the best available personnel for school positions, the following criteria and procedures will be utilized: Concerted efforts will be made to maintain a variation in staff relative to educational preparation, background, and previous experience through recruiting on a broad basis. All available sources of personnel supply, including college and university career placement offices, career-information-day programs, student-teacher information, advertisements in appropriate publications, and others that serve to identify a pool of qualified personnel for position openings will be used.

Written applications, official transcripts of college work, student teaching and teaching reports and recommendations, and personal interviews provide the primary data for personnel selection. The procedures for screening and selecting personnel for teaching positions are as follows:

1. Notices of position opening in teaching will be disseminated internally through the offices of school principals and externally through selected college and university teacher placement offices.
2. The central human resources office will collect and process applications; the official application form of the school district and other application materials, as required by the human resources office, must be completed and received before an applicant can be considered for a position.
3. The central human resources office will gather all evidence for purposes of screening applicants including the application form, evidence of certification or licensure for the position in question, teacher placement records of the applicant, official college transcripts, at least three professional references from former employers and/or supervisors, and other information of importance. In addition, the district's prescreening background-check form is to be completed and returned by the applicant.
4. Preliminary interviews of applicants who are best qualified will be conducted by the central human resources office, although other representatives may participate as interviewers as the case requires.
5. Finalists for the position, as determined by the human resources office, will be scheduled for interviews with appropriate building principals and /or supervisors. The human resources office, together with the appropriate building principal and/or supervisor, will decide if the position should be offered to a specific applicant.
6. When a position is offered tentatively and accepted pending school board approval, the human resources office will send its recommendation to the school superintendent. Upon the superintendent's approval, the nomination will be made to the school board for final approval.
7. All final applicants for a position will be notified of the decision reached by the school board.

Figure 9.7 Sample of an Administrative Regulation for Recruitment and Selection

educational policy systems that have been implemented in numerous school districts nationally. Both systems provide a comprehensive classification system to guide policy development in school districts. The NEPN/NSBA, which is the most widely used classification system nationally, is based on an "alpha" system; letters of the alphabet are used for coding policies and regulations (i.e., each major topical heading has a letter). The NEPN/NSBA system uses 11 major sections (or series) in its classification system. Section G is used for policies related to personnel. Thus, GCBC in the coding system refers to section G (personnel); the third subsection, C (professional staff); the second division, B (professional staff contracts and compensation); and the third subdivision, C (professional staff supplementary pay plans/overtime). Figure 9.8 reveals a partial listing of the subsections, divisions, and subdivisions of Section G.

Section G: Personnel

Section G of the NEPN/NSBA classification system contains policies, regulations, and exhibits on all school employees except for the superintendent (policies on the school chief are located in Section C, General Administration). The category is divided into three main divisions: GB has policies applying to all school employees or to general personnel matters; GC refers to instructional and administrative staff; and GD refers to support or classified staff.

GA	Personnel Goals/Priority Objectives
GAA	Evaluation of Personnel System
GB	General Personnel Policies
GBA	Open Hiring/Equal Employment Opportunity and Affirmative Action
GBAA	Sexual Discrimination and Harassment
GBAB	Pay Equity
GBB	Staff Involvement in Decision Making
GBC	Staff Compensation
GBCA	Merit/Performance Pay Programs
GBD	Communications with Staff (also BHC)
GBE	Staff Rights and Responsibilities
GBEA	Staff Ethics/Conflict of Interest
GBEB	Staff Conduct
GBEBA	Staff Dress Code
GBEBB	Staff Conduct with Students
GBEBC	Gifts to and Solicitations by Staff
GBEC	Drug-Free Workplace (also ADB)
GBED	Tobacco-Free Workplace (also ADC)/Staff No Smoking/Smoking
GBF	Staff Working on Federal/State Grants
GBG	Staff Welfare/Protection
GBGA	Staff Health
GBGB	Staff Personal Security and Safety
GBGC	Employee Assistance/Wellness Programs
GBGD	Workers' Compensation
GBH	Staff Participation in Community Activities
GBI	Staff Participation in Political Activities
GBJ	Personal Records and Files
GBJA	Confidential Information and Disclosure of Information
GBJB	Access to Personnel Files
GBK	Staff Concerns/Complaints/Grievances
GBL	Staff Awards and Recognition
GC	Professional Staff
GCA	Professional Staff Positions
GCAA	Instructional Staff Positions
GCAAA	Teacher Positions
GCAAB	Guidance and Health Staff Positions
GCAAC	Resource Staff Positions
GCAB	Administrative Staff Positions
GCB	Professional Staff Contracts and Compensation
GCB A	Instructional Staff Contracts/Compensation/Salary Schedules
GCBAA	Merit/Performance Pay for Instructional Staff
GCB B	Administrative Staff Contracts and Compensation/Salary Schedules
GCBBA	Merit/Performance Pay for Administrative Staff
GCB C	Professional Staff Supplementary Pay Plans/Overtime

Figure 9.8 Section G of the NEPN/NSBA Codification System

SOURCE: National School Boards Association, Alexandria, VA. Reprinted by permission.

The code GCAAB reveals that the entry is personnel (G), professional staff (C), professional staff positions (A), instructional staff positions (A), and guidance and health staff positions (B). New subsections, divisions, subdivisions, items, and subitems can be added to the policies by using appropriate letters.

The Davies-Brickell Codification System

The **Davies-Brickell System of Classification** uses a numerical code based on nine major series (e.g., 1000, Community Relations; 2000, Administration; 3000, Business and Noninstructional Operations; 4000, Personnel). The code 4151.1, for example, denotes the fourth major series, the first subseries, the fifth division, the first subdivision, and the first item. Similarly, the code 2346 denotes the second major series, the third subseries, the fourth division, and the sixth subdivision.

The use of Arabic numerals for coding systems provides the advantage of easy reading and referencing. One advantage of the alpha system is that it does not limit the number of entries in any one subsection, division, subdivision, item, or subitem to nine. In a numerical system, once nine entries under any one of the classifications have been reached, some structural revision becomes necessary. For this reason, some individuals prefer the alpha system that the NSBA uses. Because there are 26 letters in the alphabet, numerous divisions, subdivisions, items, and subitems can be utilized without the need to restructure. On the other hand, some persons find the use of letters for coding purposes to be less readable than numbers (e.g., 4146.2 vs. DADFB). In any case, a consistent codification system is of paramount importance. It enhances the development, readability, revision, and utilization of the school district's policy and regulation manual.

How Personnel Policies and Regulations Are Developed

Although quality varies considerably, most school districts have some form of a policy and regulation manual. Because policy development is a never-ending process, some school districts simplify completing this task by purchasing policies written by national organizations or policy consultants. Unless customized for the particular school district, such policy manuals tend to be no more than boilerplate products that do not reflect the real climate and educational needs of the system. Therefore, it is important that human resources administrators fully understand the process of policy development and be prepared to assume a major leadership role in that activity. In 2004, 75.6% of the personnel directors in one state reported that they had the primary responsibility for personnel policy and regulation development in their school districts (Norton, 2004).

Although most school districts have a nucleus of policy already established, the need to develop an entirely new set of policies is quite common. Even when school districts have a "complete" policy manual, it is not unusual to have one or more sections in need of complete revision. When major revisions are necessary, the

question of who is to do the work arises. One approach is to have the school board appoint the school superintendent to do the policy work. The school superintendent is generally quite knowledgeable about the school district and its human resources purposes and needs. On the other hand, policy development is a monumental task, and such an arrangement tends to take much time away from other work of the superintendent's office. Another approach is to set up a series of task-force groups to do the policy work. Representative groups can benefit from personal involvement in policy development. Yet such an arrangement does not obviate the fact that policy development takes both time and skill. Professional staff members cannot always sacrifice the time necessary to do the work; nor are they always personally knowledgeable in the area of policy development.

Some school districts find it most expedient to use outside consultants to complete their policies. Policy consultants have special expertise for such work and are able to complete a quality product if it is founded on the district's culture and needs. Such an arrangement can be quite costly, however, because of the lengthy time commitments for such consulting. We caution against simply buying the policy statements from external organizations. Although such statements can result in a policy manual for the school district, unless such services are customized for the district, its goals, values, problems, needs, and situation, policies tend to be of a generic nature instead of exemplifying the real meaning and value of localized policies.

Another arrangement is to allow the central personnel unit to take the primary leadership in the development of policies and regulations in the area of human resources. The human resources director is highly knowledgeable about the personnel objectives and needs of the school district. These administrators necessarily must be fully acquainted with the legal aspects of personnel administration important to policy and regulation development.

We support the arrangement whereby the human resources director is given the primary authority to develop viable personnel policy for the school district. Such an arrangement does not set aside the fact that the school board remains as the final authority on all policy recommendations and the only body that can adopt policy officially for the school district. It also does not suggest that policy recommendations cannot evolve from any source or that participation in policy development should not include representatives from the school system's many publics. The following section explains one model for policy development that numerous school districts have used.

Model for Policy and Regulation Development

The human resources director might use the following model for completing a comprehensive study and revision of the school district's personnel policies and regulations:

Step 1. Examine various school and community documents and resources for information relative to what "policies" or decisions already have been determined. Sources of policies and regulations include school board minutes, school board

manuals, teachers' manuals, board correspondence, board committee reports, staff committee reports, school publications, citizen committee reports, newspaper files, personal interviews with past and present members of the school board and staff, and legal documents related to the school district. Frequency of notations on certain personnel subjects may suggest the need for a definite district policy. Give special attention to specific goal statements set forth by the governing board.

Step 2. Check on established practices in the area of personnel administration. Operations of the school board and the district often reflect embedded practices that imply policy need areas. Unwritten policies often become formal statements of policy through such an analysis of practice.

Step 3. Investigate what other boards have done in the development of personnel policy. Such information serves as a guide to possible policy development rather than being directly applicable to the local district in question. Such information can be useful as a sounding board in revealing local policy needs. Additionally, complete a thorough examination of state statutes related to the administration of schools and other official documents for clues to topics that should be set forth as official school district policy.

Step 4. Consult the studies and writings of others in the area of school personnel administration. Guides and handbooks prepared by school board associations, state departments, and other organizations often are excellent sources of policy content. Once again, such information should be used as a place to start rather than serving as a blueprint for meeting local needs.

Step 5. Enlist the aid of all concerned. It is good practice to solicit input from citizen groups, professional and support personnel in the school district, and other stakeholders of the district. Such involvement is conducive to quality results and also to gaining the ultimate approval and effective implementation of the policies to be recommended.

Step 6. Organize study groups to examine policy needs and to recommend policy in various subsections and divisions of the personnel policy topical headings (e.g., the NEPN/NSBA section G topical headings). Include such representative personnel as teachers, support staff, patrons, administrators, and at least one school board member in the study groups. The final approval and adoption are facilitated with the sanction of at least one board member serving on the committee. Organize a steering committee of representatives most knowledgeable of policy development and the needs and purposes of human resources administration. These committee members serve as liaisons with study subgroups in checking for consistency in the policies developed.

Step 7. Have the school superintendent and the administrative cabinet review the policy work completed. The professional staff has an ongoing role as policies are being developed in the initial stages. Thus, administrator, teacher, and support staff groups can participate by completing their own review of needed policies, by providing suggestions to study groups, and by acting as sounding boards for initial study group recommendations.

Step 8. Have the school board review the policy work completed. As is the case with the administrator, teacher, and support staff groups, the school board needs to participate in the initial stages of personnel policy development in ways similar to those recommended in Step 7. In addition, the school board as a whole should review the semifinal policy draft and make recommendations for revision.

Step 9. Have the draft of the policies tested for legality. The school board attorney reviews the policy draft from a legal viewpoint. Legal clearance helps to build school board and district confidence and lends support to the final policy package.

Step 10. Use first and second readings of the personnel policy statements prior to official adoption by the school board. Policy is legally binding for all district personnel and in this sense is a legal contract between the school board and its personnel. Thus, due consideration necessitates attention to sunshine laws and other aspects of legal procedures.

The Language of School Policies and Regulations

Attention to the language of written policies can obviate many problems of interpretation and possible conflict. Because a variety of publics utilize policies and regulations, they must be readable and meaningful to all concerned. Poorly written, ambiguous policies tend to confuse rather than inform. Furthermore, because policies serve as legal extensions of the school board, precise language that is presented in a clear, straightforward manner is of paramount importance. In policy writing, the statement, "You get what you write," is a basic truth.

Consider the following personnel policy statement:

In order to provide quality education to all students within the school district, a yearly evaluation of all certificated staff will be conducted. Evaluations should commend staff and provide avenues for staff improvement. Staff evaluations will be used to consider contract renewal.

This policy statement might appear to be clear and concise on the surface, but certain language questions must be raised. For instance,

1. Is only one performance evaluation annually permissible under this policy?
2. Is this yearly evaluation to constitute the totality of evidence for contract renewal consideration?
3. Is this evaluation to serve both formative and summative purposes?
4. How is the statement "Evaluations should commend staff and provide avenues for staff improvement" to be interpreted?
5. Are statements other than commendations permissible?
6. Does the policy suggest that the school district itself will provide the avenues for staff improvement?
7. Who will be responsible for planning and administering the evaluation program?

Smith and Mazin (2004) underscored the importance of positive language in the writing of policies and regulations. Two examples of positive and negative wording are as follows:

Negative wording: Vacation requests not submitted at least 30 days in advance will be denied.

Positive wording: In order to properly schedule vacation times and assure that the organization meets its staffing requirements, employees should submit vacation requests 30 days in advance of the requested leave.

Negative wording: Due to the potential of infringing on the personal beliefs and basic ethics of individual students, teachers will avoid instruction, discussions, and use of instructional materials relative to controversial issues and topics related to sex, religion, and political beliefs.

Positive wording: The school district supports the teacher's freedom to think and express ideas, to select appropriate instructional materials and methods of instruction, and to be free to take action within their professional domain. Such freedom carries with it the responsibility of using judgment and prudence to the end that it promotes free exercise of intelligence and pupil learning.

Summary

Policy by its very nature is often surrounded by controversy. Because policy generally evolves from important issues, which are often in dispute, total consensus on specific policy is seldom the case. For this reason, some persons take the position of leaving well enough alone; after all, if one puts policy in writing, it has to be followed. Such a view overlooks the reality that all organizations are governed by policy, and educational systems are no exception. Without policies and regulations, the school district could scarcely be called a system. Policies and regulations serve to establish orderly operations within the school district and help to define the system's functions and organizational relationships.

Most people would agree that policy is designed to provide direction and purpose for the school system. Policy should be studied by human resources administrators because of its significant effects on the lives of the personnel in the system. The challenges surrounding the human resources processes of selection, assignment, evaluation, collective negotiations, compensation and welfare, protection, and others demand the direction and guidance that personnel policies and procedures can provide. As Davies and Brickell (1988) pointed out, "the whole process of policy formulation is rich with opportunities for stimulating good thinking about school goals and their relation to policies by the many persons and groups concerned with the schools" (p. iv).

It is quite clear that the human resources function in education is embedded in the legal world of legislation and court rulings. Policy and regulations of school districts increasingly reflect the actions taken by federal, state, and local agencies. The

personnel processes of recruitment, selection, assignment, compensation, collective bargaining, evaluation, and others are all controlled in part by the results of legal actions taken by various official agencies.

This chapter has presented information that underscores the vital importance of policy and administrative regulation development for the human resources function. It has also discussed many of the legal rulings that influence the behavior of all human resources administrators.

Discussion Questions

1. You have been selected by your teacher colleagues to serve on a district-wide committee for the purpose of revising the school district's leave policy. All forms of absence from duty are concerns of the committee. Although the overriding concern is that of the development of a viable policy for all professional staff members, what are several specific provisions that you would want to have implemented as a teacher? For example, what stipulations would you see as important in the area of personal leave, sabbatical leave, and so forth?
2. Use the information provided in question 1 to set forth several specific provisions that you, as a member of the school board, would consider imperative to an effective policy on personnel leaves. Examine the differences, if any, between the stipulations arrived at for question 1 and question 2.
3. Information in the chapter indicated that the development of policies and regulations served to clarify the division of labor between the school board and the school superintendent. Discuss this contention in more detail. Why is such a division important in school operations? Isn't there some danger that such a division will result in conflicts between the board and the superintendent?
4. Obtain a copy of your school district's policy manual or that of another school district. Rate the following characteristics from low (1) to high (5) as they pertain to the policy manual examined: completeness, conciseness, clarity, distinctiveness, and consistency. (Review the discussion of these characteristics included in the chapter for further term clarification.)
5. Use the NEPN/NSBA system to determine each of the following topical headings. Write the topic of the series, subseries, division, subdivision, and so on, for each entry.
 - a. GBEB
 - b. GCAAA
 - c. GCBBA
 - d. GCB
 - e. GCAB
6. An administrator comments that, "I do all I can to keep policies strictly informal. Put them in writing and you have to carry them out. I want to keep as much freedom to act as possible." How might you reply to such a statement?

Case Studies

CASE 9.1

PAY OR NO PLAY

Ce Ce Rose has taught instrumental music at East High School for six years. She holds a B.S. degree in music and will complete a master's degree at the end of the second term at State University.

Principal Hodson received a call from one of the school's patrons, Mrs. John Adams. Mrs. Adams, whose son is a sophomore at East, also is the mother of two daughters who both graduated from East and participated in the school's instrumental program.

"Miss Rose has informed my son, Mark, that he needs special help in order to retain his place in the school band," reported Mrs. Adams. "She implied to Mark that his trumpet playing was below the standard expected for the marching band," she remarked. "Miss Rose has made herself available for special lessons at \$12.50 an hour. She'll work with Mark after school on Wednesdays and on two Saturday mornings a month."

Principal Hodson was silent for a moment. If this was true, this information was new to him.

"Aren't teachers supposed to give special help to students after school hours if needed?" asked Mrs. Adams. "I understand that she already is giving lessons to three other orchestra students."

"Well, many of our teachers do give help after regular classroom hours," said Principal Hodson, "and I do know that some of our teachers moonlight as tutors at night and on weekends."

"It seems to me that the charging for special lessons could lead to problems," commented Mrs. Adams.

"Mrs. Adams," said Principal Hodson, "let me search for more information on this matter. I'll get back to you at the earliest possible time. I appreciate your concern and thank you for contacting me on this matter."

Questions

1. Place yourself in Principal Hodson's role. What action plan would you implement in this situation?
2. Identify three or four issues of importance in this case.
3. Assuming that the school district has no written policy concerning the issues you identified in question 2, is a guiding policy needed to deal with such cases? Why or why not?

CASE 9.2

TEACHERS' ACADEMIC FREEDOM

On the opening day of school in September, Keefe, a tenured part-time English teacher, who is also head of a high school English department and coordinator for grades 7 through 12, gave each member of his senior English class a copy of the prestigious *Atlantic Monthly* magazine and asked the students to read the first article that night. Keefe discussed the article with his class—especially a particular word that was used in it. He explained the word's origin and context, and the reasons the author had included it (the word, admittedly highly offensive, was a vulgar term for an incestuous son). Keefe said that any student who felt the assignment personally distasteful could have an alternate one.

The next evening Keefe was called to a meeting of the school committee and asked to defend his use of the offensive word. (Parents had complained.) Following his explanation, a majority of the members of the committee asked him informally if he would agree not to use it again in the classroom. Keefe replied that he could not, in good conscience, agree. No formal action was taken at the meeting, but Keefe was suspended shortly thereafter, and school administrators proposed that he be discharged.

Claiming a violation of his civil rights, Keefe sought a temporary injunction before a federal district court forbidding any action on the part of the school board prior to a hearing on the alleged violation. The court refused to grant the injunction, and Keefe appealed to the United States Court of Appeals, First Circuit. His position was that, as a matter of law, his conduct did not warrant discipline and therefore there was no ground for any hearing. The position had two relevant parts:

1. His conduct was within his competence as a teacher, as a matter of academic freedom, whether the defendants (school board) approved or not.
2. He had no warning by any regulations then in force that his actions could bring about his discharge.

The school board denied Keefe's contentions, and the following statement appeared in court records:

They (the board) accept the existence of a principle of academic freedom to teach, but state that it is limited to proper classroom materials as reasonably determined by the school committee in the light of pertinent conditions, of which they cite in particular the age of the students. Asked by the court whether a teacher has a right to say to the school committee that it is wrong if, in fact, its decision was arbitrary, counsel candidly and commendably (and correctly) responded in the affirmative. This we consider to be the present issue. (Davies & Watt, 1970)

Questions

1. What do you believe about the freedom of teachers to select and use materials of instruction despite the objections of some parents?
2. Discuss your views of the position set forth by Keefe. Do the same with the statement by the school board that appeared in the court records.

SOURCE: From "Teachers' Academic Freedom" by D. R. Davies and H. Watt, August 1970, *School Board Policies*. Copyright © 1970 by Daniel R. Davies. Reprinted by permission. Davies and Watt based this discussion on the case of *Keefe v. Geanakos et al.* (1st Cir. 1969).

CASE 9.3

MISS NORTH'S DILEMMA

Miss North has served in the Jefferson school system for 19 years as an elementary teacher. Her employment record in the Jefferson schools shows that she taught at Longfellow Elementary School for five years, Mark Twain Elementary School for nine years, Whitman Elementary School for three years, and in her present position as grade 5 teacher at Emerson for two years. She has served under four different superintendents, including the present school head, Dr. Donnelly, who has been in Jefferson for two years.

During Miss North's two years at Emerson, one board member called Dr. Donnelly to inquire about Miss North. The board member stated that he had received many calls about Miss North in the last two days.

(Continued)

(Continued)

"I just wanted to let you know about the calls," said the board member. "You'll most likely be receiving some yourself soon. Better be on your guard."

Dr. Donnelly reviewed Miss North's permanent file. Evaluation reports on Miss North pointed out that it was felt that she was a strict teacher and did not have the most friendly classroom atmosphere, but most pupils performed better in her classroom than in one with more permissive surroundings.

One anecdotal notation in Miss North's file outlined a conversation between her and the assistant superintendent, Dr. Seward. Dr. Seward had telephoned Miss North to inform her that it would be necessary to transfer her from Mark Twain to Whitman. The reasons outlined for the action as recorded by Dr. Seward centered on an apparent feeling of growing parental dissatisfaction and the fact that several parents had requested that their children not be placed in her room the next year. Thus, the decision was reached to move Miss North to Whitman for a new start.

The record revealed that Miss North was greatly disturbed about the transfer decision. "I don't drive an automobile," Miss North had pointed out. "How do you expect me to get back and forth to school each day? Everyone knows what it means when you're placed at Whitman," Miss North had stated, according to Dr. Seward.

Mr. Smith, principal at Whitman Elementary School, was quoted by Dr. Seward as saying, "You never know how she will react from day to day. We've gotten along as well as can be expected. She doesn't have much patience for the slow learner, but her good kids can compete with most other grade-five pupils."

At a special board meeting later that week, a second member of the board of education mentioned the concern centering on Miss North. "Parents tell me that the pupils are afraid of her," one board member stated. "She apparently is 'cold' toward parents. In one instance, I was told that one of her pupils had written a note on the blackboard wishing her a happy birthday. Miss North insisted that the one who wrote it on the board erase it in front of the whole class. The parent of the child indicated that her embarrassed daughter didn't want to return to school."

Another board member stated, "This must be her 30th year of teaching in Jefferson. Doesn't she retire soon?"

The matter was referred by the board to Superintendent Donnelly for immediate study. After the meeting, Dr. Donnelly conferred with Mr. Malloy, principal at Emerson.

"She is a rather cold person, but I've received no official complaints from parents to date," said the principal. "However, my visit last week to her classroom revealed that some children are not responding. Her room was all business. The science lesson which I observed was well presented."

Dr. Seward apparently felt that it would be best to release Miss North. "She is starting one of her problems again. I think we've gone along with her long enough. Mr. Malloy would just as soon have her out of his building," Dr. Seward related to Dr. Donnelly. "She is a 'loner' in my opinion. She didn't even attend the faculty social last month."

Dr. Donnelly noted that the date was March 1 and school was to close on May 27. Obviously, the board was anticipating immediate action on the part of the administration.

Questions

1. Assume the role of Dr. Donnelly, school superintendent, and discuss/write your follow-up procedures and recommendations to the school board.
2. What policy and regulation matters are significant in this case? Why?
3. Explain how a viable set of policies and regulations might have proven of special value in this case.

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