



Oak Park Elementary School District 97

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**TO: Members, Board of Education
Dr. Carol Kelley, Superintendent**

FROM: District 97 Policy Review Team

RE: Policy Review and Discussion

DATE: November 9, 2015

The district's policy review team (Amy Felton, Rupa Datta and Chris Jasculca) is presenting the following information to the Board of Education tonight for review/discussion:

- Proposed policy changes/updates provided by the Policy Reference Education Subscription Service (PRESS) in its August 2015 Update Memo
- Status of changes to policy 8:80 (Gifts to the District)
- Result of the first quarterly review session the team performed in conjunction with its plan for monitoring board policies on an annual basis

Proposed Policy Changes from PRESS

The policy review team reviewed/discussed the proposed policy changes that were featured in the August 2015 Update Memo provided by PRESS. Below is a summary of the changes, as well as the team's recommendations. Please note that several of the revisions outlined in the memo from PRESS were limited to the footnotes that correspond with the policies. Since changes to the footnotes do not require board action, we did not include them in this document.

- **Policy 2:160 (Board Attorney)** – PRESS is recommending that the policy and legal references be updated to clarify the following:
 - The board may select one or more attorneys or law firms as board attorneys.
 - The board attorney represents the school board as the governing body for the district.
 - The board attorney must not represent another client if the representation would create a conflict of interest.

In order to accomplish this, PRESS suggests changing the first paragraph of the policy from:

The Board of Education may enter into any agreement for legal services with a specific attorney or law firm. The Board Attorney serves on a retainer or other fee arrangement as determined in advance. The Board Attorney will provide services as described in the agreement for legal services. The District will only pay for legal services that are provided in accordance with the agreement for legal services or are otherwise authorized by this policy or a majority of the Board.

to:

The School Board may enter into any agreement for legal services with a specific attorney or law firm. The School Board may enter into agreements for legal services with one or more attorneys or law firms to be the Board Attorney(s). 1 The Board Attorney represents the School Board in its capacity as the governing body for the School District. The Board Attorney shall not represent another client if the representation involves a concurrent conflict of interest, unless permitted by the Ill. Rules of

Professional Conduct adopted by the Ill. Supreme Court. 2 The Board Attorney serves on a retainer or other fee arrangement as determined in advance. The Board Attorney will provide services as described in the agreement for legal services. 3 The District will only pay for legal services that are provided in accordance with the agreement for legal services or are otherwise authorized by this policy or a majority of the Board.

PRESS also suggests adding the following legal reference:

Rule 1.7 (Conflict of Interest: Current Clients) and Rule 1.13 (Organization as Client) of the Ill. Rules of Professional Conduct adopted by the Ill. Supreme Court.

These suggested revisions serve as a “restatement of the Illinois Supreme Court’s rules governing the professional conduct of attorneys.”

The team recommends that the board approve the updates to the policy and legal references as written.

- **Exhibit for policy 2:160 (Board Attorney)** – PRESS is recommending that districts add this exhibit, which features “a checklist designed to assist school boards in selecting and retaining legal counsel.” The team recommends that the board add this exhibit, but change from Board President to Board President and designee throughout the document to align it with the board’s current practice for selecting the board attorney.
- **Policy 2:260 (Uniform Grievance Procedure)** – PRESS is recommending that the following changes be made to the policy:
 - Add “Right to Pursue Other Remedies Not Impaired” and “Deadlines” as subhead titles.
 - Update language throughout the policy “to clarify the rights of a complainant, an accused, and the school district when investigations pursuant to this policy occur. These clarifications were made in response to the uptick of investigations by the Department of Education’s Office for Civil Rights (OCR) in Illinois involving Title VI (discrimination on the basis of race, color, and national origin) and Title IX (discrimination on the basis of sex).”

The team asked Steve Cummins, the senior director of human resources, to review the policy to ensure that it aligns with the district’s current practices and procedures. He offered the following comments/questions:

The final sentence on the first page says: "If a person is pursuing another remedy subject to a complaint under this policy, the District will continue with a simultaneous investigation under this policy." Does this apply only to the 15 items featured in the first section of the policy? If so, are there any situations or scenarios under which a law enforcement investigation into a criminal matter would supplant or override the need for the district to conduct a simultaneous investigation?

PRESS provided the following answer to the comments/questions from Cummins:

Yes. If someone filed a grievance under 2:260, the policy is triggered and the complaint manager must begin his or her duties. If the grievance is also the subject a criminal investigation, the complaint manager will need to adjust the investigation accordingly. The Office of Civil Rights is demanding that schools respond to the victim’s needs even when the police are investigating and dealing with a perpetrator.

The team recommends that the board approve the updates to the policy as written.

- **Policy 4:50 (Payment Procedures)** – PRESS is recommending that the policy be updated “in response to subscriber feedback to provide that the treasurer shall prepare and present to the board a list of bills before the Board’s first regular monthly meeting or, if necessary, a special meeting.” Since the board’s current practice is to have the treasurer present a bill list and related report at each of its regularly scheduled meetings, the team recommends that the board maintain the current version of the policy, but revise the first sentence as follows to include a reference to special meetings.

The Treasurer shall prepare a bill list and related report, and shall present it to the Board of Education at each of its regularly scheduled meetings or, if necessary, a special meeting.

- **Policy 5:50 (Drug- and Alcohol-Free Workplace; Tobacco Prohibition)** – PRESS is offering optional language that can be added to the first two items that follow the second sentence of the policy. Districts can revise the first item as follows to address the issue of “being under the influence” of an illegal or controlled substance.

Unlawful manufacture, dispensing, distribution, possession, or use of an illegal or controlled substance, or being under the influence of any illegal substance or any detectible use of any illegal substance regardless of when or where the use occurred.

Districts can revise the second item as follows to address the issue of “alcohol consumption being detectible” while employees are present on district premises or while performing work for the district.

Distribution, consumption, use, possession, or being under the influence of an alcoholic beverage; being present on District premises or while performing work for the District when alcohol consumption is detectible, regardless of when and/or where the use occurred.

The team recommends that the board approve the addition of the optional language to both items. However, the team also wants to make the board aware of the parameters under which the district would need to prove its case in a court of law if an employee is disciplined or discharged for “being under the influence.”

If a hearing is required before the district may discipline or discharge an employee under this provision, the district must put forth evidence that the employee violated it. A district would also have this burden if a grievance is filed under a *just cause* provision in a collective bargaining agreement. The Ill. Court of Appeals held that when the policy defines *under the influence* as any “mental, emotional, sensory or physical impairment due to the use of drugs or alcohol,” the school district must prove that the teacher showed signs of impairment even though she registered 0.056 blood-alcohol level on a Breathalyzer. *Kinsella v. Board of Education of the City of Chicago*, 27 N.E.3d 226 (IllApp.1st, 2015).

- **Policy 5:170 (Copyright)** – PRESS is offering optional language regarding copyright infringement and the designation of a Digital Millennium Copyright Act (DMCA) agent. Below is a description from PRESS regarding what a DMCA does and how a district might benefit from having one.

The DMCA provides limitations on online service providers (OSP) liability for storage of copyrighted material residing on a system or network controlled or operated by or for the OSP. Districts that may benefit from designating a DMCA agent are those that operate or contract to operate the following types of websites: file and information sharing sites; blogs that allow guests to post content; social media sites; and other sites that accept, publish or host content created and submitted by other parties.

District 97 is currently listed as a DMCA agent on the U.S. Copyright Office’s website. In order to maintain this status, the district needs to file “an amended designation of agent” and pay a fee of \$140. Since being a DMCA agent does little to benefit our schools, staff and students, and because the OSP list is comprised

primarily of colleges and universities and does not feature any of our comparative/peer districts, the team recommends that the district not file an amended designation of agent. The team also recommends that the board forego the option of revising the policy to include the language regarding copyright infringement and the designation of a Digital Millennium Copyright Act (DMCA) agent.

- **Policy 5:270 (Employment At-Will, Compensation, and Assignment)** – PRESS is recommending that the legal references be updated to “delete case law that has been overturned or refers to lower court decisions.” The team recommends that the board approve the updates as written.
- **Policy 5:290 (Employment Termination and Suspensions)** – PRESS is recommending that the legal references be updated to “delete case law that has been overturned.” The team recommends that the board approve the updates as written.
- **Policy 6:140 (Education of Homeless Children)** – PRESS is recommending that several non-substantive changes be made to the policy and legal references as part of its five-year review. The team recommends that the board approve the changes as written.
- **Policy 7:10 (Equal Educational Opportunities)** –PRESS is recommending that the following changes be made to the policy, legal references and cross references:
 - Add immigration status to the list of protected classifications. This change is for clarification purposes. While nationality was and will continue to be listed as a protected classification, this change is “intended to protect children from discrimination based on their immigration status.”
 - Correct the reference to Title IX in the legal references.
 - Add references to policies 7:50 (School Admissions and Student Transfers To and From Non-District Schools), 7:60 (Residence) and 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment to the cross references.

The team recommends that the board approve the changes as written.

- **Policy 7:40 (Nonpublic School Students, Including Parochial and Home-Schooled Students)** – PRESS is recommending that the first sentence under the section titled “Students with a Disability” be changed from:

The District will accept for part-time attendance those students with disabilities who live within the District and are enrolled in nonpublic schools.

to:

The District accepts for part-time attendance children for whom it has been determined that special education services are needed, are enrolled in nonpublic schools, and otherwise qualify for enrollment in the District.

The team recommends that the board approve the change as written.

- **Policy 7:260 (Exemption from Physical Activity)** – PRESS is recommending that elementary school districts add language to the policy that, prior to this point, was only featured in policy 6:310 (High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students). This language reads as follows:

A student requiring adapted physical education must receive that service in accordance with his or her

Individualized Educational Program/Plan (IEP).

A student who is eligible for special education may be excused from physical education courses in either of the following situations:

- 1. He or she (a) is in grades 3-12, (b) his or her IEP requires that special education support and services be provided during physical education time, and (c) the parent/guardian agrees or the IEP team makes the determination; or**
- 2. He or she (a) has an IEP, (b) is participating in an adaptive athletic program outside of the school setting, and (c) the parent/guardian documents the student's participation as required by the Superintendent or designee.**

The team recommends that the board approve the addition of the language as written.

- **Policy 7:310 (Restrictions of Publications)** - PRESS is recommending that the following changes be made to the policy and legal references:
 - Revising the definition of publication, including adding a provision that reads “or (3) information or material on electronic devices (e.g., data or voice messages delivered by cell phones, tablets, and other hand-held devices).”
 - Adding a section titled “Bullying and Cyberbullying” to the second page of the policy that reads “The Superintendent or designee shall treat behavior that is *bullying* and/or *cyberbullying* according to Board policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, in addition to any response required by this policy.”
 - Adding the bullying prevention and response statute (105 ILCS 5/27-23.7) to the legal references.

The team recommends that the board approve the changes as written.

- **Policy 7:325 (Student Fundraising Activities)** - PRESS is recommending that the following changes be made to the policy, legal references and cross references:
 - Rename the policy to align with the state and national lunch programs' use of fundraising without a hyphen.
 - Add a directive regarding the management of fundraising activities that states: “For any school that participates in the School Breakfast Program or the National School Lunch Program, fundraising activities involving the sale of food and beverage items to students during the school day while on the school campus must comply with the Ill. State Board of Education rules concerning the sale of competitive food and beverage items.”
 - Revise the fourth directive to read: “Student safety must be paramount.” This revision was based on feedback PRESS received from its subscribers, and gives districts the latitude to make decisions regarding how they want to treat/handle door-to-door solicitations.
 - Add “23 Ill.Admin.Code Part 305, School Food Service” to the legal references and “Policy 4:120 (Food Services)” to the cross references.

The team asked and received confirmation from PRESS that “school-sponsored student organizations” does include individual classrooms. The team recommends that the board approve the changes as written.

- **Policy 8:10 (Connection with the Community)** – PRESS is recommending that district’s add two new subheads to the policy titled “Public Relations” and “Community Engagement.” Below is additional information from PRESS about the “Community Engagement” section.

The Community Engagement subhead is a new option for boards that complete the work necessary to develop and implement a community engagement initiative. IASB has extensively researched and prepared a new report titled *Connecting with the Community: the Purpose and Process of Community Engagement as part of Effective School Board Governance*. It is now available to help school boards and superintendents understand what community engagement is, why it is critical, what they can expect to accomplish, and how to evaluate the results.

The team recommends that the board approve the addition of the two subheads and the “Community Engagement” section as written. As for the “Public Relations” section, the team recommends using the optional language provided by PRESS with one minor revision—replace District Safety Coordinator in the final sentence with Superintendent or designee to align the policy with the district’s current structure/organization and practices. This language reads as follows:

The Board President is the official spokesperson for the School Board. The Superintendent is the District’s chief spokesperson. The Superintendent or designee shall plan and implement a District public relations program to keep the community informed and build support through open and authentic communications. The public relations program shall include, without limitation, media relations; internal communications; communications to the community; communications to students and parents/guardians; emergency communications in coordination with the Superintendent or designee; the District website and social media channels; and other efforts to reach all audiences using suitable mediums.

The team believes the optional language is less prescriptive and provides flexibility in terms of the creation of a public relations plan/program that will best meet the needs of the board and district.

Attached are the policies and exhibit that are being presented to the board tonight for a first reading. A second reading and approval of these policies and exhibit are scheduled for the board meeting on December 1, 2015.

Attachments:

- Policy 2:160 (Board Attorney)
- Exhibit for Policy 2:160 (Board Attorney)
- Policy 2:260 (Uniform Grievance Procedure)
- Policy 4:50 (Payment Procedures)
- Policy 5:50 (Drug- and Alcohol-Free Workplace; Tobacco Prohibition)
- Policy 5:170 (Copyright)
- Policy 5:270 (Employment At-Will, Compensation, and Assignment)
- Policy 5:290 (Employment Termination and Suspensions)
- Policy 6:140 (Education of Homeless Children)
- Policy 7:10 (Equal Educational Opportunities)
- Policy 7:40 (Nonpublic School Students, Including Parochial and Home-Schooled Students)
- Policy 7:260 (Exemption from Physical Activity)
- Policy 7:310 (Restrictions of Publications)
- Policy 7:325 (Student Fundraising Activities)
- Policy 8:10 (Connection with the Community)

Status of Changes to Policy 8:80 (Gifts to the District)

In December 2014, the policy review team recommended that District 97 replace the district-specific version of policy 8:80 (Gifts to the District) with the version that was drafted and is currently maintained by PRESS. The team based this recommendation on its belief that the PRESS version is clearer and more succinct, as well as the fact that it is the policy used by many of our peer districts.

The board discussed the difference between the two versions, more specifically that the current version states that “all accepted gifts, grants, and bequests shall be acknowledged by the Board,” while the PRESS version states that “while the Board encourages unrestricted gifts, donations to fund specific projects are acceptable if the project is approved by the Board.”

Based on this difference, the board members recommended, and the policy review team agreed, that the adoption of the policy would be tabled until the administration developed procedures for approving and/or acknowledging donations. (FYI – PRESS does not currently have or offer a template for administrative procedures that correspond with this policy.)

In the time that has elapsed since this review/discussion took place, the administration has been working on the procedures that correspond with all of the district’s policies, including policy 8:80. In addition, PRESS has provided recommended revisions to policy 8:80, including several that were featured in its August 2015 Update Memo.

The team still believes the board/district should switch to the PRESS version of the policy, and is currently assessing/identifying which changes we believe should be made. The administration is also in the process of finalizing a draft of the corresponding procedures. The tentative plan is to present both documents to the board during one of its meetings in December. Please note that the board does not approve administrative procedures. The draft procedures are simply being shared with the board to show how the language featured in the document aligns with the policy.

Results of Policy Review Session for First Quarter

In April 2015, the policy review team presented the board with its plan for monitoring policies on an annual basis. Under this plan, the team will review one or more of the eight sections of the district’s policy manual on a quarterly basis, and place the policies from those sections into one of the following categories:

- **Review Only**
- **Review and Possibly Revise**
- **Review and Spot Check for Enforcement**

The team will then provide the board with a written report at the conclusion of each quarterly review session. These reports will be shared with the community.

Attached is a report that features a summary of the results and proposed next steps from the team’s first review session.