

POLICY MATTERS

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Dear ASBSD Members,

Please accept this complimentary copy of Policy Matters, a publication that takes an in-depth look at school board policy. It's the first issue in our seventh year of publication, and we're pleased to continue offering this valuable resource to our members.


Following this complimentary copy, districts will have the option to subscribe for the remainder of the year — and receive three more issues before June 30 — for just \$200. If you're not yet a subscriber, see the registration form on the back of this letter for more information.

Your subscription to Policy Matters gives your district four issues a year, filled with insight and analysis on policy development, policy news and relevant sample policies. This year, we've brought back our popular staff columns — Risk Watch with Ken Bridger and Section B with Dr. Julie Ertz — and are debuting a new column — Policy in Practice with Bill Engberg, a column that discusses the difference between policy and regulation.

Specific to this issue, you'll find articles and sample policies relating to ballot initiatives and the need for schools to educate voters without spending public funds. While not every issue of Policy Matters will deal with politics, election season is right around the corner and we know schools will be dealing with many politically charged issues in the coming months.

We hope you enjoy Policy Matters and use it as a resource to discuss and drive policy at the local board table. If you have any questions, please contact ASBSD Director of Policy and Legal Services at 605.773.2513 or at bill.engberg@asbsd.org.

As always, thank you for supporting your school board association.



Wade Pogany,
Executive Director
Associated School Boards of South Dakota

Policy Matters: Subscription 2011-12

POLICY MATTERS

Policy Matters, published four times during the school year, provides insight and analysis on emerging issues that could impact policy decisions at the local level.

COST

An annual subscription to Policy Matters is \$200. For 2011-12, we will be providing you three more policy-filled issues.

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POLICY MATTERS

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Speaking up to educate voters

Schools can inform voters on election issues without spending public funds

Political activity is in the air in South Dakota. Opt-out campaigns sprang up around the state this Spring following education cuts. Ballot measures for the 2012 election are emerging and candidates eyeing Presidential election have already voiced their intent.

School districts have long been supporters of democracy, recognizing the strength of local governance and community input. But as publicly funded entities, they are also prohibited from using taxpayer dollars to sway an election.

So how can schools get involved with the democratic process in their community? Can they support ballot initiatives or use district



money to promote an opt-out? Are schools able to spend district funds to advocate a position on an election measure?

According to state law and an opinion given by the South Dakota Attorney General, the answer is

no; however, they may be allowed use resources, including the use of staff time and supplies, to do what schools do best: educate the public.

South Dakota codified law
See ELECTIONS [page 6]

Facility use must serve community

School facilities are an asset to a community. They provide a home for public education, a place of employment for many and space for community groups and organizations to gather.

South Dakota law grants school boards the authority to rent or grant the use of school facilities, motor vehicles or land belonging to the school district for any purpose which the board considers to be a community service (SDCL 13-24-20). The law leaves the definition

of “community service” to the determination of local boards.

While the request by a local Boy Scout troop to use the school gym or an adult education class to use a classroom in the evening may be an easy decision, what about the request of a chapter of partisan political party? A Wednesday night church group? A group wanting to hold an pro-life rally?

A clear facilities use policy helps the board govern who can use

the building and empowers the administration to apply consistent guidelines when considering rental applications.

Because school buildings are built and operated largely through local taxes, it is in the best interest of the school to make the facilities available to a wide variety of civic, cultural or recreational activities. The board should balance this need, however, with the best inter-

See FACILITIES [page 8]

POLICY MATTERS

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Searching for a topic?

To suggest topics for Policy Matters, contact Bill Engberg at 605.773.2513 or email at bill.engberg@asbsd.org.



Policy in the news:

New public school exemption form, procedure for 2011-12 school year

South Dakota school districts should be using the new Public School Exemption form and procedure starting this school year.

The form changed due to legislation passed during the 2011 session. Under HB 1133, an exemption for alternative instruction is now effective immediately upon filing with the school district. No school board action is required. An exemption may still be revoked later, per existing statutes.

The new public school exemption form is available on the South Dakota Department of Education's homeschool web page at www.doe.sd.gov/oatq/homeschooling.asp. Click on "Exempt Certificate Form" in the right-hand column.

The department notes that although the form does not include collection of race or ethnicity data, districts will need to input that data based on their knowledge of the student in order to get the enrollment record to save.

For more information, call DOE Accreditation Specialist Carol Uecker at 605.773.4771.

Belle Fourche attendance policy rewards high-achieving students

Belle Fourche School Board members are hoping a new attendance policy will keep students in their seats — at least until the final exam.

Under the policy, students who are absent two days or fewer in a class during the semester — and have a grade point average of at least 85 percent — can forgo final examination for that class if they choose.

A similar policy was tried in the district last semester, and saw an overall improvement in attendance during the trial period.

"We wanted to increase attendance and we did, Belle Fourche High School Principal Mathew Raba told the Black Hills Pioneer. "But, we also wanted to see grade averages increase and that wasn't necessarily the case for everyone."

In January, the board approved a temporary policy that would allow students to miss one day of class and not take the final exam. By the end of the semester, the district realized some students opting out of the final had below average grade point averages.

To correct the issue, the board included requirements for minimum grade point averages in the final policy to ensure students were achieving at high levels.

Cheyenne-Eagle Butte strengthens its K-12 student appearance policy

The Cheyenne-Eagle Butte Combined Board of Education is starting the school year sporting a new policy on student appearance.

The district eliminated its previous dress code policy amid controversy that it restricted students' freedom of expression, but approved an appearance policy for the 2011-2012 school year.

To help students and parents prepare for back-to-school, the district wrote a news release that was published in the West River Eagle newspaper. The in-depth release included a copy of the policy and assured parents the intent of the district wasn't meant to restrict students but to ensure "no one will feel offended or uncomfortable during school."

"The truth is that about every school in the entire country has a dress code of some kind. No matter where a student goes to school the student probably won't be allowed to wear clothing with the name of any alcohol or drug on it," the release said.

Delaware board to petition Supreme Court ruling on school 'prayer policy'

The Indian River School District Board of Education in Delaware voted unanimously to file a petition requesting that the U.S. Supreme Court review its practice of opening public meetings, including school board meetings, with a moment of prayer.

"For seven years, the board policy has been the subject of discussion, not only in our courts but in the media and throughout our community," school board member Donald Hattier said.

The board's vote was in response to the U.S. Court of Appeals for the Third Circuit's recent decision that the prayers were unconstitutional and go beyond the interaction between church and state permitted by the U.S. Constitution.

The board said it will abide by the Third Circuit decision while its petition to the U.S. Supreme Court is pending. It will instead open its meetings with a 20-second moment of silence.

— WBOC News (Del.)

Online policy reference manual goes live

Schools, board members now have full access to powerful policy resource

ASBSD's interactive web-based policy reference manual is up and ready for full use as a secured membership resource, ASBSD Communications Director Brian Aust said.

Letters containing log-in information were emailed to school board members and school administrators on Sept. 1. Members who have not provided ASBSD with an email address were sent the information via postal mail.

Since May, members have been able to test drive the website, found at <http://policy.asbsd.org>, during an extended preview period.

"This is a step forward for Policy Services," Aust said. "Our previous online policy reference manual did the job it was set up to do — it got it us online. This site is an huge upgrade."

The ASBSD Online Policy Reference Manual contains hundreds of sample policies, regulations and exhibits to help districts in developing school board policy.

The new reference manual has powerful, robust search capabilities, Aust said. Members will be able to search for specific policy topics by keywords or NEPN code, or browse the entire collection of sample policies using an easy-to-use index.

"One of the search features members can also use is revision date, so members can see which policies we've recently updated," Aust said.

The homepage of the ASBSD Online Policy Reference Manual contains multiple search tools to easily find sample policies. The website was sponsored by ASB Protective Trust.

Policies will be reviewed and revised more frequently, Aust says. The new format of the online manual gives ASBSD staff better internal control, making the policy reference manual a more current and dynamic policy development tool for members.

The completed site represents a partnership between the association and ASB Protective Trust, which sponsored the effort.

"The development of sound policy is something

that is unique to board governance teams," Aust said. "The association is always striving to help our member schools do this more efficiently and effectively.

"And good policy aids districts with risk management and helps protect the health and safety of staff and students."

For log-in information, contact ASBSD Policy Associate Kay Thompson-Tieszen at 605.773.5204 or kay@asbsd.org. [PM](#)

HARNESSING THE POWER OF THE INTERNET

Being online gives ASBSD's Policy Reference Manual a few bonus features:

- **Linked legal references**
When possible, sample policies include direct web links to legal citations that provide the board with the authority to enact local policy, including references to federal and state law, as well as state administrative rule.
- **Linked cross references**
At times, a school board policy might need to include

references to other policies in the manual. The ASBSD Online Policy Reference Manual provides interactive links to cross-referenced policies within the manual.

- **Online comments**
Once members have logged into the reference manual, they can leave comments on each policy. This quick-and-easy comment form allows members to make suggestions or ask questions about the policy. ASBSD staff moderates all comments and will reply with clarification, if needed.

Spreading democracy



one signature
at a time

Policy can clarify school involvement in petition process

“Excuse me, do you have a minute to discuss public education?”

A cheerful person toting a clipboard stops you outside of a store and asks you to sign your name in support of a ballot measure. It might seem like an inconvenience at the time, but petition drives represent democracy at its finest, giving citizens an opportunity to affect change from a store parking lot or street corner.

Gathering voter signatures on a petition is the starting point for getting an issue or candidate — or recalling a law or candidate — on a ballot. Every registered voter in the U.S. has the right to sign a petition or participate in the process.

School board members and school employees may be different, however.

While democracy doesn't end at the school door, school employees and board members are governed by certain state and federal laws that prohibit political activities by those receiving public money.

With several 2012 ballot initiative petitions already circulating around South Dakota this year, a written policy can help clarify what school board members and school staff can and can't do regarding to petition circulation.

ASBSD sample policy GBGA is an example of a political activity policy that governs multiple

actions, including petitions. As with any sample policy, districts should consult with their legal counsel and consider local issues, but here's a few commonly asked questions school boards may want to consider to get started.

Can school staff sign or circulate petitions?

School employees can both sign and circulate petitions at will, but only as private citizens, says ASBSD Director of Policy and Legal Services Director Bill Engberg.

As far as courts are concerned, Engberg said, school employees enjoy the same rights as all Americans when they are on their own time,

including petitioning their government. But when school employees are at work during school hours, on school grounds, or are identifying themselves with their school title, their freedom of expression may be limited.

“When you work for a public entity, such as a school, you represent that entity. School boards are legally elected to set the course for the district, and district employees are responsible for carrying out the wishes of the district,” Engberg said. “So when school employees speak in their identified role — as a teacher or a business manager, for example — the courts have said that speech may not be protected.”

School boards may want to consider discussing the details of employee political activity during school hours or on school grounds, such as whether to allow staff to circulate petitions in employee lounges, or to use school staff emails for sharing petition information.

Can school board members legally participate in petitions?

This situation is similar to the issue of school employees, Engberg said. School board members are elected officials, and therefore entities of the state and should take care not to expend any public funds or use their official position to influence elections.

However, as private citizens on their own time and agenda, school board members can sign petitions or volunteer during petition drives.

Can we allow petitioning to occur on school grounds?

The U.S. Supreme Court has not ruled on the issue of allowing petition drives on school grounds, so there is no clear answer at this time. Districts should discuss the matter with their legal council and decide if they want to open the school campus to individuals who want to circulate petitions.

Policy GBGA reflects the position that distribution of political materials, including petitions, should not be allowed on school property during school hours. This policy helps schools stay out of violation — or the appearance of violation — of state and federal law prohibiting the use of public funds to influence campaigns.

“Sometimes schools run into public relations issues with politics on campus,” Engberg said. “People look at what’s going on at the school and say, ‘They aren’t supposed to get involved.’ That doesn’t mean the school is necessarily doing

ASBSD SAMPLE POLICY

GBGA: DISTRICT INVOLVEMENT IN POLITICAL ACTIVITY

The board believes in the importance of democracy in American society and advocates political participation as an act of self-governance. In this spirit, the board recognizes the rights of district officials and employees, as private citizens, to be involved in local, state and federal political activities, and encourages politically related material, discussions and projects in the classroom with the intent to teach students about democracy.

For the purpose of educating voters and lawmakers, the board will also provide information on ballot questions. The board authorizes the superintendent or superintendent’s designee to communicate such information to citizens, media sources, public officials or candidates running for office as the superintendent or designee deems appropriate.

However, the board prohibits the following actions:

1. Use of an official school title to endorse or oppose candidates running for elected office, a political party or a proposition, referendum or issue being voted upon by the electorate;
2. Use of district funds to support or oppose a candidate running for elected office, a political action committee, a political party or a proposition, referendum or other ballot issue;
3. Distribution or posting of material which supports or opposes any candidate, political party or action committee, or proposition, referendum or other ballot issue on school property during school hours; and
4. Use of school facilities by candidates, their representatives, political parties, or political action committees.

School as a polling place

In the case that a public school building is used as a public polling place, candidates, their representatives, members of a political party or political action committee or citizens acting in support or opposition to a ballot question may hand out literature or speak with prospective voters as long as this is done outside a 100-foot radius of the entrance to the polling place.

LEGAL REFERENCES: SDCL 12-27-10; 12-27-21; 13-7-3; 13-43-15.1; 13-43-1; Hatch Act

anything wrong, but schools should consider carefully who they allow to do what on school property.”

Can the district initiate a petition?

Because school districts are political subdivisions of the state and receive federal and state funding, they cannot initiate petitions calling for political candidates or measures to be on the ballot. Schools are allowed to initiate local opt-out and bond campaigns for consideration of local voters.

School districts are also allowed to educate voters on an issue addressed in a petition, including showing voters the potential benefits or harm to the district and putting forth their support or opposition on the proposed law based on the impact it would have on the district. Any distribution of information to the public should first be approved by the board.

For more information, contact Director of Policy and Legal Services Bill Engberg at 605.773.2513. [PM](#)

FUNDING

continued from COVER

12-17-20 strictly prohibits the expenditure of public funds to influence the outcome of an election. According to the law, the state and its agencies, governing bodies and political subdivisions may not “expend or permit the expenditure of public funds for the purpose of influencing the nomination or election of any candidate, or for the petitioning of a ballot question on the ballot or the adoption or defeat of any ballot question.”

The law does allow officers and employees of state entities to contribute personal funds toward a political candidate or ballot campaign, but within their official capacity, they are not allowed to spend district funds for the purpose of supporting or opposing a political candidate, ballot measure, opt-out campaign or bond issue.

In 1988, South Dakota Attorney General Roger Tellinghuisen clarified the issue of using public money to advocate a position on election measures (Official Opinion 88-28). The

Attorney General’s opinion stated that although state courts had not yet addressed the issue, his review of court decisions in other jurisdictions lead to a conclusion that municipalities, counties and school districts may not expend public funds to promote or oppose an election measure.

“A fundamental goal of the democratic electoral process is to attain the free and pure expression of the voters. Basic democratic principles mandate that the government must, if possible, avoid any activity or feature which might adulterate that free and pure choice,” he wrote, citing *Could v. Grubb* (Cal. 1975). “The government should not ‘take sides’ in election contest or bestow an unfair advantage on one of several competing factions...”

“Further, the use of public tax dollars for purposes of influencing election results implicates the rights of those who dissent from the government supported position. Dissenters who are in effect compelled to finance the expression of views with which they disagree have reason to complain and may assert an infringement of First Amendment Rights.”

Using public funds to educate

Sound black and white? Not quite. SDCL 12-17-20 contains a provision that allows the state and other entities to present “factual information solely for the purpose of educating the voters on a ballot question.”

According to Tellinghuisen, lawmakers made this provision so entities, such as school districts, can help educate voters on the ballot issues they are expected to vote on.

“Expenditure to provide the voters with the relevant facts and pros and cons of a ballot measure have never been considered constitutionally objectionable and case authorities suggest that authority for such expenditures need not be expressly provided,” Tellinghuisen wrote, citing the cases *Citizens to Protect Pub. Funds*, and *Stern v. Kramersky*. “The authority may be fairly implied from powers expressly granted.”

However, the opinion does note that expenditures for disseminating information to the public should be judged on a case-by-case basis. If passage or rejection of the ballot measure

ASBSD SAMPLE POLICY

KMI: RELATIONS WITH POLITICAL ORGANIZATIONS (PUBLIC FUNDS)

The board believes in the importance of democracy and the rights of citizens to be involved in politics, but recognizes state and federal law that prohibit schools from seeking to influence elections.

School district funds, whether derived from local, state or federal sources, will not be used for the purpose of influencing elections or ballot measures to be decided by the community or statewide voters.

The school will, in keeping with state and federal law, offer factual information on ballot measures that have the potential to affect district operations, including opt-out campaigns and bond campaigns, to the public for the purpose of educating voters.

School resources, including staff time, shall not be used for political purposes.

LEGAL REFERENCES: 12-27-20; Hatch Act; Davis Bacon Act

LEGAL AUTHORITY

12-27-20. Expenditure of public funds to influence election outcome prohibited.

The state, an agency of the state, and the governing body of a county, municipality, or other political subdivision of the state may not expend or permit the expenditure of public funds for the purpose of influencing the nomination or election of any candidate, or for the petitioning of a ballot question on the ballot or the adoption or defeat of any ballot question.

This section may not be construed to limit the freedom of speech of any officer or employee of the state or such political subdivisions in his or her personal capacity.

This section does not prohibit the state, its agencies, or the governing body of any political subdivision of the state from presenting factual information solely for the purpose of educating the voters on a ballot question.

“Expenditure to provide the voters with the relevant facts and pros and cons of a ballot measure have never been considered constitutionally objectionable...”

— South Dakota Attorney General official opinion 88-28

would significantly affect the ability of the district to carry out its operations, the use of public funds for strictly informational purposes may be authorized.

Still, the information should be considered carefully to ensure they are fair and accurate.

“To avoid any claim of misappropriation the governing board involved must be careful to ensure that the published information constitutes a fair presentation of the relevant facts on both sides of the election issue,” the opinion states.

Language is key in communicating the facts in a fair manner. Schools should take care to avoid the obvious statements of “vote yes” or “vote no” but they should also aim to tell voters specific ways in which the proposed law will affect the district.

“It’s certainly within the responsibility of a school board to educate voters about the impact a ballot initiative or proposed law may have on their communities and school district,” ASBSD Communications Director Brian Aust said.

Adopting a resolution

There are several ways boards can inform voters, including informational meetings, fact sheets or issue web pages. One of the most common ways the district can share information to the community is for the board to take a formal position through board action by adopting a resolution.

“A board resolution can be a way of telling your district’s story of how the law will impact the district and community,” Aust said.

Resolutions are statements of fact that outline key ways in which a ballot measure or proposed law will affect students, schools, district employees and other district concerns. Resolutions typically have several parts, beginning with a factual statement explaining what the ballot initiative

or proposed law means.

After the board has defined what the measure will do, the next step is to explain the district’s story, or how the measure or law will affect school operations. This part may include a statement of support or opposition of the proposed law.

If needed, the board also can delve into the broader issue surrounding the ballot measure. For example, if the ballot measure is focused on education funding, the board may want to explain how funding levels currently impact the district and how funding has impacted the district in the past. This part of the resolution can help voters place the issue into a cultural or historical context and give them a greater understanding of the issue itself.

According to Aust, resolutions are all about communicating openly with community about what the proposed law will actually do.

“Some people look at resolutions as advocacy, but really they are a tool for educating. It is a responsibly of school board members, as elected leaders, to be able to tell the community the district’s story,” he said.

For example, when the state was considering a measure of mandatory consolidation for schools with fewer than 100 students, many districts had a responsibility to communicate tough news to their communities: If passed, the law would mean consolidation and possibly school closures for their district.

“School officials need to be able to explain the issue before it comes up to a vote, to empower citizens so they can take the appropriate action,” Aust said.

In the past, ASBSD has provided sample resolutions for local board consideration, such as Initiated Measure 10, known as the gag law, in 2008. For examples of sample resolutions provided to South Dakota schools, contact ASBSD.

Writing the policy

ASBSD sample policy KMI: Relations with Political Organizations (Public Funds) is an example of board policy that adheres to the fine line between educating versus persuading voters.

“School districts should be conservative with any involvement in public issues,” ASBSD Director of Policy and Legal Services Bill Engberg said. “Even something as simple as using the lights or building could have ramifications with a community member.”

Engberg said the policy should allow for the school to provide information to voters. School policies governing political involvement should also recognize the right of district employees to participate in the democratic process as private citizens.

“As long as it is on their own time, and as long as they are not using their school position, district employees are free to do what they want,” Engberg said.

For more on consideration of district political involvement, including staff leave for political campaigning and facility rental, see ASBSD sample policies KG: Community Use of School Facilities; GBGA: District Involvement in Political Activity; and GBG: Staff Participation in Political Activities. Sample policies KIA: Distribution and Posting of Promotional Materials and KI: Public Solicitations and Advertising in the Schools can provide guidance on distribution of political materials on school property.

With most political involvement, Engberg said, the major concept boils down to this:

“School districts cannot get involved in terms of supporting or attacking a political person or issue, or they open themselves up to legal ramifications.” **PM**

FACILITIES

continued from COVER

ests of the school district and the community: Will the usage be of service to the community? Is the usage going to be too controversial for community members?

School boards should keep in mind that allowing controversial groups or meetings isn't prohibited by law, but districts must stay in compliance with state and federal funding clauses (no public fund expenditure to influence elections) and the establishment Clause of the First Amendment (separation of church and state). For example, if a group wants to use the school auditorium for a pro-choice meeting, the board may want to open the school to a pro-life meeting. The key is balance and maintaining a focus on community service.

For this reason, a board may want to consider creating a list of prohibited activities on school grounds or in school buildings. For example, ASBSD sample policy KG: Community Use of School Facilities prohibits the use of school grounds for partisan political meetings, fund raising campaigns, commercial advertising and activities that are illegal or in bad taste to the community. When outlining prohibited activities, the board should remember that the policy needs to remain broad enough to allow the superintendent flexibility to write regulations to carry out the board's goals.

Facility use agreement

It is also important that every rental include a facility use and equipment agreement, according to ASBSD Risk Manager Ken Bridger.

The agreement, to be signed by both the school representative and the user, must include a hold harmless clause to protect the school. ASBSD has a sample agreement form, KG-E, available in the ASBSD Online Policy Reference Manual.

In addition, schools may want to advise individuals and groups that it is in their best interest to purchase short-term liability insurance during their usage. While schools are covered by insurance, community members or groups — particularly if they are not part of a larger, national organization — may not be covered and may not realize that they could be held personally liable in the event of an injury.

“As professionals in the community, we owe it to tell someone renting school space of the risk

ASBSD SAMPLE POLICY

KG: COMMUNITY USE OF SCHOOL FACILITIES

School district facilities and equipment are purchased, maintained, and operated by funds largely provided by local taxes. The board believes the facilities and equipment ultimately belong to the residents of the district and accepts the responsibility for making them available to responsible organizations and individuals of the community for appropriate activities. These activities may not infringe upon nor interfere with the conduct and best interests of the school district or its programs.

Prohibited activities

The following activities will be prohibited on school grounds or in school facilities:

1. Partisan political meetings;
2. Promulgating any theory or doctrine subversive to the laws of the United States or any political subdivision thereof advocating governmental change by violence;
3. Any activity that may violate the canons of good morals, manners or taste, or be injurious to the buildings, grounds or equipment;
4. Any purpose in conflict with school activities;
5. Commercial advertising;
6. Fund-raising campaigns except as permitted by board policy or special action of the board;
7. Activities which are discriminatory in the legal sense.

Permission may be granted to allow local colleges and universities, which may charge tuition, or school personnel to use district facilities for staff improvement or in-service training. Private teaching, either by individuals employed by the school district or by outside agencies or persons, for which tuition is charged will require board approval before facilities may be used.

The superintendent will develop regulations to be reviewed by the board for the use of school district facilities and equipment.

Granting of approval


The superintendent is authorized to approve and arrange for scheduling the use of school facilities by qualified applicants who satisfy the above purposes and limitations. Right is reserved by the board to revoke any such permit, without liability, should such action be deemed necessary or desirable.

Applicants will be required to submit a facility use agreement declaring that to the best of their knowledge their projected use is legal. Applicants requesting permission to use a school building will be held responsible for the preservation of order and for any damage to school facilities. The person signing the application will agree to replace or pay for all damages or lost equipment or material when directed to do so by the school administration. If replacement is required for damaged property, replacement costs will be the measure, and depreciation will not be a factor. In addition, users of the facility will be required to hold the district harmless for all damages and personal injury that may occur during their utilization.

if something unforeseen happens,” Bridger said.

Districts covered under ASB Protective Trust Property and Liability Insurance can inform renters about the Tenant User Liability Insurance Program (TULIP), which allows individuals to

purchase liability coverage at a minimal price for a set number of days and level of coverage.

For more information on TULIP, contact Bridger at 605.773.2511 or ken.bridger@asbsd.org. 



POLICY IN PRACTICE

WITH BILL ENGBERG

Regulation carries out board's vision, mission

All school board members should know it; all administrators should know it: Policy is different than regulation.

It's easy to say, however, sometimes in the middle policy discussions, the distinction between governance and regulation can blur and content best left to regulation seeps into policy.

The difference between policy and regulation lies in the distinction between the duties of school boards and administrators. School board members are elected to foster the vision and mission of the school district. Collectively, the board determines where the community wants the district to go and provides governance in that direction. In

essence, the board decides the *what* of the district. Administrators, on the other hand, carry out the goals of the school board. They deal with the *how* of the district.

Let's look at the distinction between policy and regulation in a bit more detail with the issue of school facility use.

Policy in practice: KG

ASBSD's sample policy KG: Community Use of School Facilities (page 8), governs the use of school facilities and equipment by outside entities. The policy begins with a statement of philosophy that outlines the school board's beliefs about the ownership of school buildings and property and the intent of the board to make them available to responsible people for appropriate activities.

KG then continues with a statement of policy, or the governance statement. In this case, the policy outlines specific things the board wishes to prohibit, addresses the issue of using facilities for private tutoring and training, and grants the superintendent the authority to develop regulations, and to approve and arrange the use of school facilities.

It might seem prudent to include information about rental cost and facility clean-up or a hold harmless clause in KG — but these types of details should be included in the subsequent regulation. The reason for the exclusion is that policies are meant to be long-term and stable. They are the laws of the district. Regulations, on the other hand, are intended to be more flexible, allowing for modifications if necessary.

The distinction comes about for practical reasons. School boards meet once or twice a month, with special meetings occurring as needed. School administrators work in daily operations of a district, dealing with employee concerns, student discipline, facility maintenance problems and a myriad of issues that all require immediate attention and answers. Regulations provide standard

procedures that can be adjusted so administrators can act quickly within the school board's vision and mission for the district, without needing to wait for the next meeting of the board to discuss the matter.

To help ensure the superintendent or other administrator can develop regulations that cover a wide array of circumstances, the board should create statements of policy that are brief with clear intentions. The more restrictions in policy, the narrower the corridor the administration may have in carrying out the policy.

In respect to KG, rental rates, scheduling and specific dos and don'ts in regulatory documents will help administrators apply the policy fairly to a variety of community members or groups seeking to rent school facilities. Regulations for KG includes exhibit KG-E, a regulatory form on facility use agreement.

The form, to be signed by both the renter and school representative, gives the district written details of who the renter is, time and date of usage, information on liability, including a hold-harmless clause and state law that govern school rental and resulting liability (SDCL 13-24-20).

As with any exhibit or regulation, the school board retains final authority. The board can review regulations at its discretion, but may want to revise or veto only when inconsistent with district policy. Again, the board's role is not to develop regulation, except when required by law or when the superintendent recommends board adoption.

For district policies that govern the development and adoption of policy and regulations, see ASBSD sample policies CH: Policy Implementation; CHA: Development of Regulations; and CHB: Board Review of Regulations.

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ASBSD SAMPLE POLICY

CH: POLICY IMPLEMENTATION

The superintendent has responsibility for carrying out, through administrative regulations, the policies established by the board.

The policies developed by the board and the administrative regulations developed to implement policy are designed to promote an effective and efficient school system. Consequently, it is assumed that all board employees and students will willingly carry them out.

There are activities that are common to all departments and school levels but procedures for conducting them may vary from unit to unit. Principals and department heads will establish procedures for conducting activities within their individual units within the larger framework of administrative regulations and board policies.

SECTION B

WITH DR. JULIE ERTZ



Student success starts with your leadership team

Have you ever been in a situation where a school board member reveals a hidden agenda? Do you have someone on your board who seems to get involved in discussions only when the subject of the football coach comes up?

Personal preferences, hidden agendas and a lack of vision for the district can create conflict between school board members and superintendents until a molehill becomes a mountain. But that's not how it should be. Every school board and superintendent has the potential to become a strong governance leadership team for their district and a powerful alliance for student achievement.

In fact, your students are depending on it.

The success of a district's mission to give all children a high-quality education starts with the

working relationship of its governance leadership team. To affirm this partnership, the board may want to consider adopting a policy on board-superintendent relationships, similar to ASBSD Sample Policy BCD. The policy starts by articulating the philosophy behind the leadership team, and outlines expectations of the board and superintendent. Your policy could also contain a list of operating principles — but be aware that the policy should be a commitment to shared leadership and not merely a list of dos and don'ts.

While the success of your district is founded in the strength of its governance team, the success of your team is rooted in trust. Cultivating and maintaining the high-level of professional trust takes an understanding of the roles and responsibilities of each. In a nutshell, school boards

govern, superintendents administer. The board's primary responsibilities are policy development, strategic planning, evaluation and budget adoption. The superintendent is responsible for carrying out the policies and overseeing the daily operations of the district, making recommendations to the board and keeping it apprised of the issues and concerns of the district.

But knowing the roles isn't enough. Clear expectations of your leadership team are critical. You can help clarify expectations by putting important expectations into policy and strategic planning. Be clear and realistic about goals for each other, and don't surprise members of your leadership team with unexpected agenda items. Help your team work efficiently and effectively by following board protocol and doing your homework before coming to a board meeting.

Also, be accountable to your team for your share of the work and deliver results on time. Assist your progress with regular evaluation and celebrate your successes.

As with any team, open, constructive communication fosters the relationship. Realize that conflict is often between ideas, not people, and strive to disagree or debate tactfully. Embrace your diverse perspectives by reminding yourself that it makes your team stronger in the end to have discussed all possible options or outcomes.

Ultimately, if you're having conflict within your board-superintendent team, chances are your team is not focusing on kids. The primary focus of the governance leadership team should remain on student achievement.

Keep focused on what is best for students and you'll find most molehill problems soon disappear.

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ASBSD SAMPLE POLICY

BCD: SCHOOL BOARD AND SUPERINTENDENT RELATIONSHIP

The board believes the success of its mission to create a high-quality learning environment where all children can learn depends upon the cooperation between the board and the superintendent.

To achieve this common goal of student achievement, the board-superintendent governance leadership team will make every possible effort to develop a mutual understanding of their respective roles, create clear expectations and transparency, build professional trust and respect, and communicate openly and honestly with each other.

The board believes that the legislation of policies is its most important function and that the execution of those policies is the function of the superintendent.

The superintendent will be responsible for the administrative and advisory functions of the board. Strategic planning, policy making and superintendent evaluation are the functions of the board. The board retains final authority within the district, as charged by the South Dakota Legislature.

Together, the board and the superintendent are a team, each playing a well-defined role for the benefit of the district, students and community.



RISK WATCH

WITH KEN BRIDGER

With slip and fall liability, proof is in the paper

As districts welcome back students, teachers, volunteers and school visitors, it's important to take a look at the safety of school buildings and grounds — and to document the steps taken to ensure that safety.

Written documentation of buildings and grounds inspection should be a vital part of a district's overall risk management strategy. Written reports, checklists and logs of maintenance activity are proof that the district acted in a responsible manner to protect the public. Without documentation, there is no physical proof of the school's actions and if an injury claim arises, it can become a case of "he said, she said."

One area where written proof is especially important is snow and ice removal. In the chilly Midwest, one of the greatest concerns during winter months is injuries stemming from slip and fall incidents. Slip and falls are the No. 1 reason for emergency room visits, according to the Centers for Disease Control, which last counted more than 8 million visits in 2007.

In addition, the U.S. Bureau of Labor Statistics reports that slip, trip and fall incidents amount to about a quarter of all occupational injuries each year, with workers' compensation and medical costs estimated at approximately \$70 billion annually.

Policy concerns

It's important for school boards not to write too much into maintenance policies, creating unnecessary liability. If something is in policy, that means school employees absolutely must follow it or the school is liable. For example, a claimant who slipped on a snowy sidewalk can look at your policy and say, "You have a policy that you're going to shovel within three hours of a snowfall. You broke your own policy."

In that sort of a situation, a school might as well get out its checkbook.

A better way is for the board to create a broad-based policy, such as ASBSD sample policy ECB: Buildings and Grounds Maintenance, that establishes the philosophy of safety and provides flexibility for the superintendent or school principal to create procedures and log forms.

A snow and ice removal log can be a calendar-type chart made in Microsoft Word with a place to record date and time of inspection, name of employee inspecting and action taken. The record doesn't have to be fancy; the key is to give schools something to verify something has been done to keep the area free from snow and ice hazards.

It's also important that these logs be kept on file with the school. Over time, the logs can show a consistent pattern of action — they illustrate that the school has a history of care and concern. And when determining liability for slip and falls, courts will look to see if the school was acting in a responsible manner.

For instance, even though the school custodian decided the weather conditions didn't warrant ice melt on Thursday, a log could show he or she de-iced the sidewalk on Monday, Tuesday and Wednesday. In other words, the custodian was monitoring the conditions and acting with safety in mind.

Schools with contracted snow removal should require documentation of snow removal dates and times, names, and actions as part of their contract. Keep all records of the contract and removal logs on file.

A couple of other snow removal tips schools should keep in mind: Use the same checklist for all schools, including any technical schools within the district, and remember to follow city statutes on snow removal for business owners.

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ASBSD SAMPLE POLICY

ECB: BUILDINGS AND GROUNDS MAINTENANCE

The board believes that keeping school buildings and grounds safe is part of its responsibility to provide students, staff and community members with a healthy learning and working environment.

The board strives to provide schools that are safe from hazards, sanitary, properly equipped, lighted and ventilated and esthetically suited to promoting the goals of the schools. The superintendent will have direct supervision of the care of school property. The superintendent will be responsible to the board for its adequate maintenance.

Each school principal will have responsibility for the school facility and grounds under his or her charge. Principals will carry on a continuous inspection of all buildings, equipment, playgrounds, outside walkways and grounds to discover conditions that may be dangerous to the safety of students, staff and community members. The principal will supervise the custodial staff of the school in maintaining an adequate program of school care and maintenance.

District employees are encouraged to report promptly to the principal of the school any defects to the building or equipment that could prove injurious to students, staff or other persons.

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