

Policy Oversight

At issue is oversight to insure that (1) those initially creating school policies comply with federal and state laws and regulations, (2) insure that school districts fully implement the policies, and (3) give ODE the power to impose penalties for noncompliance up to and including naming the district a nonstandard school district. A secondary issue is to create a level on consistency between policies with similar issues, i.e., a more consistent and inclusive protected class and a more consistent complaint procedure to start.

The policy creation process

1. ORS 332.107 Rules for school government. It is the responsibility of each district school board to establish rules for the government of the schools and pupils consistent with the rules of the State Board of Education. [Formerly 336.030; 1993 c.45 §42]

2. The school district is directed by BF - Policy Development

<http://policy.osba.org/brookings/AB/BF%20D1.PDF> However, I have worked with over 600 policies for the Brookings-Harbor School District and all but one was created, supplied and updates provided by OSBA.

3. BHSD 17C is one of those school districts that pay OSBA to provide these written policies and ARs to member school districts knowing that the "OSBA does not assume and disclaims any and all responsibility for the accuracy, legality and content of the BHSD's policies..."
<http://policy.osba.org/brookings>

4. BFD Board Policy Implementation. The superintendent follows this policy
<http://policy.osba.org/brookings/AB/BFD%20D1.PDF>

5. Becoming official school policy. The school board has two readings at separate regular board meetings and, if approved, by at least 3 board members, it becomes policy upon its appearance in the approved minutes of that 2nd regular board meeting.

Background

Last year's Brookings-Harbor School District 17C policy committee changed a number of OSBA's recommendations so (1) the district would be in compliance with SB-2599 and SB-1555, (2) would create consistency in the definition of "protected class", (3) would create consistency in language, where possible, for complaint procedures, and (4) would start including "at official school bus stops" as a safe zone for students coming to school and coming home.

OSBA had recommended not to include the latter point in bully policies because it would expand the liability of the district, a self-serving recommendation that one would expect from a school board association, were it not for the fact that it was clearly stated in SB-2599, SB-1555 and ORS 339.351 (2) (b) as a responsibility of the district. Our committee included it to follow the law. I would think that

districts would want to insure the protection of students from someone using, possessing, distributing or selling tobacco products and inhalant delivery systems at official school bus stops as well.

Regarding "Protected Class." The chart shows those "classes" that appear in policies, laws, ORS and documents and the classes. Three of the policies in the June 2015 Update from OSBA that needed to be reviewed and approved, had a listing of Protected Classes. AC was considerably expanded, while JECB and LBE-AR came up short. The October 2015 Update had yet another policy JFCF that had its own listing.

The previous policy committee had started a process that when a proposed policy update that had protected class came up, unless that was a law that prohibited the inclusion of the class, it would be changed to conform with the previous policy changes. This came about when OSBA presented GBNA-AR policy which contained one protected class for cases of bullying and a different protected class for intimidation.

Oversight of policy development - OSBA:

JFCF/GBNA and JFCF/GBNA-AR had been a combined student/staff policy since 11/18/09. January 15, 2014 those policies were divided GBNA and GBNA-AR were approved. JFCF and JFCF-AR came up for reviewed later and the policy committee felt that they should follow the same format of their partner policy of GBNA's short policy statement and the application of the policy in the AR for consistency.

OSBA has recommended once again to make two essentially identical policies substantially different with JFCF-AR only having the complaint procedure and everything else in the JFCF versus GBNA with the short policies and GBNA-AR having all of the definitions, actions and procedure.

Additional changes OSBA has made from JFCF without notice to the district:

"District", "Harassment, intimidation and bullying", and "Reporting" paragraphs - OSBA removed "official school bus stop" because they claim ("legal staff recommend against this as it extends district responsibilities to unsupervised, off-site premises.") Believed to be Rick Stuckey Clearly what a school board association would do to protect school boards. However, that opposition should be taken up with the legislature who required it by law (SB-1555 Section 2 (d) to be included for the protection of students

Protected class: OSBA has included the classes from ORS 174.100 and 339.351 but not Title IX's three protected classes - gender identity, pregnancy, parenthood (Family friendly) OSBA does include marital status and sex which are in Title IX, SB-2599 and SB-1555. Of the other 12 school board policies that include a listing of protected class, only one (JECB) doesn't include age. (See the attached.) ("The 'age' of a student is provided for in the compulsory attendance law as well as other school law written around FAPE and student admission.") Leslie Fisher

Reporting

In line 4 and 8 OSBA has once again removed the word "must" and replaced it with "shall", something they insist shouldn't be followed though the legislature specifically required it back in 2012 replacing "shall" with "must". See SB 1555 ("OSBA continues to use "shall report" as a directive for the school employee. The use of the word shall indicates mandatory reporting.") Leslie Fisher

OSBA removed the neutral party status of the investigator, and removed the option of the complainant to go to the State if they aren't satisfied with the board's decision.

Step 2 OSBA has replaced "principal or superintendent" with "district official" and removed any reference to the Title IX Coordinator to receive the complaint (see Step 1) SB-1555 339.356 1. (A) Identify by job titled the school officials responsible for receiving such a report at a school and appoint an independent investigator who could be a district official."

OSBA also removed the requirement for the investigator to be a neutral party.

The investigator has five-working days to arrange the meetings after receipt of the complaint. It is unclear whether that five-working days includes the presentation of witnesses and the notification to the complainant when the investigation is concluded. However, a total of five working days is the public complaint procedure noted in KL-AR so it probably should be clarified here as well. (5 days)

OSBA has removed Step 5 - which told complainants that they have to option, if they aren't happy with the board decision, to appeal to ODE and then on to the Regional Civil Rights Director at US Department of Education.

"If a complaint alleges a violation of state standards [+or a violation of other statutory or administrative rule that the State Superintendent of Public Instruction has appeal responsibilities,+] and is not resolved at the Board level, then the district will supply the complainant with appropriate information in order to file a direct appeal to the State Superintendent of Public Instruction as outlined in Oregon Administrative Rule (OAR) 581-022-1940."

Oversight of policy implementation - Oregon School Districts:

(Started with my presentation to the House Education Committee on February 8, 2016)

Conclusion

OSBA gives a standard reply that their lawyers have thoroughly vetted these policies when, if they had actually read the law, they would see the error of their ways.

These statements were supposed to go into effect by July 1, 2012, based on SB-1555. They finally went into effect by action of the BHSD school board policy committee on 4/14/15 against OSBA's wishes. With the current choosing to following OSBA's old position and going back to the prior 7/1/2012 statements, that were choosing under ORS 327.103 to become a "nonstandard" school district. Again from SB-1555

"Section 1 (3) A school district that does not comply with the requirements of this section is considered nonstandard under ORS 327.103."

BTW: I have original copies from OSBA of their legal opinions supporting their recommended changes. (See notes in red and surrounded by the symbols ().) As I've noted before on the BHSD policy web site "OSBA does not assume and disclaims any and all responsibility for the accuracy, legality and content of the Brookings-Harbor School District's policies provided on this site." <http://policy.osba.org/brookings/> It's been four years that I have been involved with the above issues on JFCF and the issue still hasn't gotten resolved because there appears to be no governmental oversight of what OSBA recommends and no procedure available to insure compliance when these issues are discovered

School districts seem to use legal maneuvers to avoid taking responsibility to adhere to their own policies which fosters student's and their parent's distrust in the system. Many of these parents have chosen to leave the public education system or move to a district that seems to be more responsible.

I am available at virtually any time to discuss this situation. This is a brief of what has been going on and I have much more information and data for reference. Circumstances that are currently going on in the district.

Yours in service,

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