

AASB NEW LAWS AND REGULATIONS IN ALASKA 2020/2021

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I. Policy Updates

- Public Records Policies (BP 1340 and 9324)
- Complaint Policies (BP 1312, et al.)
- School Accountability Policy (BP 0520/AR 0520)
- Employment of Retired Teachers (BP 4112.10)
- Title IX

Public Records Policies (BP 1340 and 9324)

- Modern communication has become more virtual and online, a trend only increased by the COVID-19 pandemic.
- The model public records policies are vague in several areas related to records retention for electronic records.
 - Ex: How long should electronic meeting minutes be kept?
- These policies will be updated to provide greater clarity regarding retention requirements, in accordance with state law.
- Modifying BP 1340 and BP 9324.

Complaint Policies (BP 1312, et al.)

- The Board Policy 1312 series creates a complex complaint process by which community members may bring complaints regarding schools, district personnel, discrimination, and instructional materials.
- This complaint process can be confusing and cumbersome. Further, the process can require extensive board participation where complaints are more appropriately addressed administratively.
- The update will streamline the complaint process and provide a more succinct administrative process.
- Modifying BP 1312, et al.

School Accountability Policy (BP 0520/AR 0520)

- The School Accountability Policy in BP 0520 establishes a system to measure school progress and performance. The system was most recently updated following the enactment of the Every Student Succeeds Act.
- Updates will be made to this policy to reflect current Alaska and federal regulations.
- Modifying BP 0520/AR 0520.

Employment of Retired Teachers (Board Policy 4112.10)

- AASB has already distributed a revised version of BP 4112.10, which implements AS 14.20.136 and authorizes the employment of retired teachers who are qualified to teach in those disciplines of specialties in which a shortage of teachers exists.
- To be hired as a retired teacher, a district must certify that the teacher and the district did not arrange for reemployment before the teacher retired, and that the teacher has been retired for a certain number of days. The policy also defines the circumstances that constitute a teacher shortage, and provides that a retired teacher contract may not exceed 12 consecutive months.
- Modifying BP 4112.10.

II. Title IX

- A major revision to Title IX was adopted in 2020 (34 CFR 106).
- AASB created a resolution in August 2020 which serves a placeholder until a formal policy is adopted. The resolution states that it implements the provisions of the amended Title IX regulations. It recognizes all aspects of the regulations, including, but not limited to, updated definitions of sexual harassment, equal treatment in responding to complaints of sexual harassment, an objective grievance process, and appropriate notice throughout.
- A revised Title IX policy will be included in this year's annual update.
- Title IX Final Rules include a definition of sexual harassment, distinguishes between "reports" and "formal complaints" of sexual harassment, outlines required processes in responding to each (reports and formal complaints), and includes implementation of supportive measures. It also includes a detailed grievance process, and provides specific requirements in regard to recordkeeping and public notices.

Title IX Definitions

- A school has an obligation to respond when it has actual knowledge of sexual harassment that occurred within the school's education program or activity, against a person in the United States.
 - New or changed definitions include:
 - Sexual Harassment includes:
 - Quid pro quo sexual harassment by a district employee (conditioning aid, benefit or service of the district on an individual's participation in unwelcome sexual conduct); or,
 - "Hostile Environment" sexual harassment (Unwelcome conduct determined by a reasonable person to be "so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity"); or,
 - Conduct that falls within VAWA or CLERY Act (sexual assault, dating violence, domestic violence, stalking).
 - If conduct falls under this definition it must be investigated and addressed under the Title IX investigation procedures.

Title IX Definitions, continued

- Actual Knowledge. District has “actual knowledge” if it has 1) notice of sexual harassment or 2) an allegation of sexual harassment is made to the Title IX Coordinator, any official with authority to institute corrective measures, or to any employee of an elementary and secondary school.
- Education Program or Activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred.
 - No duty to respond to conduct that was not on school property or at school sponsored event, or outside the United States.
- Supportive Measures are non-disciplinary, non-punitive services offered an alleged victim or alleged perpetrator, regardless of whether a formal complaint is filed, to ensure continued access to the education program. This can include counseling, deadline extensions, schedule modification, contract restrictions, campus escort, etc.

Title IX, Distinction between Reports and Formal Complaints

- Reports – Any allegation or report of sexual harassment, regardless of source, constitutes actual knowledge triggering District response obligations. When a report or allegation is made the Title IX Coordinator must contact the alleged victim (referred to as the “complainant” regardless of who made the report), explore and implement supportive measures, and explain the process for filing a formal complaint.
- Formal complaint - is a document filed by the complainant (or parent/guardian) or the Title IX Coordinator that alleges sexual harassment and requests an investigation into the allegation. A formal complaint triggers the Grievance Process.
 - Multiple notices are required upon receipt of a formal complaint.

Title IX, Grievance Process

- Districts are to adopt a grievance process for investigation of formal complaints, determination of responsibility, and an opportunity for appeal.
- Presumption. The accused is presumed not responsible and no discipline is to be imposed until after the grievance process has been followed and a determination made. There is a process for limited emergency removals.
- Burden of Proof. Burden of proof and burden of gathering evidence needed to make a determination regarding responsibility is on the District.
- Standard of Evidence. Districts can select whether to apply a preponderance of the evidence or a clear and convincing standard of evidence. Whichever standard is selected must be used in all cases.
- Informal Resolution Process Option. District procedures can include an option for informal resolution after formal complaint is filed (not before). Informal resolution is not permitted for allegations of employee sexual harassment of a student.
- Notices. There are multiple notices required throughout the grievance process including written notice of the allegations, the right to have an advisor who may or may not be an attorney, advance notice of meetings and interviews, the right to review evidence, and the right to review and respond to the investigation report before it is finalized.
- Investigation is only required if there is a formal written complaint. Investigations must be conducted by a neutral trained investigator, follow regulation requirements and afford due process. Investigations must be conducted by a neutral, trained investigator.
 - The investigation report is to be given to the parties at least ten days before a hearing or the date the decision maker will determine responsibility, for their review and written response.
- Determinations. Determinations of responsibility are made by an initial decision maker, which can be one or a group of people but cannot be the Title IX Coordinator or the Investigator(s). Determinations are to be in writing and delivered to the parties.
 - Optional Hearing. Grievance procedures may but are not required to include a hearing.
 - Questioning of Parties and Witnesses. Regardless of whether a hearing is provided, the parties must be able to submit written, relevant questions they want asked of another party or witness, and to submit follow-up questions before a determination is reached.
- Appeal. The grievance process is to outline the bases for appeal, which must include the right to appeal if there has been procedure violation, new evidence, or conflict of interest/bias

Title IX, Training Requirements

- Title IX Coordinators, Investigators, Decision Makers and Informal Resolution Facilitators are to be trained on:
 - The definition of sexual harassment; and,
 - The scope of district's education program or activity; and,
 - How to conduct an investigation and grievance process including hearings, appeals, and informal resolution as applicable; and,
 - How to serve impartially.
- Decision Makers must also be trained on 1) technology to be used at a hearing; and 2) issues of relevance of questions and evidence.
- Investigators must also be trained on issues of relevance to create an investigative report.
- All training materials are to be posted on the District's website.

Title IX, Posting Requirements

- Notice of policy, Title IX Coordinator information, and grievance procedures and process must be given to:
 - Applicants for admission and employment;
 - Students;
 - Parents or legal guardians of students;
 - Employees;
 - Unions or professional organizations having agreements with the District.
- Title IX Coordinator's name, office address, electronic email address, and telephone number must be prominently displayed on the District website.

Title IX, Recordkeeping

- There is a seven-year retention period for records of investigations, determinations, recordings, transcripts, remedies, appeals, informal resolutions, training materials, supportive measures, and information demonstrating the reasonableness of the district's response to reports of sexual harassment, including why supportive measures were not provided for any report where they were not.

Questions?

- Contact information:

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