

AASB EXECUTIVE ADMINISTRATORS WORKSHOP

**NEW LAWS AND REGULATIONS IN ALASKA
2021**

*Presented by Michael Caulfield
Jermain Dunnagan & Owens, P.C.*

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New update coming in March 2022.

I. ALASKA LAWS AND REGULATIONS

a. Assessment of English Learners

This regulation changes the standards by which schools must assess English learners. The updated standards are *WIDA English Language Development (ELD) Standards Framework, 2020 Edition: Kindergarten – Grade 12*.

- Amending pertinent regulations in 4 AAC 04.155 English language proficiency standards, 4 AAC 06.820 Participation, and 4 AAC 34.055 Plan of service.

II. FEDERAL LAWS

a. Title IX

JDO and AASB have developed a Title IX administrative regulation, AR 0410, which establishes standards required by the Department of Education's Title IX revisions. The revisions were promulgated by the Department of Education and went into effect as a final rule in August of 2020.

The revisions to Title IX are expansive. They require school district to create elaborate investigation, hearing, and resolution procedures for complaints that may constitute violations of Title IX. Under Title IX, districts which receive federal funding must respond to sex discrimination, including sexual harassment. Title IX

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prohibits sex discrimination in a school's activities and programs, and requires all schools, from K-12 to post-secondary institutions, to take appropriate steps to prevent and redress instances of sex discrimination. The AR 0410 prepared by JDO and AASB provides a model policy that districts may use as they establish their own Title IX investigation and resolution procedures.

- Implementing AR 0410.

III. ALASKA EDUCATION LAW IN THE COURTS

a. BST Holdings v. OSHA, Fifth Circuit Ct. of Appeals, Case No. 21-60845.

The Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) requiring employers with 100 or more employees to ensure employees get vaccinated or test weekly (by January 4, 2022) for COVID-19 and wear a mask (by December 6, 2021).

The 5th Circuit Court of Appeals has issued and reaffirmed a stay that blocks the rule from going into effect. While the legality of the rule will likely ultimately be decided by the Supreme Court, employers may still consider preparing to comply with the standard's December 6 and January 4 deadlines.

There is no prescribed timeline for Alaska school districts as they are not covered by OSHA, but rather by Alaska's OSHA approved State Plan. The ETS requires State Plans be amended to incorporate the ETS within 30 days of the final federal rule. At this point, Alaska's State Plan has not been amended, and given that Alaska is one of the states (more than 20) which have joined in the action to challenge the ETS, we believe it will be some time before that happens (if ever). If Alaska's plan is not amended, there is an outside possibility OSHA would remove approval of Alaska's plan and take control over Alaska's workplace health standards.

The ETS requires other employers covered by OSHA to implement all of the ETS requirements by December 6, 2021 with the exception of testing of unvaccinated employees, which would be required by January 4, 2022. But, as discussed above,

the 5th Circuit Court of Appeals has since issued an order staying enforcement of the ETS pending further decision by the court.

JDO and AASB will be prepared to issue model policies for a vaccine mandate should the 5th Circuit Court of Appeals lift its stay or find the ETS to be valid. However, this will likely be some time in the future.

b. Mahanoy Area School District v. B. L., US Supreme Court, 594 U. S. ____ (2021).

This case before the United States Supreme Court involved a student who posted inappropriate messages on her personal Snapchat account while away from school. Her caption said, “F*** school f*** softball f*** cheer f*** everything.” The post was distributed to many other students who attended her school, but was not posted at school and did not include any other information. As a result of her posting, the student was suspended from the cheer team (but not school).

The case wound through the legal system before ending up at the Supreme Court. After its own review, the Court overturned her suspension. It held that the First Amendment limits but does not entirely prohibit regulation of off-campus student speech by public school officials, but here, the school district’s decision to suspend the student violated the First Amendment. The Court held that her speech did not cause “substantial disruption” or threaten harm to the rights of others

The court noted that three features of off-campus speech diminish the need for First Amendment leeway: (1) off-campus speech normally falls within the zone of parental responsibility, rather than school responsibility, (2) off-campus speech regulations coupled with on-campus speech regulations would mean a student cannot engage in the regulated type of speech at all, and (3) the school itself has an interest in protecting a student’s unpopular off-campus expression because the free marketplace of ideas is a cornerstone of our representative democracy.

This case does not mean that students are completely free of school discipline while away from school. There may be some circumstances, particularly relating to threatening behavior, where students may be disciplined for conduct outside of school.

IV. YEAR IN REVIEW

a. Business Policy Updates

BP 3000	This update clarifies the working relationship between the Board and Superintendent, as well stylistic edits to better reflect the Board's fiscal practices.
BP 3100	This update provides stylistic edits to the Board's budget process, and clarifies the importance of public input in the budgetary process.
AR 3100	This update recognizes that some local ordinances may require a date earlier than May for the adoption of a budget. As an AR, this update does not require board approval.
BP 3260	This update provides stylistic edits to the Board's material fees program.
BP 3270	This update provides the Superintendent greater discretion to dispose of used District property, in an amount up to \$5,000.
BP 3280	This update clarifies that districts in municipalities or boroughs may work with their municipality or borough on the sale or lease of school facilities.
BP 3290	To ensure appropriate oversight, this update establishes that all donations greater than \$1,000 shall be brought before the Board. It also states that the Superintendent may apply for special revenue grants.
BP 3300	This update removes the requirement that the Board approve or ratify <i>all</i> transactions. Transactions may still be subject to Board approval elsewhere in board policy.
BP 3315	This update adds a conflict of interest provision for awards with federal funds.
BP 3400	This update provides stylistic edits to the management of district accounts policy.

BP 3440	This update adds a reference to BP 3440.1, <i>Fixed Assets Capitalization</i> .
BP 3450	This update strengthens best practices for the maintenance of liquid money in school buildings.
AR 3450	This update renumbers AR 3451 and associates it with AR 3450.
BP 3470	This update clarifies the definition of the committed fund balance and assigned fund balance. It also adds reference to the DEED Uniform Chart of Accounts.
BP 3510	This update provides greater clarity regarding the Superintendent's role in assuring proper inspection and maintenance of district buildings.
BP 3514.1	This update clarifies Board and Superintendent roles in the management of hazardous substances.
AR 3514.1	This update clarifies Board and Superintendent roles in the administration of pesticide application. As an AR, this update does not require board approval.
BP 3515	This update provides stylistic edits to the management of school safety and security policy. It also adds several policy references.
AR 3515	This update strengthens best practices for security and safety in school buildings. As an AR, this update does not require board approval.
BP 3515.6	This update makes grammatical corrections to BP 3515.6
BP 3530	This update emphasizes Board intent to maintain a robust risk management program.
BP 3540	
BP 3541.1	This update clarifies that there must be adequate space on a bus schedule so that transportation to charter schools does not interfere

BP 3541.5	<p>with transportation to attendance area schools. It also makes stylistic changes.</p> <p>This update raises the recommended amount of private insurance for persons transporting students to \$1,000,000. It also revises the school related trip section to ensure that trips in school vans are covered by policy.</p>
BP 3542	<p>This update removes the monetary requirement for districts that wish to adopt in-lieu-of transportation arrangements with parents.</p>
BP 3550	<p>This update retitles BP 3542 to recognize that it applies to bus drivers.</p>
BP 3554	<p>This update includes language to recognize various dietary guidelines that may apply to different districts. It also updated nutrition terminology. Finally, it updates language authorizing the use of independent contractors to perform food services.</p>
BP 3580	<p>This update makes the food sale policy inclusive of all District programs.</p> <p>This update incorporates reference to AS 40.21.070, <i>Records Management for Local Records</i>.</p>

b. Professional Boundaries Update

BP 1312.1

BP 4119.12

BP 4131

BP 4222

BP

BP 5131.43

BP/AR 5141.4

BP 5145.7

BP 6142.1

BP 6142.2

This update revises various board policies and administrative regulations to reference and incorporate BP 5141.42, *Professional Boundaries for staff and students*. The changes cross-reference BP 5141.42 and, where appropriate, state that applicable training required by BP 5141.42 shall be provided.

QUESTIONS?

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