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# Policy Development: Why It's Important and What AASB Can Do to Help

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## ***GOALS FOR TODAY***

- **Understand when a formal written policy is appropriate**
- **Learn about the new “trend” in school board policy in Alabama**
  - **Learn the law governing the adoption of policies**
    - **Identify common policy drafting mistakes**
  - **Review Alabama caselaw and learn how policies can create liability**
- **Learn how AASB can help you tackle your policy manual and keeping it updated!**

# Authority to Adopt a Policy

A local board of education shall “[1] determine and establish a written educational policy [2] for the board of education and its employees and [3] shall prescribe rules and regulations for the conduct and management of the schools.”

Ala. Code § 16-1-30(b).

# Take a minute to decide whether you would vote “yes” or “no” to adopt policies regarding the following:

Students are not allowed to go to their parked vehicle during the school day unless they have permission from an administrator.



**Take a minute to decide whether you would vote  
“yes” or “no” to adopt policies regarding the following:**

Corporal punishment must be administered in the presence of another certified employee.



# Take a minute to decide whether you would vote “yes” or “no” to adopt policies regarding the following:

Teachers cannot under any circumstances leave their students unsupervised.



# What I've learned in 16 years of policy work:

- AASB started its policy project in 2008.
- 63 school boards have completely overhauled their policies through AASB.
- Problems with policy are universal!
  - Too bulky to use.
  - Outdated.
  - Topics/laws have become more cumbersome and technical.



# Why are Policies Important?

- A policy may be required.
- Having (and following) sound policy is “good policy,” because adherence often protects the school board and its employees (e.g., federal civil rights claims, corporal punishment liability, insurance coverage, etc.).
- Well-conceived policies promote fairness, consistency, and common sense in decision-making.



# Why are Policies Important?

- Policies can, intentionally or unintentionally, create legal obligations for school boards and their administrators. So, careful planning and drafting is key.
- Policies cannot ordinarily lessen requirements that are imposed by law. But they can impose greater burdens and obligations on school boards than would otherwise be established by the law (e.g., more difficult grievance, discipline, or record access/disclosure policies).
- Remember Students First?

# Ideal Policies

A good policy should (1) be clear, (2) user-friendly, (3) organized, and (4) provide enough flexibility to allow administrators to comfortably apply it in different situations.



# When is a Policy Appropriate?

- **When it is required by statute, regulation, or case law.**
  - Salary schedules
  - Code of Conduct
  - Corporal punishment
  - Weapons/tobacco
  - Model policy issued by ALSDE

# Trends in required policies

- Legislation requiring model policy (e.g. Annalyn's law; Jamari Terrell Williams Act; Jason Flatt Act; ELOs)
- Either ALSDE or committee develops policy.
- Issuance by ALSDE
  - Memorandum sent to each local superintendent
- Adoption by each local board of education
  - After complying with 16-1-30.

# When is a Policy Appropriate?

- **When a uniform or consistent approach to a recurring situation is advisable or desirable.**
  - Field Trip Approval
  - Extracurriculars
  - Nonresident enrollment
  - Fundraisers



# When is a Policy Appropriate?

- **When it is the best way to systematically communicate basic information about governing standards, principles, and procedures.**
  - This changes over time
  - Do you have other more accessible documents?
    - Code of Conduct
    - Curriculum Guide
    - Employee handbook
    - Finance Manual



# When is a Policy Appropriate?

- **When the absence of policy guidance has led or may lead to inconsistent, inequitable, or ill-considered administrative decisions.**
- Student Discipline
- Enrollment





# When is a Policy Not Appropriate?

When the policy is prompted by an unusual, isolated, or extreme situation (e.g., student left in school bus).



# When is a Policy Not Appropriate?

- When the policy is a response to pressure from political/interest groups or organizations or is created to “take a stand,” “make a statement,” or “do something” to address a perceived problem.



# When is a Policy Not Appropriate?

When a less formal pronouncement (or no pronouncement) accomplishes the desired result.

- Would an administrative memo, letter of reprimand, training, or other less formal method work?



# When is a Policy Not Appropriate?

When a policy is adopted just because other school systems have a policy on the subject.



# Common Policy Pitfalls

## #1

Failure to comply with the statutory requirements to adopt the policy.

# Common Policy Pitfalls

## #1

Alabama law contains specific, straightforward requirements for the adoption (or amendment) of a school board policy, commonly called “meet and confer”:

- Superintendent’s **notification of proposed policies with opportunity to comment to** a representative of the “local employees’ professional organization whose parent organization represents the majority of school employees statewide”—usually the local **AEA** uniserv director;

Ala. Code § 16-1-30(b).

# Common Policy Pitfalls

## #1

Alabama law contains specific, straightforward requirements for the adoption (or amendment) of a school board policy, commonly called “meet and confer”:

- **Written recommendation** of the proposed policy **by the superintendent** to the board;
- A **majority vote of the board**; and
- **Publication** of the new policy to affected persons within 20 days of adoption.

Ala. Code § 16-1-30(b).



# Common Policy Pitfalls

## #2

Burdening the process of policy adoption with unnecessary requirements.

Examples include: (1) “policy on a policy,” requiring extensive steps for adoption; (2) use of large (or too many) standing committees or a multilayer approval process; (3) requirements to table a policy before adoption.



\*

You can always add layers of review on an ad hoc basis!

# Common Policy Pitfalls

## #3

Adopting policies that are too detailed and/or restrictive.

Policies that are overwritten (e.g., “under no circumstances shall a bus driver or aide ever leave a parked school bus for any period of time while any child remains on the bus”) create absolute standards that cannot (and will not) always be met.



# Common Policy Pitfalls

## #4

Adopting another school board's policy,  
based on the assumption that the policy was vetted.



# Example

## Corporal Punishment



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# The Law re: Corporal Punishment

“The provisions of Title 26 shall not apply to public school teachers in relation to corporal punishment of students when the punishment is consistent with established written policies of the employing board of education. . .” Ala. Code § 16-28A-2

So, a school board can permit corporal punishment in its school system by adopting a written policy.

# Compliance with Policy & Immunity from Suit

In Alabama, “[a] State agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's \* \* \* exercising judgment in the discharge of duties imposed by statute, rule, or regulation in \* \* \* educating students.” Ex parte Trotman, 965 So.2d 780 (Ala. 2007).

# Compliance with Policy & Immunity from Suit

State-agent immunity applies to individuals who are exercising judgment in the discharge of duties imposed by statute, rule, or regulation in educating students; educating students includes not only classroom teaching, but also supervising and educating students in all aspects of the educational process.

Ex parte Trottman, 965 So. 2d 780 (Ala. 2007)



# Compliance with Policy & Immunity from Suit

But “a State agent shall not be immune from civil liability in his or her personal capacity \* \* \* when the State agent acts willfully, maliciously, fraudulently, in bad faith, **beyond his or her authority**, or under a mistaken interpretation of law.” Ex parte Cranman, 792 So.2d 392, 405 (Ala. 2000).

# Ex parte Monroe Cnty Bd. of Edu., 48 So.2d 621 (Ala. 2010)

- In Ex parte Monroe, the school board's corporal punishment policy required another professional employee to be present, but the teacher's classroom was isolated from the rest of the school.
- The teacher performed corporal punishment without another employee present because, in order to comply with the policy, she would have to violate a different rule that prohibited leaving students unsupervised.

# Ex parte Monroe Cnty Bd. of Edu., **48 So.2d 621 (Ala. 2010)**

In deciding the case, the Alabama Supreme Court found that “[a]lthough the rules of a board of education governing the administering of corporal punishment might be improved by incorporating into those rules a provision authorizing a teacher to disregard those rules in exigent circumstances, it is not the province of this Court to fashion more appropriate guidelines after the fact in litigation stemming from a failure to adhere to guidelines.”

The Court denied immunity, such that the teacher was at risk of personal liability for her conduct.

In order to establish and maintain an educational climate conducive to learning, the Board permits reasonable corporal punishment of students in the schools of the School System. If such punishment is required, it shall be administered with care, tact, and caution. Corporal punishment shall be administered by the Principal/Assistant Principal with a witness or a teacher with the Principal/Assistant Principal as the witness.

Teachers shall be supported by the Board and administration in their efforts to teach good citizenship by requiring proper conduct. While teachers shall be reasonable in student-related demands, they need not tolerate disrespectful, boisterous, rough, and violent outbursts of language and temper on the part of students.

In all cases, corporal punishment shall be administered in accordance with the following guidelines:

1. In cases where a student maintains innocence of the offense, a brief but adequate statement of the reasons and supporting evidence shall be given orally to the student with an opportunity for the student to explain his/her sides of the situation. Based upon all facts, if the situation warrants it, corporal punishment may then be administered without delay.
2. The use of corporal punishment should follow specific failures of other corrective measures to improve student behavior. Teachers should be prepared to provide information concerning alternate corrective measures used.
3. A teacher with the Principal or Assistant Principal as a witness or Principal/Assistant Principal with a witness may punish corporally but the witness must be informed beforehand of the reasons for the punishment.
4. The instrument used in corporal punishment should be wisely selected.
5. Corporal punishment should not include more than three (3) licks administered to the buttocks. Other forms of corporal punishment are not permitted in the schools of the School System.
6. Utmost care, tact and judgment shall be exercised, and all cases of corporal punishment shall be documented by both the person administering the punishment and the witness and delivered to the Principal. Such documentation shall be submitted by the end of the day the incident occurred.
7. School Principals/Assistant Principals or teachers who have administered corporal punishment shall provide the student's parents or guardians, upon request, a written explanation of the reason(s) and the name of the witness upon request.
8. Corporal punishment shall be administered in the office of the Principal or in such place or places as may be designated by the Principal.
9. Corporal punishment shall not be administered in the visual presence of other students.
10. Those administering corporal punishment shall consider the age, size, sex, and overall physical condition of the student.
11. Corporal punishment shall not be administered in anger or with malice.
12. Provided a special education student (except gifted or speech impaired) warrants corporal punishment, said student's IEP committee shall be reviewed to determine if the offense is related to the handicap; if not, the student may be corporally punished as any other student.
13. Special parental problems concerning corporal punishment shall be dealt with by the Principal.

The local Principal and professional staff shall utilize all practical ways and means of helping students with problems and of inducing them to accept and act upon conduct standards approved for the school before resorting to corporal punishment.

# Example

## School Safety & Automobiles



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# **Ex parte Yancey,** **8 So.3d 299 (Ala. 2008)**

- In Ex parte Yancey, the teacher routinely had students in weight lifting class help clean the football stadium and deliver trash to nearby dumpsters.
- One of the students got his truck to load up trash bags and take them to the dumpster. Several other students rode in the back of the truck. One student fell out and was severely injured when the truck hit a “dip” in the road.

# Ex parte Yancey, 8 So.3d 299 (Ala. 2008)

The student handbook prohibited students from going to their vehicles or to the parking lot “without the permission of Principal or Assistant Principal.” The handbook also required students to come immediately into the school after parking their cars and forbade them from returning to their vehicles until the end of the school day without first obtaining “permission from the administration.”



# Ex parte Yancey, **8 So.3d 299 (Ala. 2008)**

- While the Court ruled that the teacher had the discretion to direct the students to perform these tasks, the Court also determined that the teacher was not an “administrator,” that the practice violated the policy in the student handbook, and that the teacher exceeded what authority he had.
- The Court denied immunity due to the teacher’s failure to follow the policy. So, the teacher was at risk of personal liability for his conduct.



## Example

### Lack of Policy



# Ex parte Trotman, 965 So. 2d 780(Ala. 2007)

- In lawsuit brought by 11-year-old student's mother after student was sexually assaulted when she was permitted to leave school grounds with an individual who said he was student's brother.
- There was no board policy governing the checkout process.

# Ex parte Trotman, 965 So. 2d 780(Ala. 2007)

- Mother failed to establish that a specific checkout policy existed at the school at the time of the incident
- As a result, she was unable to establish that principal and instructional assistant exceeded the scope of their discretion by permitting student to leave school grounds with individual.

# Example Supervision



# Ex parte Spivey, 846 So.2d 322 (Ala.2002)

- In *Spivey*, a vocational teacher, Peacock, **removed a guide fence from a saw**, or “shaper,” used by students to cut wood.
- This shaper also lacked certain safety guards.

# Ex parte Spivey, 846 So.2d 322 (Ala.2002)

- A student was injured while using the shaper, and he sued Peacock, claiming that Peacock was liable for his injuries.
- This Court noted that, generally, educators are afforded immunity when using their discretion.

# Ex parte Spivey, 846 So.2d 322 (Ala. 2002)

- The student, however, claimed that Peacock was not entitled to State-agent immunity because, he said, Peacock failed to follow general provisions in his job description and in the faculty handbook regarding safety.
- The Court rejected this argument.

# Ex parte Spivey, 846 So.2d 322 (Ala.2002)

- Although those documents “impose[d] upon Peacock a general responsibility to ensure safety in his classroom, the[y] ... do not remove from Peacock his judgment in determining the safe operation of the tools or when a safety hazard exists.”
- This exercise of judgment in “determining the safe operation of the tools or when a safety hazard exists,” entitled Peacock to State-agent immunity.

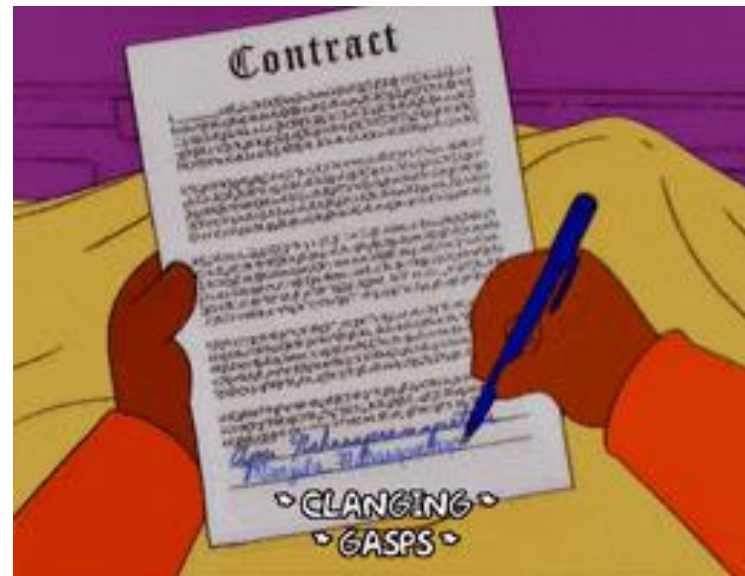


# Practical Recommendations

- Maintain an ongoing policy review and revision process  
Otherwise, a stale policy cannot be identified and fixed.
- Incorporate disclaimers into policies or adopt a general disclaimer applicable to all policies that: (1) disavows the contractual nature of a policy enactment; (2) disavows any intent to create substantive or procedural rights; and (3) reserves discretion to the board to deviate from or suspend the policy in appropriate circumstances.

# Practical Recommendations

Treat the adoption of policies as the equivalent of enacting a statute or entering into a binding contract with every person affected by the policy.



# Practical Recommendations

Can the policy you are adopting be followed in every instance? (Remember our corporal punishment case?)



# Questions to Ask Before Adopting a Policy

The decision to adopt a policy--even a well-drafted one--should be carefully considered. Answering the following questions can assist boards in determining whether the benefits of adopting a proposed policy outweigh the burdens and risks inherent in policy administration:

- Does the situation or need that triggered consideration of the policy require “legislation,” or can the problem be addressed as well or better by an *ad hoc* (one time) measure/response?

# Questions to Ask Before Adopting a Policy

- Is the proposed policy comprehensible and user friendly? Can it be understood and applied by administrators, teachers, and employees? Is the board willing to provide any training/orientation that may be required?
- Is sufficient breadth and flexibility built into the policy? Does it restrict options or tie hands? Is it drafted in a way that permits its continued application over time (i.e., will it be obsolete in two or three years)?

# Mitigating the Impact of a Poorly Drafted Policy

The Board's interpretation is controlling, even if it not as reasonable as other interpretations.



“An agency’s interpretation of its own policy is controlling unless it is plainly erroneous.” Accordingly, “[i]t is well settled that an agency’s interpretation of its own regulation must stand if it is reasonable, even though it may not appear as reasonable as some other interpretation.” Ex parte Bd. of Sch. Comm’s of Mobile Cnty, 824 So.2d 759,761 (Ala. 2001).

# Mitigating the Impact of a Poorly Drafted Policy

If litigation is inevitable, consider shoring up a weak or ambiguous policy with a formal written interpretation/analysis of the questionable provision(s) for the superintendent's signature and issuance.







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# AASB's Policy Review & Analysis



# Goals and Objectives

- Review
- Simplify
- Make more user friendly
- Increase decision-making flexibility but maintain legal compliance and consistency
- Minimize liability
- Make relevant distinctions between true policy matters and other forms of administrative pronouncements, regulations, and directives

# Goals and Objectives

## Specific Strategies

- Reduce the number of policies and the size of the manual
- Shorten and simplify the text of policies
- Reorganize and renumber the policy manual
- Update policies to conform to current legal standards and requirements
- Carefully select policy topics and text

Upon the request of a pregnant student and the student's husband (parent or guardian, if the pregnant student is unmarried), a pregnant student shall be permitted to attend school and to participate in regular school programs until such time that the student's school attendance and participation in school programs endanger the health and safety of the student, as determined by the student's physician. Although school officials shall not exclude a pregnant student from enrollment in school solely because of the student's pregnancy, school officials shall have the authority and responsibility to take appropriate disciplinary action against a pregnant student, as well as any other student, for any actions or misconduct on school grounds which are either disruptive or in violation of school regulations.

If the pregnant student chooses to remain in school during the semester in which she expects to deliver the child, her attendance shall be governed by the same attendance policies, rules, and regulations which govern all other students. Although the pregnant student's school absences may be excused, the student shall be able to earn course credit only if minimum course requirements and attendance requirements are met, as determined by the principal through consultation with the student's teachers and in accordance with the attendance policy files JBD.

The pregnant student who remains in school during the pregnancy should be under the direct care of a licensed physician. Also, the pregnant student shall be expected to fulfill the following responsibilities:

1. Notify the school principal or counselor after the pregnancy is confirmed.
2. Provide the principal with a written statement from the physician. The statement should include the physician's recommendation concerning school attendance for the pregnant student and confirmation of the expected date of delivery.
3. Present a statement from her physician that she is able to physically resume school activities after giving birth.
4. Participate in a joint conference with the principal and the pregnant student's husband (parent or guardian, if the pregnant student is unmarried). The required conferences shall be held for the purpose of determining the duration of the student's school attendance before the date of delivery, based upon the physician's recommendation.
5. Consult monthly with the school counselor.



# AASB's Policy Pipeline

# POLICY PIPELINE

- Policy Pipeline is an annual AASB publication that makes policy recommendations to our subscribers based on new laws, regulations, court cases or best practices.
- In addition to the publication, you also have exclusive access to sample policies provided in Microsoft Word format and the members-only webinar to review the publication.



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1 IN THIS ISSUE

- Introduction 2
- Alabama Literacy Act 3
- Off-Campus Events 3
- Criminal Charges 5
- Service Animals 8
- Unpaid Meals Charge Policy 10
- Transgender Students 12
- Changes to Title IX 15
- Pregnant Workers Fairness Act 17
- PUMP Act 18
- Prayer and Religious Expression 19
- Parental Notification Under ESSA 22
- Cash as a Payment Option 24
- Sick Leave 25
- Board Bids 26
- Salary Schedules 27
- Financial Literacy and Money Management 29
- Alabama Safe at Schools Act 30
- Tyrell Spencer Act 30
- Unsafe School Choice Option 32
- Interstate Teacher Mobility Compact 32
- Public Participation 33
- No Policy Required 36
- Extended Learning Opportunities Act 36
- Mental Health Opt-in 41
- Social Media 45
- Hybrid Meetings 46
- Department of Examiners 46
- Policy Adoption 47
- Postscript 48
- Missing an Issue? 48

## •Policy Maintenance Webinar

•Each year, Policy Pipeline subscribers are treated to an exclusive webinar to review and discuss the new edition at no additional cost.

•Thursday,  
July 27, 2023  
10:00 AM CDT

•Each subscribed superintendent should have received a registration link for the webinar by email.

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# Would you still vote to adopt these policies?

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