SECOND EDITION

WISCONSIN INSTITUTE FOR LAW & LIBERTY

A PROJECT OF THE WISCONSIN INSTITUTE FOR LAW & LIBERTY

EMPOWERING SCHOOL BOARDS

Model Policies that Promote Good Governance, Transparency, and Parental Rights



SchoolBoardPolicies.org





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Restoring American Education
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Model School Board Policies
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About WILL

The Wisconsin Institute for Law & Liberty (WILL) is a nonprofit law and policy center based in Milwaukee, Wisconsin. WILL works for an America in which communities, businesses, and everyday people are flourishing due to personal and economic freedom and more widespread opportunity. WILL strives to help civil society flourish by restoring separation of powers between states and the federal government, fights for individuals' First Amendment rights so that their freedom of speech and exercise of religion are protected, and advocates for equality for all citizens.

Have questions or suggestions? Contact us at:
info@will-law.org

Mission Statement

Through litigation, education, and participation in public discourse, WILL advances the public interest in the rule of law, individual liberty, constitutional government, and a robust civil society.

Why was Restoring American Education created?

Communities across the nation are concerned that public schools are drifting away from their founding ideals. During the pandemic, parents were provided a peek into the classroom and had questions and concerns about what their children were learning. The result has been a wave of parental engagement and activism aimed at holding schools and school boards accountable for curriculum and academic proficiency.

Restoring American Education is an initiative of the Wisconsin Institute for Law & Liberty (WILL) to close a critical gap by engaging parents, school board members, and teachers with an understanding of these concerns, trends, and of the alternative resources available.

Why model school board policies?

Our hope in creating these model school board policies is to assist in informing school board members about what types of policies are considered to be pro-parent and pro-transparency. Ultimately, we aim to facilitate students academic success.

Ongoing discussions across our nation about public school education continue to be divisive and difficult. WILL provides these model school board policies as an addition and alternative to the limited options currently available for school board members.

WILL offers these model policies with goals of improving school governance, creating transparency, increasing parents' rights and involvement, and optimizing student academic achievement. Most of the policies fall within more than one of these categories, and each one is intended to improve students' academic proficiency.

Good governance: What we mean by good governance is essentially that school districts need to shift their perspective. Parents should be viewed as partners, not adversaries. This requires engagement, and it requires good governance. If districts do not have good policies in place to set and meet expectations, then no matter how much parents engage, there are going to be obstacles.

Parents' rights: The parents' rights category is derived from the principle that parents have a constitutional right

to direct the upbringing and education of their children.* Policies that engage parents are ultimately in the best interests of students.

Transparency: We think transparency is key to parents and taxpayers knowing about their local public school. This includes specific areas such as curriculum transparency, teacher professional development transparency, contracting transparency, and financial transparency. By providing information about content that is subject to open records laws anyways, districts can foster a partnership with parents and the community.

How can school boards use these model policies?

Most of these policies may be introduced and enacted in any state. They can be implemented as-is or revised based on the needs of the local community and school district. Model policies drafted specifically for Wisconsin may be revised to comply with various state laws around the country.

Restoring American Education is an ongoing project, and additional model policies will be added periodically. Please reach out to info@will-law.org if you have suggestions for model policies on particular topics or if you have questions about existing model policies.

* Article I, Section 1 of the Fourteenth Amendment – right of parents to direct the upbringing and care of their children. *Pierce v. Society of Sisters* (1925). SCOTUS described this right as "essential," "commanding," a "basic civil right of man," "far more precious than property rights," and "established beyond debate as an enduring American tradition."

Likewise, SCOWIS has "long recognized the rights of parents to rear their children according to their own system of beliefs," and has described parents' rights as "substantial" and "of constitutional magnitude."



TABLE OF CONTENTS

1. Review and Update of District Policies
2. Board-Superintendent Communications
4. Audit and Transparency in Contracts
6. Parent, Family, and Community Engagement
8. District Personnel Evaluation and Training
10. Assessment of Educational Goals
11. Political or Controversial Displays in the Classroom
13. Prayer in Schools
15. Racial Non-Discrimination
17. Student Discipline
20. Student Discipline (Wisconsin)
22. Recess
23. Dress Code
27. Cell Phones in the Classroom
30. Financial Literacy Instruction
32. Evaluation and Update of District Curriculum Purchased from Third Parties
35. Classroom Observation
37. Access to Student Records
39. Attendance and Notice of Truancy (Wisconsin)
42. Right to Review Instructional Materials and Related Documents
44. Right to Review Professional Development Training Materials
45. Library Material Transparency
47. Library Materials and Parental Rights
49. Parental Notification of Acts or Threats of Violence
52. Parental Notification of School Safety Updates
54. Planning and Parental Notification for School Trips
57. Survey Notice and Opt Out
60. Controversial Issues
62. Social Emotional Learning Instruction and Parental Notification
65. Human Growth and Development Instruction and Parental Notice and Opt Out (Wisconsin)
68. Human Growth and Development Advisory Committee (Wisconsin)
70. Student Gender Identity and Parental Notification and Consent
72. Employee Use of Student Pronouns
74. Employee Expression in Non-School Settings

MODEL POLICY #1

REVIEW AND UPDATE OF DISTRICT POLICIES

Why Adopt This Policy?

It is important that Board members know what policies are in place for the District and whether they are still relevant and appropriate. Having a clear understanding of existing policies enables school board members to address issues consistently and in accordance with established guidelines. In adopting this policy, the school board sets the expectation for regular review, revision, and understanding of District policies, ultimately aiming to enhance student academic achievement.

Policy

In connection with the District's goal of optimizing student academic achievement, the School Board shall conduct a yearly review of District policies. To facilitate such review the Superintendent shall, at least once per year, suggest any changes to District policies which the Superintendent believes appropriate. The Board shall update policies as it determines appropriate and in accordance with existing law, and shall update parents and students at least yearly, at the beginning of the school year.

Legal Analysis — National

Local school boards have broad discretion in the management of school affairs. *Epperson v. State of Ark.*, 393 U.S. 97, 104, 89 S. Ct. 266, 270, 21 L. Ed. 2d 228 (1968); *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 102 S. Ct. 2799, 73 L. Ed. 2d 435 (1982); *Meyer v. Nebraska*, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923); *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (U.S. 1925). Public education in our Nation is committed to the control of state and local authorities. *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 507, 89 S.Ct. 733, 736, 21 L.Ed.2d 731 (1969).

Legal Analysis — Wisconsin

School boards have a legal duty for oversight and administration of the school district. *See* Wis. Stat. § 120.12; Wis. Stat. § 120.13; Wis. Stat. § 118.001.

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MODEL POLICY #2

BOARD—SUPERINTENDENT COMMUNICATIONS

Why Adopt This Policy?

School boards should consider adopting a policy to set the expectation that there will be efficient and transparent communication between school board members and the superintendent. Clear expectations ensure timely information exchange, allowing the board and superintendent to address issues promptly and collaboratively, ultimately benefiting students, families, and the school community.

Policy

The Board believes that a strong, effective relationship between the Superintendent and School Board requires frequent communication both in and out of official settings.

Superintendent Communications with the Board

It is expected the Superintendent provide information to the School Board as follows:

1. If an issue surfaces, the Superintendent will make every effort to inform the Board as soon as possible.
2. Conduct bi-annual Superintendent/Board member one-on-one interview to discuss progress towards District mission and goals.
3. Communicate electronically (i.e. e-mail, text message, etc.) in a timely manner when items of importance arise.
4. Phone calls on urgent items.
5. Respond to Board members' questions in a timely manner.
6. Propose meetings and/or agenda items with input and approval of Board President.

Board Communications to the Superintendent

The School Board may communicate with the Superintendent as follows:

1. The Board, as an entity, may communicate with the Superintendent through the Board President. The Superintendent shall respond to such communication on a timely basis.
2. In addition, individual Board members may call, email, or text the Superintendent with questions, which the Superintendent will respond to on a timely basis. If the Superintendent believes that a question from an individual Board member is inappropriate the Superintendent shall inform the Board member and the Board President of that fact and Board may take action as appropriate.

3. A reasonable amount of time will be given to process questions and responses (depending on the question and request, 1 to 3 business days). Every effort will be made to process the request as soon as possible.
4. On Board matters, the Board President, and not the Superintendent, serves as the public spokesperson for the Board.

At any time, the Board may decide to conduct a monthly (informal) check-in between the Superintendent and Board members. If necessary, the Board may establish a standing Board agenda item to review progress and success of communication protocols.

Legal Analysis — National

The position of Superintendent exists in all 50 states; however, the scope of the job of Superintendent, how this person is elected, and his or her relationship to the Board may vary state-by-state. In general, establishing good communication practices is unlikely to be at odds with any state law. However, it is prudent to check your state's roles and responsibilities between the Board and the other school actors.

Legal Analysis — Wisconsin

The Superintendent is an employee of the School District, and the School Board has the duty to oversee the administration of the District. Specifically, in Wisconsin, there are laws pertaining to the roles and responsibilities of the Board and the District administrator. *See* Wis. Stat. § 118.001; Wis. Stat. § 118.24.

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MODEL POLICY #3

AUDIT AND TRANSPARENCY IN CONTRACTS

Why Adopt This Policy?

School boards should consider adopting a policy ensuring the transparency and accountability in District contracts. This policy sets up a regular review process for the school board to inspect contracts that have already been entered into and allows the Board to review new contracts of a specified financial threshold before they begin. By adopting this policy, the school board can demonstrate responsible stewardship of public funds and mitigate the risk of financial mismanagement.

Note: *This model policy contains bracketed text for school boards to select details about an appropriate threshold amount and/or particular subject areas which will trigger the notice requirement when district administration enters into a new contract with a vendor. Our recommendation would be to set an amount that is appropriate based on the overall budget levels of the district.*

Policy

This policy is established to ensure transparency and accountability in the financial transactions and contractual relationships between the district and its vendors.

At least once per year, the school board will conduct a review of all contracts between the district and vendors. This policy applies to all contracts entered into between the district and its vendors, whether or not financial considerations are involved.

If district administration enters into a new contract of greater than [*Insert threshold amount and/or subject areas here. See note above.*], the District Administrator shall report to the school board and provide a copy of the contract within 30 days of entering into the new contract.

The district shall post, at least once per year at the beginning of the school year, a full list of contracts between the district and vendors. If the district contracts for services that require the district to share student information, parents shall be provided effective notice that student information will be shared by the district, and have an opportunity to object to the information of their child(ren) being included in the information shared. See legal analysis. District administration shall ensure to the fullest extent possible that the vendor complies with all state and federal laws regarding confidentiality of student personal information.

If the district shares student information with external researchers, the district shall notify parents and share research findings and identify if the district made any changes to curriculum, policies, or programs as a result.

> *Districts should consider an appropriate threshold amount and/or particular subject areas which will trigger the notice requirement when district administration enters into a new contract with a vendor. Our recommendation would be to set an amount that is appropriate based on the level of budgeting for the district.*

Legal Analysis

Federal law limits the disclosure of personally identifiable student information from educational records without parental consent. 20 U.S.C. § 1232g; 34 C.F.R. § 99 (Family Educational and Privacy Rights Act). Except as authorized by federal law, any personally identifiable information collected in an audit or evaluation shall be protected in a manner which will not permit the personal identification of students and their parents other than by officials designated by law. *Id. See also* 20 U.S.C. § 1232h (Protection of Pupil Rights Amendment).

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MODEL POLICY #4

PARENT, FAMILY, AND COMMUNITY ENGAGEMENT

Why Adopt This Policy?

School boards should consider adopting a policy focused on engagement to highlight collaboration and support from families and the community within the school environment. This policy sets clear expectations and promotes initiatives that encourage involvement and partnership between the school, families, and the community.

Policy

Relations with Parents and Families

The School Board believes that the education of children is a joint responsibility, one it shares with the parents of the school community. To ensure that the best interests of the child are served in this process, robust communication between home and school must be maintained.

The Board believes that it is the parents and legal guardians who have the ultimate responsibility for their children's in-school behavior, including the behavior of students who have reached the legal age of majority or have been recognized as emancipated by a court of law, but may be, for all practical purposes, still under parental or guardian authority.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as grandparent or stepparent with whom the child lives).

The Board recommends that the following activities be implemented to encourage parent/guardian school cooperation:

1. Regular and frequent parent-teacher interaction to facilitate, promote, and encourage two-way communication between home and school;
2. Meetings of staff members and groups of parents/guardians of those students having special abilities, disabilities, needs, or problems;
3. Availability of student educational records for parent/guardian review upon request;
4. Open houses in District schools to provide parents/guardians with the opportunity to see the school facilities and meet faculty.

For the benefit of children, the Board believes that it is appropriate for the District to encourage parents/guardians to cooperate with the school to improve their child's career in school by:

1. Supporting schools by encouraging children to observe all school rules and regulations;

2. Maintaining an active interest in the student's daily work and helping to make sure that students complete assigned homework;
3. Reading all communications from the school, signing, and returning them promptly when required;
4. Cooperating with the school in attending conferences set up for the exchange of information of the child's progress in school;
5. Communicate with the school administration with any comments or concerns regarding their childrens' education.

To achieve the above goals, the Board directs the Administration of the District to do the following:

1. Ensure proper protocols are followed in order to evaluate family engagement;
2. Confirm teachers and staff are knowledgeable and trained in what the expectations are for the District with respect to school rules.

Relations with Community

The Board believes community engagement can benefit student academic and extracurricular achievement. The Board has identified three main goals related to community engagement:

1. Broaden students' education opportunities by bringing community members in to talk to students about government, business, community activities, etc.
2. Engaging with community members to address, if possible, social and health conditions present in the community that can interfere with learning, including but not limited to crime, drug abuse, nutrition, and health care.
3. Improving representative and participatory government by engaging with citizens on their concerns about education governance.

The Administration shall make every effort to maximize opportunities to meet the above goals. It shall conduct annual meetings involving school leadership personnel to discuss opportunities to engage with the community

Legal Analysis

In accordance with the Every Student Succeeds Act (ESSA), school districts are required to maintain parent and family engagement. This policy furthers that directive by providing additional guidance. *See* 20 U.S.C. § 6318; 20 U.S.C. § 6312. Additionally, the district must follow FERPA to protect student privacy. Every effort to comply with policy should be mindful of that requirement. *See* 20 U.S.C. § 1232g; 34 CFR Part 99.

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MODEL POLICY #5

DISTRICT PERSONNEL EVALUATION AND TRAINING

Why Adopt This Policy?

School boards should consider adopting a policy to establish guidelines for the evaluation and training of District personnel. This policy delegates responsibility to the superintendent to ensure that district personnel are trained on state and federal laws and regulations. Furthermore, implementing a structured framework for areas for individual staff improvement and criteria for staff evaluation enhances accountability and professionalism within the district.

Policy

The Board is responsible for the employment of all personnel. To carry out this responsibility, it delegates to the Superintendent the function of developing professional staff job descriptions. The Superintendent is responsible for implementing a program of personnel assessment that identifies specific criteria and a systematic procedure to evaluate staff.

To achieve this responsibility, the Superintendent shall execute an annual personnel assessment. The purpose of annual personnel assessment is to:

1. Confirm district personnel are knowledgeable of state and federal laws and regulations;
2. Assess whether district personnel are complying with state and federal laws and regulations;
3. Determine if district personnel activities and services are meeting the expectation of improving District programs, services, and student outcomes;
4. Ensure the continuous improvement of administrative and supervisory services provided to professional staff members, including professional development opportunities for career advancement.

The annual evaluation program shall also aim to identify specific areas in which individual professional staff members need improvement so that appropriate assistance may be provided or arranged for. Staff members shall be provided access to any written supervisory report and/or comments relating to the annual assessment. Upon request, staff members shall also be provided with access to and a copy of any documents relating to job performance that will be placed in the personnel file.

Legal Analysis — National

All teachers and paraprofessionals working in a program supported by federal funds must meet applicable state certification and licensure requirements. 20 U.S.C. § 6312(c)(6). Additionally, local educational agencies (LEAs)

can use federal funds to develop and implement initiatives to assist in recruiting, hiring, and retaining effective teachers. 20 U.S.C. § 6613(b)(3)(B). These initiatives can include the development and provision of training for school personnel and evaluators on how to accurately differentiate performance, provide useful feedback, and use evaluation results to inform decision making about professional development, improvement strategies, and personnel decisions. 20 U.S.C. § 6613(b)(3)(B)(v).

Legal Analysis — Wisconsin

Under Wisconsin law, School Boards are required to evaluate, in writing, the performance of all school personnel at the end of their first year and at least every third year thereafter. *See* Wis. Stat. § 121.02(1)(q). School Boards have a duty to advise school teachers and administrative staff regarding the instruction, government and progress of students and exercise general supervision over schools. *See* Wis. Stat. § 120.12. Employees are entitled to inspect any personnel documents and may request all or any part of his or her records. *See* Wis. Stat. § 103.13(1).

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MODEL POLICY #6

ASSESSMENT OF EDUCATIONAL GOALS

Why Adopt This Policy?

Districts are required to set pupil academic standards under both Wisconsin state law and federal law. School boards should consider adopting this policy which designates a timeline to adopt student academic standards and establishes how to make those standards known to families. This policy ensures that there is clarity and consistency in educational expectations while promoting transparency and encouraging parental involvement in supporting student success.

Policy

Annually, prior to the beginning of the school year, the School Board shall provide parental or guardian notice of the pupil academic standards that will be in effect for the school year. The school board may provide the notice required under this paragraph electronically, including by posting the notice or a link to the pupil academic standards on the school district's Internet site.

At least once every two months, the School Board shall include as an agenda item for board meetings an assessment of student achievement in relation to the pupil academic standards in effect for the district. The Board shall first prioritize assessment of student achievement in English language arts and math. If the Board determines student achievement is not meeting the applicable pupil academic standards, the Board shall take appropriate action in an effort to meet such standards.

Legal Analysis — National

The Every Student Succeeds Act (ESSA) requires that all students in America be taught to high academic standards that will prepare them to succeed in college and careers. 20 U.S.C. § 6311.

Legal Analysis — Wisconsin

Wisconsin school boards have the duty to determine the educational standards for the district. *See* Wis. Stat. § 120.12(13); Wis. Stat. § 118.30 (1g) (a) 1.

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MODEL POLICY #7

POLITICAL OR CONTROVERSIAL DISPLAYS IN THE CLASSROOM

Why Adopt This Policy?

School boards interested in eliminating controversial and political signs and decorations in the classroom should consider adopting this policy. It is viewpoint neutral; it does not favor any particular belief or political system. This policy seeks to foster a cohesive and focused learning environment and mitigate unnecessary distractions. By establishing clear guidelines, this policy aims to ensure classrooms remain spaces for inclusive and respectful dialogue, encouraging open discussions about diverse perspectives.

Policy

The purpose of this policy is to ensure an inclusive, effective, and focused learning environment for students and staff, regardless of personal beliefs or political opinions.

District personnel are prohibited from displaying political or controversial flags, signs, clothing, or accessories. This does not include the U.S. flag, the Wisconsin State flag, or the official flag of the municipality in which the school is located.

For purposes of this policy, a political or controversial statement refers to any symbol or physical representation that meets one or more of these criteria:

1. Is the subject of intense public argument, disagreement, or disapproval.
2. Includes political messages, such as displays of partisan political affiliation or advocacy for specific political candidates or parties.
3. Pertains to contentious ideologies, beliefs, or social issues.
4. Incites controversy, debate, or divisiveness within the school community.

If a teacher is not sure whether or not a specific item is "political or controversial," he or she can consult the building principal for guidance and clarification. The principal shall assess the item in question based on this policy. If there is still uncertainty or disagreement, the matter will be escalated to the school board for a final determination, ensuring consistent interpretation and application of the policy across all district schools and personnel.

The school board acknowledges the right of its professional staff members, as citizens in a democratic society, to speak out on issues of public concern in non-school settings. The district shall balance its employees' right to free

speech against the district's interests in an efficient, disruption-free workplace, consistent with applicable policies regarding employee expression and employee First Amendment rights.

Legal Analysis

While district professional staff certainly have First Amendment rights, the State, as an employer, has an interest in regulating the speech of its *employees*. As such, this policy balances the interests of the teacher as *a citizen* in commenting on matters of public concern, the interest of the public, and the interests of the State as an employer, in promoting the efficiency of the public services it performs through its employees.

Whether a teacher is speaking as a private citizen depends upon whether the speech at issue itself is ordinarily within the scope of an employee's duties. Since decorating a classroom and dressing for work is generally *within* the scope of an employee's duties, it is therefore not speech made as a private citizen and not protected by the First Amendment.

The U.S. Supreme Court has stated that when public employees make statements within the scope of their employment, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline. *Garcetti v. Ceballos*, 547 U.S. 410, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006).

Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cnty., Illinois, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968). Even if the employee was speaking as a private citizen, the speech must be balanced with the employer's ability to promote an effective and efficient public service. *Id*.

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MODEL POLICY #8

PRAYER IN SCHOOLS

Why Adopt This Policy?

School boards should consider adopting a policy that acknowledges and upholds religious freedom rights of students and teachers in the District. This policy provides guidelines related to student religious freedom as well as guidelines related to the rights of school staff to express and practice their religious beliefs in a way that maintains a professional learning environment and prioritizes student academic achievement.

Policy

The district recognizes the importance of religious freedom, including the freedom of individuals to pray. This policy is established to provide guidance on prayer in district schools. This policy also provides guidelines for respecting the rights of teachers to express and practice their religious beliefs while maintaining a professional learning environment that prioritizes student academic achievement.

Student Religious Freedom

The district acknowledges and respects the right of students to freely exercise their religion, including the right to engage in personal and voluntary prayer. Students shall not face discrimination based on their religious beliefs or expression or for a lack thereof. School officials may not impose rules on religious student speech and activities if they discriminate against student speech or activities for being religiously motivated or reflecting a religious perspective.

Students may pray with fellow students during the school day on the same terms and conditions that they may engage in other conversations or activities unrelated to school curriculum. Students may also speak to their peers about religious matters just as they may do with other matters unrelated to school curriculum. Students may distribute religious literature to their classmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities.

Students may express their beliefs about religion in their homework, art work, and in written and oral reports. Such work shall be evaluated by the regular academic standards, free of discrimination based on religious content.

The district shall provide students with the opportunity to form religious clubs or organizations, subject to the same guidelines as non-religious clubs. Religious clubs shall be student-initiated and student-led.

School Staff Religious Freedom

The district acknowledges the right of teachers to practice their religious beliefs and expressions, in accordance with federal and state laws.

School staff may take part in protected religious expression such as prayer, even during their workday, in a manner that does not disrupt the educational environment or interfere with their professional duties. Teachers may wear religious attire or symbols consistent with these principles.

When teachers, coaches, and other public officials speak in their official capacities, they may not engage in prayer or promote religious views. Staff shall not initiate, lead, or participate in prayer activities with students during instructional time. In contexts where the district permits teachers, coaches, and other employees to engage in personal speech, however, it may not prohibit those employees from engaging in prayer merely because it is religious or because some observers, including students, might misperceive the school as endorsing that expression. The district will not sponsor, endorse, or organize any official prayer or religious activity as part of school events, ceremonies, or programs.

Teachers shall not face discrimination or adverse actions based on their religious beliefs or expression.

The district will annually certify in writing to the Department of Public Instruction that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools.

Legal Analysis

First Amendment; *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 142 S. Ct. 2407, 213 L. Ed. 2d 755 (2022) (holding that the prayers of a football coach on the field after games was private speech and that the school was not justified in restricting it); *Morse v. Frederick*, 551 U.S. 393, 397 (2007) (the rights of students "must be 'applied in light of the special characteristics of the school environment'" (quoting *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988) (quoting *Tinker*, 393 U.S. at 506))); *Mahanoy Area Sch. Dist. v. B. L. by and through Levy*, 141 S. Ct. 2038, 2045 (2021); *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006); *accord Lane v. Franks*, 573 U.S. 228, 134 S. Ct. 2369, 189 L. Ed. 2d 312 (2014); 20 U.S.C. § 7904a.

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MODEL POLICY #9

RACIAL NON-DISCRIMINATION

Why Adopt This Policy?

Prohibiting racial discrimination of any kind is both required by law and is essential to ensuring children grow up knowing that it is the content of their character, not the color of their skin, that matters. This policy enshrines this ideal of equality within the District and provides specific examples of where district personnel may not use race as a factor in any decision.

Policy

The school board is committed to maintaining a learning environment in which discrimination based on race is strictly prohibited. This policy aims to ensure that every individual is treated fairly as an individual, regardless of race.

The School Board has adopted a non-discrimination policy in compliance with state and federal law that governs several protected categories, including race, sex, and religion, among others. However, given the current emphasis on race in education throughout the United States, the School Board believes it is critically important to emphasize that no employee of the District may use race as a factor in any decision regarding the treatment of any person, including students. As examples, (1) teachers and other district employees may not prioritize students for instruction, services, or support based on race, (2) offer clubs, scholarships, benefits, services, or trips based on race, (3) attempt to racially balance classrooms, teams, sports, clubs, or other groups based on race, (4) alter or adjust school policies, the enforcement of school policies, or any outcomes, such as discipline policies and academic outcomes, based on race, (5) disaggregate data in such a way as to evaluate student or staff performance or discipline based on race, or (6) require, support, endorse, permit, or facilitate the segregation by race in any way of any person, including students and teachers (this would include the use of so-called racial "affinity groups"). School employees are prohibited from making decisions, changing policy, or otherwise acting based on race or on raw statistical disparities among racial groups. The phrase "based on race" should be read broadly to include any treatment, conduct, or action in which race is a factor in a decision or action. Race may never be used as a negative or stereotype in any situation. Racial groups, to the extent they need to be described, should be described carefully, thoughtfully, and accurately. Overall, it is the policy of this school district that all individuals should be treated as individuals, not as racial-group members. In short, all staff should act in a colorblind manner towards everyone.

Legal Analysis

This policy operates supplementary to other non-discrimination policies and applicable state and federal laws and does not replace them. The right to a public education "must be made available to all on equal terms" and

no public school has authority to "use race as a factor in affording educational opportunities." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 143 S. Ct. 2141, 216 L. Ed. 2d 857 (2023). The right of equality "requires equality of treatment before the law for all persons without regard to race or color." *Id.* "The educational benefits of diversity" do not justify the use of race in any way in public education. *Id.* Describing racial groups in general terms, for example as broadly labeling a student as "Asian" or "Hispanic," are in many ways "overbroad," "underinclusive," "arbitrary," "incoherent," "irrational," and "undefined" and therefore constitutionally "imprecise" as a legal matter. *Id.* Caution should therefore be exercised in using these labels. Race can never be used as a "negative" or as a "stereotype." *Id.* It is constitutionally impermissible for a public school to claim that "a black person can usually bring something that a white person cannot offer." *Id.*

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MODEL POLICY #10

STUDENT DISCIPLINE

Why Adopt This Policy?

Adopting this policy would ensure clear expectations for students and visitors of the school to maintain a safe, respectful, and orderly learning environment. This policy establishes the roles of teachers and other school staff when it comes to enforcement procedures. Finally, this policy ensures that schools and families are working together to correct behavior with a parental notification requirement.

Note: *This policy is designed to be able to be implemented in any state. WILL suggests consulting with local legal counsel to understand the requirements in your state. WILL has also published a model policy on Student Discipline that is specific to Wisconsin.*

Policy

This policy is established to provide clear guidelines for maintaining a safe, respectful, and orderly learning environment within the district. This policy aims to allow school staff and administrators to address student behavior and discipline through approaches that prioritize accountability, positive behavior, and adherence to established rules and expectations.

Non-Discrimination

In the use of disciplinary authority, including suspension and expulsion authority, neither the Board nor any employee or school administrator may discriminate on the basis of sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability.

Expectations for Student Behavior

The district shall communicate and reinforce clear expectations for student behavior that align with fostering a positive and safe school environment and prioritizing student academic achievement. The District Administrator shall ensure that a code of conduct is included in the handbook for each district school as well as the consequences for behavior that violates the code of conduct.

The handbook for each district school shall include information about (a) what constitutes punishable behavior, (b) grounds for removal of a student from the classroom, (c) the procedures for determining placement of a student who has been removed from the classroom, and (d) a procedure for notifying parents if their child has been removed from the classroom for punishable behavior under this section.

Social Media

For any social media posts that directly involve the district or members of the school community, all students are expected to avoid language that is discriminatory, harassing, threatening, or otherwise disruptive to the classroom

environment. Cyberbullying and harassment directly involving members of the school community will be treated the same as in-person incidents and will result in appropriate disciplinary action.

Parents/Visitors

The district values the collaboration between parents, visitors, and the school community to create a safe and respectful environment for all students. Parents, guardians, caregivers, and visitors participating in or attending school-related activities are expected to engage in respectful and courteous behavior toward students, staff, and other attendees. Disruptive or aggressive behavior will not be tolerated. Parents and visitors should model appropriate behavior and language for students. Parents and visitors must follow school security protocols and sign in when required. In the event of a disagreement or concern, parent and visitors are encouraged to contact the school principal or other district employee, rather than addressing the matter in a confrontational manner during school-related activities.

Failure of parents and visitors to adhere to the behavior expectations outlined in this policy may result in the following consequences: verbal warning; removal from activity; restrictions on future school-related events if there are repeated violations; or involving legal authorities in extreme cases involving threats, violence or harassment.

Teacher Authority

Teachers shall have the authority to maintain discipline and order within their classrooms to ensure effective teaching and learning. Teachers shall address unruly behavior promptly and proportionately, promoting a respectful and focused learning atmosphere. Teachers may implement discipline that includes verbal warning, redirection, private discussions, and parental involvement as needed.

Teachers shall maintain accurate and objective records of behavior punishable under this policy, interventions, and consequences. Teachers should provide details of the behavior, date, time, location, individuals involved, actions taken by the teacher to address the behavior, consequences administered, parent communication regarding the incident, and any follow-up actions taken. This documentation shall be shared with relevant school staff and administrators as needed. Records may be kept electronically or in hard copy, in accordance with school policies.

The district shall provide teachers with resources and professional development opportunities to enhance their classroom management skills. Teachers shall have access to guidance from administrators to address challenging behavior effectively.

Actions of District Personnel

District personnel must respond to behavior outlined in this policy. If district personnel takes action against a student in accordance with this policy, the building principal or other administrator shall provide parental notification.

If a teacher removes a student from class due to behavior outlined in this policy, before a return to class, the building principal or other administrative personnel will administer appropriate corrective action in accordance with the behavior code outlined in this policy and in the applicable student handbook. If a student violates the expectations for behavior as outlined in this policy either in a way that is severely disruptive to the classroom or

multiple times, then district personal shall take one of the following actions: Impose before-school detention, lunch/recess detention, after-school detention, or in-school suspension. Additional in-school discipline alternatives to out-of-school suspension may be offered at the discretion of the principal for inappropriate conduct pursuant to district policy.

Parent Notification

Parents will be notified by the building principal or other administrator if district personnel takes action against a student in accordance with this policy. No student is to be detained after the close of the regular school day unless the student's parent has been contacted and informed that the student will be detained. No student shall be refused transportation services until the parent has been notified and other suitable transportation arrangements have been made. Notification to the parent is the responsibility of district personnel and should be made prior to the departure of school buses. If a parent cannot be contacted, the child should be detained on another day.

For purposes of this policy, the term "parent" includes a legal guardian or other person standing in loco parentis (such as grandparent or stepparent with whom the child lives, or a person who is legally responsible for the welfare of the child).

Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Federal laws interact with state laws and regulations on the topic of discipline in a school district. Before adopting this policy, WILL encourages school board members to determine what state-specific requirements exist.

Legal Analysis

Local school boards have broad discretion in the management of school affairs. *Epperson v. State of Ark.*, 393 U.S. 97, 104, 89 S. Ct. 266, 270, 21 L. Ed. 2d 228 (1968); *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 102 S. Ct. 2799, 73 L. Ed. 2d 435 (1982). With respect to off-campus student speech, schools have limited authority, and such authority must be based on whether the speech created a substantial disruption to the school environment. *Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 141 S. Ct. 2038, 210 L. Ed. 2d 403 (2021). Federal law limits disciplinary options for students with disabilities, such as when conduct in violation of school policy is determined to be a manifestation of the disability of a student. *See* 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530. Federal laws also prohibit discrimination in the use of disciplinary authority. See, e.g., 42 U.S.C. § 2000d; 20 U.S.C. §§ 1681—1688; 20 U.S.C. § 6312(b)(7). Teachers cannot be held liable for harm caused by any act or omission if the actions were carried out in conformity with Federal, State, and local laws in furtherance of efforts to maintain order or control in the classroom. 20 U.S.C.A § 7946.

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MODEL POLICY #11

STUDENT DISCIPLINE (WISCONSIN)

Why Adopt This Policy?

It is important to have clear, up-to-date, and specific procedures when it comes to the discipline of students. School boards should consider adopting a policy that ensures regular review and updates of discipline guidelines and procedures, helping the district to make informed decisions and remain in compliance with applicable laws, while prioritizing a learning environment with minimal disruptions and learning loss.

Note: *This policy is designed to be able to be implemented in Wisconsin. WILL has also published a model policy on Student Discipline that is designed to be able to be implemented in any state.*

Policy

In the use of disciplinary authority, including suspension and expulsion authority, neither the Board nor any employee or school administrator may discriminate on the basis of sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability.

Before the beginning of the school year, the School Board shall determine:

1. A specification of what constitutes dangerous, disruptive or unruly behavior or behavior that interferes with the ability of the teacher to teach effectively under Wis. Stat. § 118.164(2);
2. Any grounds in addition to those under subd. 1. for the removal of a pupil from the class under Wis. Stat. § 118.164(2);
3. The procedures for determining the appropriate educational placement of a pupil who has been removed from the class and assigned a placement by the school principal or his or her designee under Wis. Stat. § 118.164;
4. A procedure for notifying the parent or guardian of a minor pupil who has been removed from the class under Wis. Stat. § 118.164(2).

A description of the above-referenced determinations regarding discipline shall be provided to parents at least once annually, at the beginning of the school year, such as in the student handbook.

The School Board endorses alternatives to out-of-school suspension when appropriate. Such alternatives may include, but are not limited to, before-school detention, lunch/recess detention, after-school detention, Saturday detention, and in-school suspension.

In-school discipline alternatives to out-of-school suspension may be offered at the discretion of the principal for inappropriate conduct pursuant to District policy.

No student is to be detained after the close of the regular school day unless the student's parent has been contacted and informed that the student will be detained. No student shall be refused transportation services until the parent has been notified and other suitable transportation arrangements have been made. Notification to the parent is the responsibility of District personnel and should be made prior to the departure of school buses. If a parent cannot be contacted, the child should be detained on another day.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as grandparent or stepparent with whom the child lives).

Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis

Wisconsin law specifically addresses requirements for student discipline by school districts including school board powers for suspension and expulsion and requirements related to the removal of a student from class. *See* Wis. Stat. § 120.13; Wis. Stat. § 118.164. Federal law also limits disciplinary options for students with disabilities, such as when conduct in violation of school policy is determined to be a manifestation of the disability of a student. *See* 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530.

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MODEL POLICY #12

RECESS

Why Adopt This Policy?

School boards should consider adopting a policy mandating recess to recognize the essential role of physical activity in promoting students' overall health and well-being. Recess provides students with valuable opportunities for social interaction, unstructured play, and cognitive rest, which are integral to their development and academic success.

Policy

For purposes of this policy, "recess" means a structured play environment outside of regular classroom instructional activities, where students are allowed to engage in supervised safe active free play.

All K through 8 schools in the district will offer a minimum of one recess period of twenty minutes per day. This may be incorporated into the lunch period.

Recess will serve as a complement to, rather than a replacement for, physical education classes. During recess, monitors or teachers will actively encourage students to engage in physical activity and will lead by example by participating alongside students whenever possible.

Schools should set indoor recess guidelines when there are inclement weather conditions or outdoor temperatures are deemed too low or too high, inclusive of wind chill factors and heat indexes, or at the discretion of the school principal based on the principal's best judgment of safety conditions.

School staff shall discourage the withholding of or use of recess or physical activity breaks as a disciplinary consequence.

Legal Analysis

Wis. Admin PI § 8.01(2)(f) (The school hours are computed as the period from the start to the close of the school's daily instructional schedule. Scheduled hours under this subdivision include recess and time for pupils to transfer between classes but do not include the lunch period. No more than 30 minutes per day may be counted for recess.); Wis. Admin. PI § 8.01(2)(k)(3) (designating the school board with the authority to establish a district curriculum plan regarding the allocation of instructional time, by week, semester, and school term, among all subject areas).

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MODEL POLICY #13

DRESS CODE

Why Adopt This Policy?

In response to concerns raised about dress codes in schools, this policy seeks to refocus attention on learning and minimize distractions. This dress code is crafted in a gender-neutral manner with no distinctions between boys' and girls' apparel. It is designed to foster a safe and positive learning environment conducive to positive student experiences. Enforced dress codes have been found to have a positive effect on everything from attendance and academic performance to reducing criminal activity.

Policy

The purpose of this dress code is to establish guidelines that promote an appropriate educational environment while allowing students to dress comfortably within defined boundaries conducive to learning. While acknowledging students' rights to personal expression and individuality, the district maintains the need to regulate conduct to ensure a safe, studious, and hygienic environment for all students, irrespective of sex, viewpoint, or religion.

1. General
    a. There can be no gap between a shirt and bottoms.
    b. All private body parts and undergarments must be covered.
    c. Apparel that is see-through or includes excessive rips or tears can be worn so long as there is an additional layer of clothing underneath.
    d. Apparel that has words or pictures on it is allowed so long as the words and pictures are not lewd, vulgar, indecent, or plainly offensive.
    e. Apparel that has words or pictures on it is allowed, so long as the words or pictures cannot be plausibly interpreted as promoting illegal drugs.
    f. If school authorities believe that there will be a substantial disruption of, or material interference with, school activities, then the school can prohibit that apparel.
    g. If school authorities believe that for safety reasons a student's apparel is inappropriate, the school can prohibit that apparel.
2. Shirts
    a. Must have capped sleeves. No tank tops, spaghetti straps, or strapless tops are allowed.
3. Bottoms
    a. Shorts must have at least a 4 inch inseam (from the bottom of the zipper or buttons to the hem).
    b. Skirts should not be more than 4 inches above the top of the kneecap when the student is standing upright with their arms at their sides.

4. Dresses
    a. If the dress has two parts, the parts must overlap.
    b. Dresses should not be more than 4 inches above the top of the kneecap when the student is standing upright with their arms at their sides.
5. Shoes
    a. Shoes must be worn at all times during school hours, unless removal is required for a class activity.
    b. Shoes must have a hard sole on the bottom for safety.
    c. No flip-flops.
6. Headwear
    a. Hats and hoods are not allowed to be worn during school hours.
    b. Headdresses may be worn for religious purposes.
7. Jewelry/Accessories
    a. Jewelry and other accessories are allowed to be worn during school so long as they are not a distraction to the student, other students, or would cause safety concerns.
    b. Sunglasses are not allowed to be worn over the eyes inside during school hours. This does not apply to sunglasses worn for medical reasons or transition lenses.
    c. Anything that covers the face is not allowed, unless worn for religious or medical reasons.
8. Athletic Uniforms Worn During School Hours
    a. Athletic uniforms may be worn during school hours, so long as they do not violate any aspect of this dress code. If the athletic uniform does violate the dress code listed above, the student will be asked to modify it to conform with the dress code (e.g. put on a jacket over the tank top, etc.).
9. Non-Instructional Hours
    a. This dress code applies when students are on school property outside of regular instructional hours, unless it is a customary athletic or activity uniform (e.g. a swimsuit for the swim team, a tank top for cross-country or track, stage costumes for theater, etc.).

Exceptions or Modifications to the Dress Code: Any exceptions or modifications to these rules shall be communicated by the building principal for special events such as prom, homecoming, spirit day, field trips, etc.

Violation of the Dress Code: If a school staff member believes that a student is not in compliance with the dress code, the staff member may first ask the student to modify or change to comply. If the student remains out of compliance, the staff member shall send that student to the central office. Once there, the principal or his/her designee will determine if the student is in violation of the dress code. If the student is in violation of the dress code, the student will again be asked to modify or change what the student is wearing. If the student does not have anything to modify or change what the student is wearing, the school will request the student's parents bring a change of clothing or send the student home. If a student has more than three (3) dress-code violations in a semester, the student may receive detention or suspension, depending on the circumstances and discretion of school staff.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as a grandparent or stepparent with whom the child lives). Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis

School districts cannot legally restrict student freedom of speech in a manner that violates their First Amendment rights. For instance, in *Tinker v. Des Moines*, 393 U.S. 503 (1969), students planned to protest the Vietnam War by wearing black armbands to school. School officials created a plan to prohibit the armbands, leading to student suspensions and a subsequent lawsuit. The U.S. Supreme Court ruled in favor of the students and noted that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Public schools cannot prevent students from expressing ideas simply because their message may contradict the preferred message of the school. *Tinker v. Des Moines*, 393 U.S. 503.

Conversely, the First Amendment *does* allow public schools to prohibit messages promoting the use of illegal drugs at school-supervised events, as seen in *Morse v. Frederick*, 551 U.S. 393 (2007). When a student displayed a banner with a reference to smoking marijuana at a school-supervised event and got suspended, the U.S. Supreme Court upheld the school's action, stating that schools may "restrict student speech at a school event, when that speech is reasonably viewed as promoting illegal drug use." *Morse*, 551 U.S. at 403.

The Supreme Court has also distinguished between political student speech, which is protected, and vulgar or lewd speech, which may not be. *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986). In this case, a student delivered a sexually explicit speech at a school assembly, resulting in disciplinary action by the school. The U.S. Supreme Court upheld the school's decision, emphasizing that obscene speech that "substantially interferes with the educational process" can be subject to discipline. *Bethel*, 478 U.S. at 678—680.

The U.S. Supreme Court has also said dress codes cannot violate the Due Process Clause of the Fourteenth Amendment, and they cannot be overbroad or unconstitutionally vague. *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828, (1995); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969); *New York v. Ferber*, 458 U.S. 747, (1982); *Connally v. Gen. Const. Co.*, 269 U.S. 385, (1926).

On the topic of whether schools can create and regulate different dress codes for boys and girls based on sex, the U.S. Supreme Court has not yet weighed in. The Fourth Circuit Court of Appeals, in *Peltier v. Charter Day School*, held that a private charter school violated Title IX and the Equal Protection Clause of the Fourteenth Amendment by mandating skirts only for female students. *Peltier v. Charter Day Sch.*, Inc., 37 F.4th 104 (4th Cir. 2022), cert. denied, 143 S. Ct. 2657, 216 L. Ed. 2d 1236 (2023).

Overall, while public education is primarily overseen by state and local authorities, courts may intervene in conflicts that significantly impact students' constitutional rights. *Epperson v. State of Ark.*, 393 U.S. 97, 104 (1968). School boards should therefore carefully consider students' free speech rights when implementing policies like dress codes.

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MODEL POLICY #14

CELL PHONES IN THE CLASSROOM

Why Adopt This Policy?

School boards should consider adopting a policy to prohibit the use of cell phones in classrooms in order to help minimize distractions, improve concentration on educational tasks, and prevent cheating during exams. Eliminating cell phones from the classroom fosters more meaningful face-to-face interactions among students and creates an environment that prioritizes academic engagement and supports overall student well-being. Schools and classrooms that have implemented phone bans have seen results of higher math and reading achievement on standards tests, more knowledge gained as measured by end-of-course exams, and even other benefits such as increased play and exercise at recess.* A 14-country study cited by UNESCO, found that the mere presence of a mobile phone nearby was enough to distract students from learning. It can take up to 20 minutes for students to refocus.†

The use of smart phones in the classroom can be a significant distraction for students. One study found that the use of cell phones to text reduced performance by as much as 30%.‡ One study found that it can take students up to 20 minutes to refocus on what they were learning after engaging in a non-academic activity. While there are mixed feelings among teachers on the use of cell phones, one study found that a plurality of teachers were opposed to their use by students in class.§ Other states have banned cell phones in school.¶ This policy provides channels for parents to maintain communication with their child during the school day, and it is not designed to override any measures in place to ensure adequate communication in the case of safety incidents or emergencies.

Note: *This model policy contains bracketed text for school boards to select details about the scope of the policy. It is written to prohibit the use of cell phones during class time but can be expanded upon to prohibit them for the entire school day.*

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* Pawlowski, Charlotte Skau, Jonas Vestergaard Nielsen, and Tanja Schmidt. "A Ban on Smartphone Usage during Recess Increased Children's Physical Activity." *International Journal of Environmental Research and Public Health*, vol. 18, no. 4, 2021, article 1907. Published online 2021 Feb 16. DOI: 10.3390/ijerph18041907.

† Most, Doug. "Why Schools Should Ban Cell Phones in the Classroom." BU Today, Boston University, 8 Dec. 2023, https://www.bu.edu/articles/2023/why-schools-should-ban-cell-phones-in-the-classroom/

‡ Froese, Arnold D., et al. "Effects of Classroom Cell Phone Use on Expected and Actual Learning." *College Student Journal*, vol. 46, no. 2, June 2012, pp. 323-332.

§ Kevin M. Thomas, Blanche W. O'Bannon & Virginia G. Britt (2014) Standing in the Schoolhouse Door: Teacher Perceptions of Mobile Phones in the Classroom, Journal of Research on Technology in Education, 46:4, 373-395, DOI: 10.1080/15391523.2014.925686.

¶ Gecker, Jocelyn. "Kids Are Using Phones in Class, Even When It's Against the Rules. Should Schools Ban Them All Day?" *AP News*, February 27, 2024, https://apnews.com/article/school-cell-phone-ban-01fd6293a84a2e4e401708b15cb71d36.

Policy

Definitions: For purposes of this policy, "cell phone" means a portable electronic device capable of making and receiving calls, sending and receiving text messages, accessing the internet, and/or running various applications, regardless of whether or not the phone is connected to a network to provide phone service. It encompasses any handheld device that falls under this description, including smartphones and similar mobile communication devices. It does not encompass any items issued by the district such as computers or tablets. [*It does / does not include devices such as Apple watches.*]

For purposes of this policy, "instructional hours" means the designated time periods during the school day when formal teaching and learning activities take place, including classroom instruction, lectures, discussions, and educational activities supervised by teachers or staff.

For purposes of this policy, "class time" means the specific periods allocated for instructional sessions or courses throughout the school day. It represents the duration during which students are engaged in learning activities under the guidance of a teacher or instructor with a designated classroom or instructional setting. Class time is a component of the overall instructional hours.

Scope: This policy applies to all students during instructional hours within school premises.

[*Or: This policy applies to all students during the entire school day including instructional hours, recess, lunch, study hall, and passing time, and applies while within school premises.*]

[*Consider adding: within school premises "and during events such as field trips and other off-campus school-sponsored activities."*]

Prohibition: The use of cell phones, including but not limited to making calls, sending text messages, browsing the internet, and accessing applications, is strictly prohibited within classrooms. Students will be required to stow cell phones in a designated location upon their entry into the classroom immediately before class time. Designated locations may include secure pouches such as Yondr bags, a cell phone cabinet, hanging pocket holders, or a basket.

Students are individually accountable for the safekeeping and protection of their cell phones while on school premises. The District does not assume responsibility or liability for instances of theft, loss, damage, misuse, or unauthorized use of cell phones brought onto school property by students. However, exceptions may apply in cases where negligence by school district personnel contributes to such instances.

Exceptions: In cases of emergencies, instructional purposes if requested by the teacher and approved by the building principal, or as authorized by an IEP team, exceptions to this policy may be granted. For purposes of this policy, "emergency" should be interpreted to mean a situation that poses an immediate threat to the safety, health, or well-being of individuals on school grounds or during school-sponsored activities, and where the use of a cell phone is necessary to seek assistance, report an emergency, or communicate urgent information to authorities or designated personnel.

Enforcement: Teachers and staff are responsible for enforcing this policy and may confiscate cell phones found in violation of this policy. Violations of this policy will result in disciplinary action in accordance with the school handbook

or code of conduct. Disciplinary action shall be progressive depending on number of violations and may involve one or more of the following: holding a phone to be picked up by a parent, lunch detention, in-school suspension.

If a cell phone is confiscated, it will be released and returned to the student after class time [or at the end of the school day], unless the violation involves potentially illegal activity, in which case the cell phone may be turned over to law enforcement.

School officials will not search or otherwise manipulate cell phones that are confiscated unless:

1. They reasonably suspect that the cell phone contains evidence of a violation of law or school policies;
2. There is an immediate threat to the safety and security of students, staff, or school property, such as threats or acts of violence;
3. The student voluntarily consents to the search of their cell phone, either verbally or in writing, without coercion; or
4. If there is a valid search warrant issued by a court of law authorizing search of the cell phone based on probable cause.

Parents are advised that they may maintain communication with their child during the school day through established channels provided by the school. These may include contacting the school office directly via telephone or email, where messages can be relayed to the student. School administration shall ensure that parents are promptly informed of any important updates or incidents involving their child, encouraging a collaborative approach to student safety and well-being.

[Optional] Cell Phone Agreement: For parents and students to know the expectations and consequences related to cell phone use at school, they will be expected to sign an agreement which includes the information contained in this policy as well as an explanation about the detrimental impact of excessive cell phone use. District administration shall provide an update to parents regarding this policy at least once per year.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as a grandparent or stepparent with whom the child lives). Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis

If a claim of suppression of free speech is brought, so long as the school policy is reasonably related to pedagogical concerns, then the judiciary generally rules in favor of educational officials. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 108 S. Ct. 562, 98 L. Ed. 2d 592 (1988). If a search or seizure claim is brought, courts have found that there is a substantial interest in teachers and administrators maintaining discipline and order in the classroom. *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985). Finally, teachers cannot be held liable for harm caused by any act or omission if the actions were carried out in conformity with Federal, State, and local laws in furtherance of efforts to maintain order or control in the classroom. 20 U.S.C.A § 7946.

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MODEL POLICY #15

FINANCIAL LITERACY INSTRUCTION

Why Adopt This Policy?

Financial literacy sets a foundation for students to be more prosperous and independent by equipping them with essential skills to navigate personal finances effectively, setting them up for lifelong success. For many students, this may be the only financial course they experience in school. Research has found that financial literacy classes can help to increase the knowledge of students about finance and increase the likelihood of positive financial choices.*

Policy

This policy is established to ensure that the district maintains an effective curriculum that prioritizes student understanding of personal finance. The policy provides a framework for topics that should be covered in a financial literacy course.

Financial literacy shall constitute at least one-half credit of instruction at the high school level. Curriculum shall include:

1. **Financial mindset:** Understanding the importance of financial responsibility and adopting habits conducive to long-term financial well-being.
2. **Education and employment:** Learning about various career paths and understanding the value of education in achieving career goals.
3. **Money management:** Creating and managing a budget to effectively allocate income towards expenses, savings, and financial goals.
4. **Saving and investing:** Understanding the importance of saving money and exploring various investment options such as stocks, bonds, mutual funds, and retirement accounts.
5. **Credit management:** Learning about credit scores, credit reports, the responsible use of credit cards, strategies for building and maintaining good credit, and why having good credit is important.
6. **Debt management:** Understanding different types of debt, such as student loans and mortgages, and strategies to manage and reduce debt effectively, including understanding interest rates.
7. **Risk management:** Identifying and assessing financial risks and diversifying investments.

* Catherine M. Reich & Jeffrey S. Berman (2015) Do Financial Literacy Classes Help? An Experimental Assessment in a Low-Income Population, *Journal of Social Service Research*, 41:2, 193-203, DOI: 10.1080/01488376.2014.977986

8. **Insurance:** Exploring various types of insurance, such as health insurance, auto insurance, renters insurance, and understanding how insurance works to protect against financial risks.

District administration should also strive to provide financial literacy instruction including:

1. **Taxes:** Understanding basic tax concepts, including tax-filing procedures.
2. **Banking:** Familiarizing students with different types of bank accounts, online banking, understanding bank fees and charges, and how to use an ATM.
3. **Financial goal setting:** Setting short-term and long-term financial goals, developing plans to achieve them, and understanding the importance of financial planning.
4. **Family involvement:** District administration should encourage collaboration between schools and parents through regular communication and should seek to offer workshops and resources to support students in applying financial knowledge within their families and communities.
5. **Guest speakers:** Consider including guests from a local financial institution, an insurance agency, investment broker firm, or a financial planner/coach to share what students can do to understand money and how it can help them build their life goals.

Legal Analysis — National

The Secretary of Education shall seek to enhance financial literacy among students through the development of initiatives, programs, and curricula that improve student awareness and assist such students in navigating the financial aid process. 20 U.S.C. § 9709(a).

Legal Analysis — Wisconsin

In Wisconsin, school boards have the duty to determine the educational standards for the district and to adopt all textbooks necessary for the use in district schools. School boards also have authority to do all things reasonable to promote the cause of education, including establishing, providing, and improving school district programs for the benefit of students.

For schools in Wisconsin, one half credit of financial literacy instruction is required for high school graduation, starting with the class of 2028. Districts should first determine if their current offerings will meet the requirements of Wis. Stat. § 118.33(1)(a)1.f. This policy uses the state law as a starting point and expands upon it. At the federal level, regarding financial aid, Congress directed the Secretary of Education to develop initiatives, programs, and curricula that improve student awareness and assist students in navigating the financial aid process.

In order for a student to graduate from high school the student must complete at least one-half credit of personal financial literacy. Wis. Stat. § 118.33(1)(a)1.f.

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MODEL POLICY #16

EVALUATION AND UPDATE OF DISTRICT CURRICULUM PURCHASED FROM THIRD PARTIES

Why Adopt This Policy?

The content of curriculum being taught to students in the classroom is critical and foundational to their education. School boards should consider adopting a policy on the evaluation and update of curriculum purchased from third parties to ensure the district prioritizes student academic achievement and adapts to evolving educational needs. Such a policy prioritizes continuous improvement in teaching methods and curricular content. This policy creates a system for reviewing curriculum purchased from third parties as well as monitoring and following up on the effectiveness of that curriculum.

Policy

This policy is established to ensure that the district maintains a dynamic and effective curriculum that prioritizes student academic achievement and adapts to evolving educational needs. The policy provides a framework for the ongoing evaluation and updates of district curriculum purchased from publishers or other third-party vendors.

For purposes of this policy, third-party curriculum refers to educational materials used as part of the educational program which may include textbooks, workbooks, teacher guides, digital resources, assessment materials, and other print and non-print materials or resources which are purchased from publishers or other third-party vendors.

For kindergarten through grade 12, District curriculum shall be adopted in the subject areas of reading, language arts, math, social studies, science, health, computer literacy, environmental education, physical education, art and music. For grades 7 through 12, curriculum shall also be adopted in vocational education.

District administration shall develop a plan for monitoring curriculum continuously, and the overall program evaluation method of the district shall be reviewed at least once every five years and revised as appropriate. All selected curriculum shall ensure that students receive a high-quality education and are prepared for academic success and shall comply with all applicable requirements in federal and state law. As part of that process, this policy applies to the District's selection of third party curriculum.

In addition to establishing and monitoring overall curricula for the District, the District shall have a standing Curriculum Review Committee to evaluate and update third-party curriculum for certain core subject areas as

described below. The Curriculum Review Committee shall consist of members who shall be selected by the District Administrator and approved by the Board. The Committee shall include at least one person from each of the following groups: teachers, administrators, curriculum coordinators, parents and students. The District Administrator and Board are free to have as many members from each group as they determine in their discretion so long as there is at least one member from each group. The District Administrator shall appoint one member as the chairperson of the Committee who shall be approved by the Board. Each member and the chairperson of the Committee shall participate for a term determined by the District Administrator and Board and may be replaced by the District Administrator and Board at any time. The Curriculum Review Committee shall comply with all applicable open meetings and open records laws.

Third-Party Curriculum Review Process

The district shall implement a process for evaluating and selecting educational materials in the subjects of English Language Arts, Math, Science and Social Studies on a rotating basis every four years. For each subject area being evaluated, the Curriculum Review Committee shall:

1. **Make a list of high-quality curricula available from third parties;**
2. **Request samples of curriculum listed, review content and data, and narrow the list to 3 to 5 options.**
3. **Conduct a detailed review of the top 3 to 5 options.**
    a. In determining the top option, the Committee shall invite vendors to present on curriculum, attend site visits, research relevant resources, and consider whether prospective curriculum has demonstrated a positive impact on student outcomes. The Committee may also organize a pilot course, gather student surveys, and seek parent input.
4. **After the Committee has selected a top option, the chairperson shall present the top option to the school board.**
    a. Approval of a new third-party curriculum shall follow applicable district policy.

Monitoring and Follow-Up

For third-party curriculum approved pursuant to this policy, the Curriculum Review Committee shall create a three-year implementation plan which must include the following:

1. **Goals for implementation of the new curriculum;**
2. **Procedure for monitoring student progress; and**
3. **Regular updates to the school board by the District Administrator.**

All selected curriculum shall ensure that students receive a high-quality education and are prepared for academic success and shall comply with all applicable requirements in federal and state law.

The district shall offer professional development to address changes in curriculum content, pedagogical approaches, and educational technology.

Each state will have its own process regarding statutory mandates for curriculum. Before adopting this policy, WILL encourages school board members to determine what those state-specific requirements are.

Legal Analysis — National

The Every Student Succeeds Act (ESSA) requires states to establish academic standards in reading, math and science. *See* 20 U.S.C. § 6301.

Legal Analysis — Wisconsin

In Wisconsin, school boards have the duty to determine the educational standards for the district and to adopt all textbooks necessary for the use in district schools. School boards also have authority to do all things reasonable to promote the cause of education, including establishing, providing and improving school district programs for the benefit of students. *See* Wis. Stats. § 118.03, 118.13, 119.18, 120.13, 121.02; *see also* Wis. Admin PI § 8.01 and Wis. Admin. PI § 8.01(2)(k).

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MODEL POLICY #17

CLASSROOM OBSERVATION

Why Adopt This Policy?

School boards should establish a clear policy regarding classroom observation to address ambiguity and confusion often experienced by parents. Many existing policies lack sufficient detail, leading to uncertainty and frustration when parental requests for classroom observation are denied without explanation. This policy aims to provide transparent guidelines for parental classroom observation, ensuring compliance with federal law while implementing safeguards to prevent misuse of the privilege.

Policy

Parental engagement in their child's education is essential to their success. To ensure the involvement of parents in the educational setting, parents shall be allowed the opportunity to observe classroom activities. But in order for the educational program to continue undisturbed when visitors are present, it is necessary to establish visitor guidelines.

Any parent wishing to observe their child's class shall contact the principal and teacher of the respective class to request to observe the classroom. Unless there are extenuating circumstances, the request for visitation shall be granted. A response to the request must be provided as soon as reasonably possible, but at least within one week of receipt of the request.

If the request is approved, a date and time for observation shall be selected through mutual agreement between the parent and the teacher or building principal and shall be established as follows: The building principal or teacher shall provide a suggested date and time within one week for observation within one week. The parent may request a different date or time. Once a date and time are agreed upon, the teacher or building principal shall confirm the details in writing or through email.

It is important for schools to communicate clearly with parents about any circumstances that may affect their ability to observe classroom activities and to provide alternative ways for parents to stay engaged in their child's education. If a request for classroom visitation is denied, the parent shall be provided notice and a reason why.

Acceptable reasons for denial of a visit may include:

1. **Excessive Visitation:** Teachers should have discretion to deny a parent request to observe their classroom based on excessive visitation in the past, to maintain a productive learning environment free from unnecessary distractions. In considering whether excessive visitation has occurred, teachers may consider the frequency of parent visits (such as multiple visits per week) and the duration of each visit (such as whether visits consistently extend for long periods and disrupt the normal flow of instruction or cause distractions to students).
2. **Instructional Disruption:** The parent has previously been asked to leave or removed for a disturbance during a classroom visit.

3. **Student Privacy:** If the presence of a parent in the classroom could compromise the privacy or confidentiality of other students during discussions about sensitive topics or individual student assessments.
4. **Safety and Security:** If there are safety concerns related to allowing visitors in the classroom, such as during emergency drills, if the parent is a sex offender, or if the visitation would violate other school policies.
5. **Legal Restrictions:** In cases where there are legal restrictions or requirements that prevent or limit parental observation, such as court orders or custody arrangements.

Denial of parental classroom observation shall not be based on any of the following reasons:

1. **Discrimination:** Discriminating against certain parents or families based on personal biases, socioeconomic status, race, national origin, sex, religion, or other factors.
2. **Maintaining Control:** The potential for classroom disturbance, when no disturbance with that parent has ever occurred and there are no reasonable grounds to believe it would.

During the visit, the parent may not create a disturbance in the classroom and may only interact with other students and classroom activities with the permission of the teacher ahead of the visit. If the presence of the parent is detrimental to the good order of the class or the school, the parent will be asked to leave. If such individual refuses to leave the school grounds or creates a disturbance, the school district is authorized to request from the local law enforcement agency whatever assistance is required to remove the parent, and that parent will not be allowed back for further classroom visits.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as a grandparent or stepparent with whom the child lives). Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis — National

Federal law requires public schools to implement policies and procedures to ensure the involvement of parents in the educational setting. These policies and procedures include creating a policy that gives parents the opportunity for "observation of classroom activities." 20. U.S.C § 6318(d)(2)C. This is part of the "Every Student Succeeds Act" or "ESSA." According to ESSA, parents have a limited right to classroom observation, but that may be restricted by the school district in a uniform policy that applies equally to all parents. The determination process for parents wanting to observe should be clear and nondiscriminatory, so if a request is denied they know why.

Additionally, the "Family Education Rights and Privacy Act" (FERPA) or "student privacy," are not valid reasons to deny a parent access to observe her child's classroom. FERPA does require that sensitive information about students may not be released without parental consent. However, what information is protected under this law matters. In the U.S. Supreme Court's decision *Owasso v. Falvo*, the Court said that peer-grading or calling out other student's scores in class was not a violation of FERPA, as those things did not satisfy the definition of an "educational record." As such, a parent observing a classroom, even if a student's scores on an assignment are read out, would not violate FERPA.

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MODEL POLICY #18

ACCESS TO STUDENT RECORDS

Why Adopt This Policy?

School boards should consider adopting a policy that provides information about student records and access for parents. Such a policy ensures parental rights are understood and respected and that student privacy is protected in compliance with applicable laws. This policy helps establish clear guidelines for record-keeping practices and fosters trust and accountability between the school district and parents.

Policy

In order to provide appropriate educational services and programming, the District must collect, retain, and use information about individual students. Simultaneously, the District recognizes the need to safeguard students' privacy and restrict access to students' personally identifiable information.

Except for data identified by policy as "directory data," student "personally identifiable information" includes, but is not limited to: the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the District reasonably believes knows the identity of the student to whom the education record relates.

The Family Educational Rights and Privacy Act (FERPA) defines an education record as including information about a student that is maintained in schools in any recorded way, such as handwriting, print, computer media, video or audio tape and film. Categories of education records include, but are not limited to:

1. Date and place of birth, parent(s) and/or guardian addresses, and where parents can be contacted in emergencies;
2. Grades, test scores, courses taken, academic specializations and activities, and official letters regarding a student's status in school;
3. Special education records;
4. Disciplinary records;
5. Medical and health records that the school creates or collects and maintains;
6. Personal information such as a student's identification code, social security number, picture, or other information that would make it easy to identify or locate a student.

Student records shall be available only to students, their parents, designated school officials who have a legitimate educational interest in the information, and other individuals or organizations only as permitted by law. Beyond these listed individuals, all student records shall be kept confidential. The Board shall adopt policies to maintain the confidentiality of such records.

The District is responsible for the records of all students who attend or have attended schools in this District. Only records mandated by the State or Federal government and/or necessary and relevant to the function of the School District or specifically permitted by this Board will be compiled by District employees.

In all cases, permitted, narrative information in student records shall be objectively-based on the personal observation or knowledge of the originator.

A student, or the parent or guardian of a minor student, shall, upon request, be shown the student's educational records. Upon request by a parent or student, the District must also provide copies of educational records. A request for student records must be signed and dated, specify what records are being requested, indicate to whom the records should be provided and for what purpose.

A student, or the parent or guardian of a minor student, has the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or student has the right to place a statement with the record setting forth his or her view about the contested information.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as grandparent or stepparent with whom the child lives).

Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis — National

The Family Educational Rights and Privacy Act (FERPA) gives parents access to student information, and it requires privacy protections for both paper and computerized student records. *See* 20 U.S.C. § 1232g; 34 C.F.R. § 99.

Legal Analysis — Wisconsin

Wisconsin law also has parental access and privacy protection laws. *See* Wis. Stat. § 118.125 (pupil records); Wis. Stat. § 118.126 (privileged communications); Wis. Stat. § 118.127 (law enforcement agency information); Wis. Stat. § 938.396 (records).

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MODEL POLICY #19

ATTENDANCE AND NOTICE OF TRUANCY (WISCONSIN)

Why Adopt This Policy?

Across the nation, there has been a trend of growing rates of chronic absenteeism, particularly since the pandemic. States have been addressing this issue, particularly using it as an indicator for the ESSA report card. These policies must be supported at the local district level. Unless student attendance improves, any efforts to address pandemic learning loss will fail. Numerous studies have found that missing significant amounts of school time has a negative effect on student performance.* Given the evidence of extensive learning loss during the pandemic, it is vital that students get back on track by not missing even more school.† While it is important to recognize that school culture can also improve absenteeism rates, this policy sets clear expectations for attendance and parental notice regarding truancy. See also this "Return to Learn" tracker which contains data about chronic absenteeism across the country over time.‡

Policy

This school board policy prioritizes effective parental notification regarding student truancy to ensure collaborative efforts in addressing attendance concerns. Parental notification will adhere to best practices, including timely communication through multiple channels. By fostering transparent communication, we aim to enhance parental engagement and promote student attendance and success.

Definitions: For purposes of this policy, a student is considered "truant" if he or she is absent from school for more than one-third of a day, without an acceptable excuse that has been provided by a parent to the school attendance officer, principal, or teacher, in accordance with absence reporting requirements.

For purposes of this policy, a student is considered "habitually truant" if he or she is absent from school for more than one-third of a day for five or more days of school during any given semester, without an acceptable excuse.

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* Michael A. Gottfried (2014) Chronic Absenteeism and Its Effects on Students' Academic and Socioemotional Outcomes, *Journal of Education for Students Placed at Risk (JESPAR)*, 19:2, 53-75, DOI: 10.1080/10824669.2014.962696

García, Emma, and Elaine Weiss. "Student Absenteeism: Who Misses School and How Missing School Matters for Performance." Report, Economic Policy Institute, September 25, 2018, https://files.epi.org/pdf/152438.pdf.

† Betebenner, Damian W., and Richard J. Wenning. "Understanding Pandemic Learning Loss and Learning Recovery: The Role of Student Growth & Statewide Testing." *National Center for the Improvement of Educational Assessment*, January 2021. Available at: https://files.eric.ed.gov/fulltext/ED611296.pdf.

‡ https://www.returntolearntracker.net/

School Attendance Officer: The school board shall designate a school employee to be the school attendance officer, if one is not already required by law. This employee shall deal with matters relating to school attendance and truancy. This includes but is not limited to monitoring attendance, communicating with parents, and keeping accurate records of student attendance.

Attendance

All students between the ages of 6 and 18 enrolled in the district are expected to attend school regularly and punctually on a full-time basis.

Teachers in the district must accurately record and report student attendance, including instances of truancy and tardiness, and provide that data to the school attendance officer on a daily basis.

Excused Absences: It is important for parents to communicate with the school regarding their child being absent from school and to provide appropriate documentation when necessary. The following constitute acceptable excuses and are permissible reasons for which students may be absent for part or all of a school day:

1. Religious observance
2. Illness or health-related issues
3. Family emergency
4. Student is out of town for family reasons
5. Medical appointments
6. Unforeseen transportation problems
7. Legal obligations by court order

Parental Notification

When a student is identified as truant, school staff shall notify the parent in writing and by phone, by text message, or in person. This notice shall occur before the end of the school day after receiving a report from a teacher of an unexcused absence. If the staff cannot reach a parent, the school attendance officer may send notification by first class mail. The notice shall include:

1. Notification of truancy; and
2. Either a request for the parent to provide an acceptable excuse for the absence or direction for the parent to return the child to school no later than the next day on which school is in session.

When a student becomes habitually truant, the school attendance officer shall notify the parent by registered or certified mail or by first class mail, and where possible, should also send an electronic communication to the parent simultaneously with the mail. The notice shall include the following:

1. Statement about parental responsibility under state law to ensure that the child attends school regularly.
2. Notice that the parent may request program or curriculum modifications under state law and that the child may be eligible for enrollment in a program for children at risk of not graduating from high school.
3. Request that the parent meet with appropriate school personnel for a discussion about the habitual truancy of the child.

a. This shall include the name of the school personnel with whom the parent should meet, a date, time, and place for the meeting, and the name and contact information of a person to contact to arrange a different date, time, or place.

b. The date for the meeting shall be within 5 days after the date that the notice is sent, except that the parent may consent for the date of the meeting to be extended for an additional 5 school days.

4. Statement of penalties under state law that may be imposed on the parent if he or she fails to ensure that the child attends school regularly as required under state law.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as a grandparent or stepparent with whom the child lives). Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis — National

See PL 114-95 ("Every Student Succeeds Act") (defining chronic absence as missing 10 percent of school days within one academic year for any reason). Chronic absence is different from truancy, which counts only unexcused absences, and average daily attendance, which reports the average number of students who attend school each day.

Legal Analysis — Wisconsin

This policy operates supplementary to any truancy plan policies and truancy plan review policies and applicable state laws and does not replace them. In general, attendance laws vary from state to state and as such, truancy standards will be set by the state government. However, certain federal funding programs dictate attendance record-keeping for local educational agencies. 20 U.S.C. § 7355 (requiring local educational agencies seeking grants under this section to conduct a census each year to determine the number of students in average daily attendance in kindergarten through grade 12 and requiring local educational agencies to submit this information to the Secretary of Education).

Additionally, the Supreme Court of the United States has said that general applicability of state compulsory school attendance statutes is constitutional, so long as they do not impair the free exercise of religion or discriminate against protected groups. *Wisconsin v. Yoder*, 406 U.S. 205, 236 (1972); *Brown v. Bd. of Ed. of Topeka, Shawnee Cnty.*, Kan., 347 U.S. 483 (1954), supplemented sub nom. *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955).

Wisconsin law governs compulsory school attendance and parental notification regarding truancy. This policy expands upon those requirements to clarify expectations and emphasize timely notice. *See* Wis. Stat. § 118.15 (compulsory school attendance); Wis. Stat. § 118.153 (children at risk of not graduating from high school); Wis. Stat. § 118.155 (released time for religious instruction); Wis. Stat. § 118.16 (school attendance enforcement); *see also* Wis. Stat. § 948.45 (criminal statute on contributing to truancy).

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MODEL POLICY #20

RIGHT TO REVIEW INSTRUCTIONAL MATERIALS AND RELATED DOCUMENTS

Why Adopt This Policy?

It is a requirement under federal law that parents may access the instructional materials used in the education of their children. While this seems like a straightforward statement and an easy process, many school districts struggle with implementation. This policy helps clarify the process of reviewing instructional materials by providing a clear definition of instructional materials and an easy-to-understand process for parents to view those materials.

Policy

Parents shall have the right to access, upon request, the instructional materials used in the education of their children. In this policy, "instructional materials" means instructional content that is provided to a student, regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the internet). This includes copyrighted materials used by a teacher, materials created by a teacher, materials available to or accessible by students but not required in the education of the child, and any tests or assessments.

For purposes of this policy, "education of the child" includes classes the child is currently enrolled in, any in-school activity required by the school or District, and any other program the student opts to participate in. For purposes of this policy, a test or assessment is an evaluation to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students.

The District values and encourages transparency between parents and the school, and therefore the District shall make every effort to be as transparent as possible.

Tests or assessments administered to District students may be reviewed in such a way so as not to compromise the integrity of the test or assessment or invalidate the results. For instance, a test or assessment may not be reviewed before it is administered to a student unless it would reveal information concerning:

1. political affiliations or beliefs of the student or his/her parents or family members;
2. medical, health information, mental or psychological problems of the student or his/her parents or family members;" as "medical or health information or mental or psychological problems of the student or his/her parents or family members;

3. sex behaviors or attitudes;
4. illegal, anti-social, self-incriminating, or demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers;
7. religious practices, affiliations, or beliefs of the student or his/her parents;
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such a program).

The Superintendent shall provide reasonable notification to parents and students of their rights to review instructional materials.

The District will develop and adopt policies, in consultation with parents, for granting such a request within a reasonable time period. The District will directly notify parents of these policies at least annually at the start of each school year and after any substantive changes.

The Board encourages parents to engage with their child's teachers and school administrators and believes that access to educational materials is vital to effective communication.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as grandparent or stepparent with whom the child lives).

Legal Analysis

See 20 U.S.C. § 1232h. Federal law requires that parents be allowed to inspect, upon request, any instructional material used as part of the educational curriculum for the student. *See* 20 U.S.C. § 1232h(c). This policy enhances parents' rights to review instructional materials.

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MODEL POLICY #21

RIGHT TO REVIEW PROFESSIONAL DEVELOPMENT TRAINING MATERIALS

Why Adopt This Policy?

Many parents express concern about some of the content their children are exposed to in the classroom, sometimes leading to frustration directed at individual teachers. However, it is crucial to recognize that teachers undergo professional development training focused on controversial topics, which may result in a one-sided view. To address these concerns and promote transparency, school boards should consider adopting a policy that allows parents to access teacher professional development training materials, holding both administration and state educational agencies accountable.

Policy

Parents shall have the right to access, upon request, all District training materials used for professional development. "Training Materials" means content or resources provided to an administrator, educator or other District staff member, regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the internet). "Training materials" also includes information received via assessments and evaluations, and any services hired or contracted with for use by the District, including bringing in outside presenters or consultants.

School board members shall also have the right to access, upon request, District training materials used for professional development.

The Superintendent shall provide reasonable notification to parents and students of their rights to review professional development training materials. Requests shall be granted in compliance with applicable public records laws.

Legal Analysis

Teachers and principals undergo periodic professional development training and incorporate that training into their work. District training materials used for professional development are subject to public records laws. *See* 5 U.S.C. § 552.

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MODEL POLICY #22

LIBRARY MATERIAL TRANSPARENCY

Why Adopt This Policy?

School boards should consider adopting a policy on library material transparency to ensure that District personnel review of library materials aligns with student educational needs and community values while maintaining age-appropriate content. This policy promotes transparency in managing library resources, setting an expectation for openness and accountability in providing access to school library materials for students and the school community. By establishing clear procedures for maintaining and updating a publicly posted library materials list, the district can effectively monitor and enhance the quality and relevance of resources available to students.

Policy

This policy is established to ensure that the review of library materials in the district is conducted in a manner that promotes the educational needs and values of the community and considers age-appropriateness. It seeks to ensure transparency in the management of library materials in the district and aims to promote openness and accountability in providing access to educational resources for students and the school community.

Library material means any print or nonprint material that is purchased with public funds and is catalogued and processed as part of a library, including books, e-books, material available in a digital library database, streaming videos, sound recordings, periodicals, newspapers, applications, and subscription content in any form. This includes materials in classroom libraries that are purchased with public funds.

At least once per year, district personnel shall establish or maintain a list of the library materials in each school library in the school district. At least once per year, at the beginning of the school year, district personnel shall publish a list of the library materials in each school library in the district on the district website. The library materials list shall be published as either a searchable online database or a sortable spreadsheet that includes material title, author, publisher, and the school(s) where the material is located.

The District Administrator, in collaboration with school librarians and relevant administrators and district personnel, will be responsible for implementing this policy and shall have 120 days from the effective date of this policy to publish a list of library materials.

The District Administrator shall establish a process to ensure school librarians or relevant administrators and district personnel will post on the district websites, once per semester, an updated list that reflects additions and changes to available library materials.

Legal Analysis — National

This policy enhances parents' rights to have access to what library materials their children will have access to in school. The Fourteenth Amendment of the U.S. Constitution recognizes the "inherent right" of parents to "direct the upbringing and education of children under their control." *See Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925). Additionally, school boards have a substantial, legitimate role to play in the determination of library content. *Board of Education Island Trees Union Free School District No. 26 v. Pico* 457 U.S. 853, 869, 102 S. Ct. 2799, 2809, 73 L. Ed. 2d 435 (1982).

Legal Analysis — Wisconsin

In Wisconsin, school districts are required to designate a library media person to direct and coordinate the library media program for the district. *See* Wis. Admin PI § 8.01(2)(h). This policy operates supplementary to other library media services regulations and does not replace them.

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MODEL POLICY #23

LIBRARY MATERIALS AND PARENTAL RIGHTS

Why Adopt This Policy?

Parents have a constitutional right to direct the upbringing of their children, and that includes permitting what kind of media and content their child consumes. Different parents have different standards for what is considered appropriate for their own child. This policy provides a process through which parents can request restrictions on certain library materials for their child, without removing the book from the library entirely so other students can access it.

Policy

The district recognizes the importance of providing an avenue for concerns regarding library materials. This policy is established to acknowledge and respect the diverse values and preferences of parents within the district while ensuring that all students have access to a wide range of age-appropriate library materials. The policy provides a process through which parents can request restrictions on certain library materials for their child.

The district recognizes the rights and responsibilities of parents and guardians to guide the educational experiences of their children. Parents or guardians may request that specific library materials be restricted from being checked out by their child based on their individual beliefs and values.

A parent may submit a written request, via hard copy or electronic mail, to both the librarian and the building principal, to request that a library material not be made available to his or her child(ren). The request shall specify the material(s) they wish to restrict. The librarian shall create a record to ensure that the material will not be checked out as designated by the parent request.

For classroom libraries, this policy applies only to books purchased with public funds. If a parent requests for their child to be restricted from a book in a classroom library, a written request must be submitted to the teacher and building principal. Upon receiving such a request, the teacher must make sure the restricted book is appropriately placed to comply with the parent request.

The librarian shall keep a list of library materials requested by parents to be restricted from being checked out by their children. At least once per year, district personnel shall review the materials on this list to determine whether they are age-appropriate. Upon discovery of a library material that is not age-appropriate, district personnel shall discontinue the availability of the library material at any grade level or age for which the material is determined not to be age-appropriate.

For purposes of this policy, the term “parent” includes a legal guardian or other person who is legally responsible for the welfare of the child (such as grandparent or stepparent with whom the child lives).

Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under State law.

Legal Analysis — National

This policy enhances parents' rights to have access to what library materials their children will have access to in school. The Fourteenth Amendment of the U.S. Constitution recognizes the "inherent right" of parents to "direct the upbringing and education of children under their control." *See Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925). Additionally, school boards have a substantial, legitimate role to play in the determination of library content. *Board of Education Island Trees Union Free School District No. 26 v. Pico* 457 U.S. 853, 869, 102 S. Ct. 2799, 2809, 73 L. Ed. 2d 435 (1982).

Legal Analysis — Wisconsin

In Wisconsin, school districts are required to designate a library media person to direct and coordinate the library media program for the district. *See* Wis. Admin PI § 8.01(2)(h). This policy operates supplementary to other library media services regulations and does not replace them. It is also important to note that Wis. Stat. § 948.11(4) states that school library and educational institution employees cannot be held criminally liable for the dissemination of what would otherwise be considered obscene material.

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MODEL POLICY #24

PARENTAL NOTIFICATION OF ACTS OR THREATS OF VIOLENCE

Why Adopt This Policy?

Parents want to know what is happening in their children's' schools, particularly when it comes to school safety. This policy creates a system of when and how to notify parents of acts or threats of violence at the school and ensures trust between families and the District. This policy is not intended to scare parents—in fact, not knowing about an act or threat of violence and hearing about it later creates strife between families and the District.

Policy

The School District is committed to the prevention of violence against any individual or property in the schools and on school property whether such acts or threats of violence are made by students, staff, or third parties. This policy is established to ensure effective communication between the school district and parents in the event of acts or threats of violence.

For purposes of this policy, acts or threats of violence include the following:

1. **Physical violence:** Any use of force that imminently threaten or results in bodily injury or harm to others, such as hitting, punching, kicking, pushing, or any other form of physical aggression.
2. **Verbal or written threats of violence:** Any spoken, written, or electronic communication that conveys an intention to cause harm or engage in violent actions against individuals or property.
3. **Social media:** Any social media post or communication directly involving the district or members of the school community that conveys an intent to cause harm or engage in violent actions against individuals or property.
4. **Possession or use of weapons:** Any possession or use of weapons, such as firearms, knives, or other device designed as a weapon and capable of producing death or great bodily harm, with the intent to cause harm or intimidate individuals in the school community.
5. **Vandalism and property destruction:** Any act or damage to school property with the intent to convey a threat or cause intimidation or harm amongst the school community.

The school district shall maintain a comprehensive safety plan to evaluate and respond to threats, potential threats, or concerning behaviors that could impact the safety of the school community. A copy of the threat assessment policy shall be provided to students, parents, and all district personnel at least once per year at the beginning of the school year and as required by applicable law.

Notification Requirements:

School personnel will provide timely notice to students and school personnel who are subjects of individually directed acts or threats of violence. Parents of students who are subjects of individually-directed acts or threats of violence will also be provided timely notice. If the act or threat is by a student, information will be shared with parents of students directly affected, but personally identifiable student information will be kept confidential in compliance with applicable state and federal laws.

School personnel will provide timely notice to students, parents and school personnel, in the event of a building directed act or threat of violence. Building-directed threats of violence include threats of violence directed against a building or school property, communicated directly or indirectly by any means, that a reasonable person would perceive to show an intent to cause damage to a school building or school property, or to harm students, employees, volunteers, community members or visitors. In exceptional cases where notifying parents could jeopardize ongoing efforts to apprehend a suspect, such notifications may be temporarily withheld to avoid tipping off the individual involved. In such instances, law enforcement's guidance and expertise will guide the decision-making process, with the paramount goal of safeguarding the well-being of all individuals within the school community.

Notifications shall be clear, factual, and designed to provide parents with essential information about the nature of the threat, actions taken, and any measure implemented to ensure the safety of the students and staff. Parental notification may be sent via email or other digital communication, written notice, phone call, in-person meetings or social media, depending on the urgency and severity of the threat. District administration shall ensure that parental notifications are issued promptly, taking into consideration the urgency of the situation and the need for accurate information dissemination.

Parents of students who are directly involved in acts or threats of violence may request access to relevant reports and videos pertaining to the incident. Upon receipt of a written request, the district administration will facilitate parental access to the requested materials in accordance with applicable laws, regulations, and procedures.

The school district encourages parents to engage in discussions with their children about safety, responsible behavior, and the importance of reporting any concerns to school authorities.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as grandparent or stepparent with whom the child lives).

Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis — National

This policy operates supplementary to other threat assessment or response policies and applicable state and federal laws and does not replace them. This policy enhances parents' rights to be notified about acts or threats of violence. FERPA gives parents access to student information, and it requires privacy protections for student records. *See* U.S.C. § 1232g; 34 C.F.R. § 99. The Fourteenth Amendment of the U.S. Constitution recognizes the "inherent right" of parents to "direct the upbringing and education of children under their control." *See Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925).

Legal Analysis — Wisconsin

In Wisconsin, each school board is required to have in effect a school safety plan, there are requirements for school safety drills, and schools are required to have "safe and healthful facilities." *See* Wis. Stat. § 118.07; Wis. Admin. PI Chapter 8. Wisconsin law also has parental access and privacy protection laws which are in addition to FERPA. *See* Wis. Stat. § 118.125; Wis. Stat. § 118.126; Wis. Stat. § 118.127; Wis. Stat. § 938.396.

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MODEL POLICY #25

PARENTAL NOTIFICATION OF SCHOOL SAFETY UPDATES

Why Adopt This Policy?

School boards should consider adopting a policy on parental notification of school safety updates to enhance transparency, keep parents informed about measures taken to ensure the safety and well-being of their children, and to promote a partnership between parents and schools. This policy creates a system of when and how to notify parents of updates to school safety. Knowing what measures are being taken to keep children safe can bring great peace of mind to parents away from their children while the children are at school.

Policy

This policy is established to ensure transparent communication between the district and parents regarding updates to school security systems and school safety plans. The school board acknowledges the importance of keeping parents informed about changes that may impact the security of students and staff.

Timely Notification of Updates

The district shall provide parents with timely and comprehensive notifications upon the creation or addition of a school security system and when a school security system receives significant updates or changes. Updates covered under this policy include substantial changes to security protocols, surveillance systems, emergency communication systems, or any other security-related technology or infrastructure. Routine maintenance and minor adjustments that do not significantly impact security do not require notifications.

Content of Notifications: Notifications shall include clear and concise information about the nature of the security system update, the reason for the change, and the potential impact on students, staff, and the school community.

Feedback and Questions

The District Administrator shall provide a designated contact person or department to address questions, concerns, or feedback from parents regarding the security system updates. Response to inquiries shall be prompt and informative.

Teacher Training

The District Administrator shall ensure that a comprehensive training plan is in place that outlines the content, objectives, and methods of training for teachers and staff members in response to security system updates.

The plan shall be designed to ensure that all relevant personnel receive appropriate training before the implementation of security system changes.

The district shall schedule periodic refresher training sessions to reinforce security procedures and accommodate new staff members who join after initial training. Updates to security system technology and protocols shall prompt corresponding training sessions.

The district shall collaborate with security professionals and law enforcement agencies to develop and deliver accurate and up-to-date training content. Expert input shall ensure that training aligns with best practices and current security standards.

Legal Analysis — National

This policy operates supplementary to other school safety plan policies and applicable state and federal laws and does not replace them. This policy enhances parents' rights to be notified about school security system and safety plan updates. The Fourteenth Amendment of the U.S. Constitution recognizes the "inherent right" of parents to "direct the upbringing and education of children under their control." *See Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925).

Legal Analysis — Wisconsin

In Wisconsin, each school board is required to have in effect a school safety plan, there are requirements for school safety drills, and schools are required to have "safe and healthful facilities." *See* Wis. Stat. § 118.07; Wis. Admin. PI Chapter 8. Wisconsin law also has parental access and privacy protection laws which are in addition to FERPA. *See* Wis. Stat. § 118.125; Wis. Stat. § 118.126; Wis. Stat. § 118.127; Wis. Stat. § 938.396.

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MODEL POLICY #26

PLANNING PARENTAL NOTIFICATION FOR SCHOOL TRIPS

Why Adopt This Policy?

School boards should consider adopting a policy outlining procedures for planning field trips and off-campus activities, including requirements for adequate communication with parents. This policy ensures that parents receive timely and comprehensive information about field trips, including safety measures, trip details, and expectations. Specifically, for overnight trips, parents should be informed about sleeping arrangements and how accommodations will be organized based on biological sex.

Policy

Field trips and other off-campus activities, including extended trips, have the potential to further student learning, offer new experiences, and connect students to their communities. This policy is established to ensure clear and comprehensive communication between the school district and parents regarding school trips. The policy aims to provide parents with relevant information about the trip, safety measures, and expectations, fostering trust and transparency in the educational experiences offered by the school.

Definitions:

1. **Field trips** are trips are part of the school curriculum and support the educational program and extend classroom knowledge through firsthand observation and experiences.
2. **Off-campus activities** include optional, school approved student trips (such as an optional trip for music students to view a musical production) and extra-curricular activities (such as through school services clubs and sports competitions).
3. **Extended trips** are those which extend overnight.

Planning and Parental Notice Requirements:

1. **Field trips, off-campus activities and extended trips shall be planned and scheduled to provide students with educational experiences which are related to the instructional goals of classroom programming.**
2. **Field trips, off-campus activities, and extended trips must be pre-approved by the building principal. To obtain approval, a staff member involved in the field trip, off-campus activity or extended trip must submit an application for approval which shall include:**

a. Information about the classes of students attending, number of students expected to attend, and names of district employees planning to attend as supervisors (including information about employees certified in CPR and first aid and any other verification as may be required by state law, i.e. for the administration of medication);

b. The name and address where the trip will be held;

c. A description of the instructional purpose of the trip;

d. A complete, detailed itinerary for the trip;

e. A budget for the trip and whether any fundraising is required;

f. Proposed eating arrangements;

g. If the district will provide transportation, the method of transportation to be used and details of the transportation plan, established in accordance with state law and school policy; and

h. If the trip involves an overnight stay, provide details for sleeping accommodations for the students and supervisors (including chaperones), such that room assignments are based on biological sex.

- For all extended trips, parents shall be notified at least two weeks in advance if an exception is being made to the requirement that sleeping arrangements be arranged by biological sex. See details below.

3. Upon request for approval for a school trip, the building principal shall:

a. Review the request and ensure that all required information has been provided;

b. Determine the appropriateness of activities for the students' age(s) and skill(s);

c. Ensure school district insurance coverage extends to the field trip location and activities; and

d. Sign or authorize district personnel to sign any applicable contracts or agreements.

4. Parental notice of all field trips, off-campus activities, and extended trips shall be provided at least two weeks in advance and shall include:

a. The name and address where the trip will be held;

b. The description of the instructional purpose of the trip;

c. A complete, detailed itinerary for the trip;

d. Potential hazards or safety risks involved with the trip;

e. Cost associated with the trip;

f. Name(s) and contact information for the district employee(s) who will be supervising the trip;

g. Information about qualifications and responsibilities for parents interested in attending as chaperones or accompanying district staff members; and

h. The method of transportation to be used and details of the transportation plan, established in accordance with state law and school policy. Parents must be informed if the district will not be providing transportation (i.e. for optional off-campus activities).

i. For all extended trips, parents shall be notified at least two weeks in advance if an exception is being made to the requirement that sleeping arrangements be arranged by biological sex.

- Parents shall be notified if sleeping arrangements will include a district employee or other supervisor of one biological sex supervising students of the opposite biological sex.

- Parents shall be notified if sleeping arrangements will include a student of one biological sex sleeping in the same room as students of the opposite biological sex.

5. **No child shall be allowed to participate in any field trip, off-campus activity or extended trip without prior written permission from a parent.**
6. **Prior to any field trip, off-campus activity or extended trip, parents may submit questions orally or in writing. Upon determination by the building principal, school board, or superintendent, the field trip organizer shall hold an informational meeting for parents.**
7. **If a field trip, off-campus activity or extended trip will contain programming or content involving a controversial issue, including anything that is the subject of intense public argument, disagreement or disapproval, then the programming and content must:**
   a. Be set forth in the application submitted to the principal and disclosed in the notice to parents;
   b. Be related to the instructional goals of course programming;
   c. Be age-appropriate;
   d. Not indoctrinate or persuade students to a particular point of view;
   e. Encourage analytical thinking and open-mindedness; and f. Not create a hostile educational environment. See legal analysis.

If a student does not participate in a field trip, it will not affect their grade or student evaluation.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as grandparent or stepparent with whom the child lives).

Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis — National

Federal law establishes a baseline for pupil rights. 20 U.S.C. § 1232h. This policy expands on those rights and empowers parents to continue to direct the upbringing of their children, in accordance with the U.S. Constitution. The Fourteenth Amendment of the U.S. Constitution recognizes the "inherent right" of parents to "direct the upbringing and education of children under their control." *See Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925). *See also* 20 U.S.C. § 1232g (Family and Educational Rights and Privacy Act); 20 U.S.C. § 1232h (Protection of Pupil Rights Amendment).

In allowing the discussion of controversial issues during school trips, school administrators should keep in mind that in *Bryant v. Indep. Sch. Dist. No. I-38 of Garvin Cnty., OK*, 334 F.3d 928 (10th Cir. 2003) the court held that deliberate indifference by school administrators to known incidents of racial harassment can constitute intentional discrimination under Title VI and thereby grounds for a private suit. Thus, it is important to ensure that instruction complies with the five requirements herein.

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MODEL POLICY #27

SURVEY NOTICE AND OPT-OUT

Why Adopt This Policy?

School boards should consider adopting this policy to uphold parental rights and protect student privacy by ensuring that no student is required to participate in surveys or evaluations revealing sensitive information without prior parental consent, allowing parents the option to opt their child out of such activities. Additionally, this policy establishes procedures for notifying parents about these activities, providing them with opportunities to inspect certain materials, and make informed decision regarding the participation of their child.

Policy

No student shall be required, without prior written parental consent, to submit to or participate in any survey, analysis, or evaluation that reveals information concerning:

1. political affiliations or beliefs of the student or his/her parents or family members;
2. medical, health information, mental or psychological problems of the student or his/her family;
3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating or demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers;
7. religious practices, affiliations, or beliefs of the student or his/her parents; or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such a program).

If any survey, analysis, or evaluation would reveal information concerning the above categories but is not required, then parental notice shall be provided before any such survey is administered, and parents shall have the opportunity to opt their child out of participating.

Consistent with parental rights, the Board directs building and program administrators to:

1. notify parents in writing of any surveys, analyses, or evaluations, which may reveal any of the information, as identified in A-H above, in a timely manner, and which allows interested parties to request an opportunity to inspect the survey, analysis, or evaluation; and the administrator to arrange for inspection prior to initiating the activity with students;

2. allow the parents the option of excluding their student from the activity;
3. report collected data in a summarized fashion which does not permit one to make a connection between the data and individual students or small groups of students;
4. treat information as identified in A-H above as any other confidential information maintained in student records and therefore not subject to public disclosure.

The Board shall establish procedures to provide parents with the opportunity to inspect any materials created by a third party used in conjunction with any such survey, analysis, or evaluation before the survey/evaluation is administered or distributed by the school to the student. The parent will have access to the survey/evaluation within a reasonable period of time after the request is received.

For the privacy of students whose parents request that they not take part in the survey, arrangements will be made prior to the time period when the survey will be given, for the student(s) to go to a supervised location where under the supervision of a staff member the student will be provided with an alternate activity.

The Board shall not collect or use personal information obtained from students or their parents for the purpose of marketing or for selling that information.

The Superintendent is directed to provide notice directly to parents of students enrolled in the District of the substantive content of this policy at least annually at the beginning of the school year, and within a reasonable period of time after any substantive change in this policy. In addition, the Superintendent is directed to notify parents of students in the District, at least annually at the beginning of the school year, of the specific or approximate dates during the school year when the administration of any survey by a third party that contains one or more of the items described in A through H above are scheduled or expected to be scheduled.

1. The notice shall provide the following:
    a. Notice of the specific or approximate dates during the school year when the following activities are scheduled or expected to be scheduled:
        - activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information (or otherwise providing that information to others for that purpose)
        - the administration of any survey by a third party that contains one or more of the items described in A through H above
2. For surveys that are required - the opportunity for the parents to opt their child(ren) in to participation in any survey involving any of the items above.
3. For surveys that are voluntary - the opportunity for the parents to opt their child(ren) out of participation in any survey involving any of the items above.

For purposes of this policy, the term “parent” includes a legal guardian or other person who is legally responsible for the welfare of the child (such as grandparent or stepparent with whom the child lives).

Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis — National

Federal law requires notice and consent to parents pertaining to some surveys and assessments. This requirement applies to the programs and activities of a local educational agency (LEA) or other recipient of funds under any program funded by the U.S. Department of Education (20 U.S.C. § 1232h, 34 CFR Part 98).

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MODEL POLICY #28

CONTROVERSIAL ISSUES

Why Adopt This Policy?

Freedom to exchange ideas and viewpoints is critical both in education and beyond. School boards should consider adopting this policy to ensure that the consideration of controversial issues in the classroom aligns with educational goals, promotes critical thinking, and respects diverse viewpoints. This policy also implements a procedure to provide effective notice to parents and to honor their rights to opt their child out of instruction related to controversial issues that conflict with their beliefs or values.

Note: *This policy works in coordination with a District's Human Growth and Development Curriculum policy and its Social Emotional Learning Instruction and Parental Notification policy. WILL has also published Model Policies for those two subjects.*

Policy

The Board believes that the consideration of controversial issues has a legitimate place in the instructional program of the District.

For purposes of this policy, a controversial issue means anything that is the subject of intense public argument, disagreement, or disapproval. This includes issues which may have political, social, or personal impacts on students and/or the community, and it includes issues that are likely to arouse both support and opposition in the community.

Properly introduced and conducted, the consideration of such issues can help students learn to identify important issues, explore fully and fairly all sides of an issue, weigh carefully the values and factors involved, and develop techniques for formulating and evaluating positions.

The Board will permit the introduction of controversial issues provided that their use in the instructional program:

1. is related to the instructional goals of the course of study;
2. is age-appropriate for the students;
3. does not indoctrinate or persuade students to a particular point of view;
4. encourages analytical thinking and open-mindedness;
5. does not create a hostile school environment. See legal analysis.

For purposes of this policy, age-appropriate means suitable to a particular group of students based on their developing cognitive and emotional capacity and consistent with adolescent development and community standards.

Controversial issues related to the program may be initiated by the students themselves provided they are presented in the ordinary course of classroom instruction, relate to the topic of instruction, and do not create a hostile school environment.

In the discussion of any controversial issue in the classroom, including during non-instructional time such as school announcements or assemblies or during homeroom or study periods, or in the course of professional duties, an educator must not pressure students to adopt a certain point of view. If an educator expresses a personal opinion on controversial issues, he or she shall identify the opinion as such, and must not express such an opinion for the purpose of pressuring students to adopt his or her point of view.

The Board recognizes that certain controversial issues may contain content that some parents may find objectionable. Educators shall provide effective notice to parents in advance of controversial issues being instructed in the classroom.

Effective notice shall be construed to mean notice sufficiently in advance of instruction such that a parent may opt out of particular units, classes, assemblies or announcements prior to information being presented to the student. If a parent indicates to the school that the content conflicts with his or her religious beliefs or value system, the school will honor a written request for his or her child to be excused from particular units, classes, assemblies or announcements. This will not affect the grade of the student, and the student will be provided alternative learning activities during times of parent-requested absences. See legal analysis. Nothing in this Policy shall be construed to conflict with state or federal law or the District policy on survey administration.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as grandparent or stepparent with whom the child lives).

Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis

Federal law establishes a baseline for pupil rights. 20 U.S.C. § 1232h. This policy expands on those rights and empowers parents to continue to direct the upbringing of their children.

In allowing the discussion of controversial issues, school administrators should keep in mind that in *Bryant v. Indep. Sch. Dist. No. I-38 of Garvin Cnty., OK*, 334 F.3d 928 (10th Cir. 2003) the court held that deliberate indifference by school administrators to known incidents of racial harassment can constitute intentional discrimination under Title VI and thereby grounds for a private suit. Thus, enforcing all five requirements listed above when discussing controversial issues is important.

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MODEL POLICY #29

SOCIAL EMOTIONAL LEARNING INSTRUCTION AND PARENTAL NOTIFICATION

Why Adopt This Policy?

Wisconsin Statue 118.01(2)(d) requires school districts to provide an instructional program designed to address a number of topics including, but not limited to topics that are currently referred to as "social emotional learning" (SEL). It includes things like the "skills needed to cope with social change," the "ability to construct personal ethics and goals," and "knowledge of morality and the individual's responsibility as a social being." Some of these topics have become controversial because of the potential to import politics into education and to permit teachers to discuss issues like gender identity and sexual orientation, "diversity, equity, and inclusion" topics, and mental health discussions that border on psychological counseling of students, among others.

Many parents believe that district personnel "teaching" their children about the "right way" to think about these topics interferes with the parents' right to guide their children's values and upbringing. Most of the curriculum required by Wis. Stat. 118.01(2)(d) is non-controversial but some of it has become extremely controversial. The Board believes that the best way to deal with this is to require transparency and to allow parents to opt out of having their children participate in lessons that deal with topics where the parents disagree with the approach being taken in the classroom. Having a policy on this issue that requires transparency and allows full opt-out rights allows the District to provide a curriculum which fully complies with the Wisconsin statute in a way that protects parents' rights.

Note: *This policy works in coordination with a District's Human Growth and Development Curriculum policy and its Controversial Issues policy. WILL has also published Model Policies for those two subjects.*

Policy

The Board affirms the importance of having an appropriate curriculum for the personal development topics addressed in Wis. Stat. 118.01(2)(d). This includes prioritizing character development and positive behavioral outcomes. The Board also affirms the importance of making sure that parents are informed of such curriculum and that parents have the opportunity to opt out of such curriculum if the parents believe that it is inconsistent with the values they wish to teach their children.

To uphold these commitments, the District shall provide parents with an outline of any teaching or discussion of the topics in Wis. Stat. 118.01(2)(d) that will be used in their child's grade level as well as information regarding how the parent may inspect the complete program and instructional materials. Prior to use in the classroom, the program shall be made available to parents for inspection.

For all units or class providing instruction on the topics in Wis. Stat. 118.01(2)(d), parents shall be provided notice in advance of the instruction and given the opportunity to opt their child out. If the topics are covered in a course designated to cover such topics (such as Human Growth and Development), then the outline for such classes shall be provided for the course at the beginning of the term and parents shall have the opt-out rights set forth in the District's Human Growth and Development Policy. If such topics are to be addressed in a class not designated to cover such topics, then prior to including any curriculum or discussion of such topics in such classes, a designated, parental notice shall be provided in accordance with the District's Controversial Issues policy in advance of any instruction on such issues and the parents have the right to opt out their children from such lessons.

Also, the District Administration shall develop a plan for monitoring curriculum intended to comply with Wis. Stat. 118.01(2)(d) periodically, and the overall program evaluation method of the district shall be reviewed at least annually and revised as appropriate, to assess compliance with this policy. The District Administration shall report to the Board annually on its evaluation. Additionally, District Administration shall establish feedback mechanisms to allow parents and students to report any concerns or instances of non-compliance. Violations of this policy will be addressed, which may include revision or removal of non-compliant content and disciplinary measures for those responsible for its inclusion.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as a grandparent or stepparent with whom the child lives). Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis — National

In order for a federally qualified health center to receive funds, any services provided by a psychologist or social worker must be done by someone who is legally authorized to perform such services under State law or the State regulatory mechanism provided by the law of the State in which such services are performed. 42 C.F.R. § 405.2450. Federally, several bills addressing Social Emotional Learning have been brought over the last several years in Congress, but none have passed so far. *See* 2011 H.R. 2437; 2015 H.R. 497; 2015 H.R. 850.

Federal law also allows parents to receive notice and an opportunity to opt his or her student out of certain surveys and polls, specifically regarding mental and psychological problems, anti-social or demeaning behavior, and more. 34 C.F.R. § 98.4. Under this same federal law, parents have a right to inspect materials that will be used in their children's education. 34 C.F.R. §98.3. Additionally, parents have the right to direct the upbringing of their children, and since SEL instruction is so closely tied with the ethics and values that families instill in their children during their childhood, parents should be given the option to opt out of such instruction. *See Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925).

Legal Analysis — Wisconsin

In Wisconsin, it is required that schools teach "personal development" to students. Wis. Stat. § 118.01(2)(d). However, no person may engage in the practice of psychology, which includes counseling, management of mental and emotional disorders or disability, or social work in Wisconsin without a license. Wis. Stat. §§ 455.02(1m)(a), 455.01(5)(a), 118.19(10)(b) and (c); *See also* Wis. Admin. MPSW § 20.02. Federal law allows parents to receive notice and an opportunity to opt his or her student out of certain surveys and polls, specifically regarding mental and psychological problems, anti-social or demeaning behavior, and more. 34 C.F.R. § 98.4. Under this same federal law, parents have a right to inspect materials that will be used in their children's education. 34 C.F.R. §98.3. Finally, parents have the right to direct the upbringing of their children, and since SEL instruction is so closely tied with the ethics and values that families instill in their children during their childhood, parents should be given the option to opt out of such instruction or it could be an infringement on their rights. *See Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925).

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MODEL POLICY #30

HUMAN GROWTH AND DEVELOPMENT INSTRUCTION AND PARENTAL NOTICE AND OPT OUT (WISCONSIN)

Why Adopt This Policy?

This policy sets a framework to ensure that any instruction in human growth and development aligns with state law, promotes medically accurate and age-appropriate instruction, involves parental input through an advisory committee, and provides parents with the opportunity to inspect and opt their child out of such instruction if desired. This policy promotes transparency and a clear process that prioritizes student learning and respects parental rights.

Note: *This policy works in coordination with a District's Controversial Issues policy and its Social Emotional Learning Instruction and Parental Notification policy. WILL has also published Model Policies for those two subjects.*

Policy

The School Board shall determine on a yearly basis whether students will receive instruction in human growth and development. If the School Board elects to provide an instructional program in human growth and development, it shall be administered in a manner consistent with Chapter 118.019 Wis. Stats, and must include the following:

1. Medically accurate and age-appropriate instruction in the following topics:
    a. The importance of communication about sexuality between the pupil and the pupil's parents or guardians.
    b. Reproductive and sexual anatomy and physiology, including biological, psychosocial, emotional, and intellectual changes that accompany maturation.
    c. The benefits of and reasons for abstaining from sexual activity. Instruction under this subdivision shall stress the value of abstinence as the only reliable way to prevent pregnancy and sexually transmitted infections, and shall identify the skills necessary to remain abstinent.
    d. Methods for developing healthy life skills, including setting goals, making responsible decisions, communicating, and managing stress.
    e. How alcohol and drug use affect responsible decision making.
    f. The impact of media and one's peers on thoughts, feelings, and behaviors related to sexuality.

   g. Adoption resources, prenatal care, and postnatal supports.

   h. The nature and treatment of sexually transmitted infections.

2. Use of instructional methods and materials that do not discriminate against a student based upon the student's race, gender, religion, sexual orientation, or ethnic or cultural background or against children with disabilities;
3. Use of instructional methods and materials that address self-esteem, personal responsibility, healthy relationships, and positive interpersonal skills, with an emphasis on healthy relationships;
4. Identification of counseling, medical, and legal resources for survivors of sexual abuse and assault, including resources for escaping violent relationships;
5. Use of instructional methods and materials that address the positive connection between marriage and parenting;
6. Presentation of information about avoiding stereotyping and bullying, including how to refrain from making inappropriate remarks, avoid engaging in inappropriate physical or sexual behaviors, and how to recognize, reject, and report any unwanted or inappropriate remarks or physical or sexual behaviors.

The Superintendent will ensure that any instruction provided under this policy also includes age-appropriate instruction that specifically fulfills the requirements of Chapter 118.019(2m) Wis. Stats., including:

1. Presentation of abstinence from sexual activity as the preferred choice of behavior for unmarried students;
2. Emphasis that abstinence from sexual activity before marriage is the only reliable way to prevent pregnancy and sexually transmitted diseases, including human immunodeficiency virus and acquired immunodeficiency syndrome;
3. Provision of instruction in parental responsibility and the socioeconomic benefits of marriage for adults and their children;
4. Explanation of pregnancy, prenatal development, and childbirth;
5. Explanation of the criminal penalties for engaging in sexual activities involving a child under Ch. 948, Wis. Stats.;
6. Explanation of the sex offender registration requirements under Section 301.45;

   a. Instruction under this paragraph shall include who is required to report under 301.45, Wis. Stats., what information must be reported, who has access to the information reported, and the implications of being registered under Section 301.45, Wis. Stats.

7. Provision of medically accurate information about the human papilloma virus and the human immunodeficiency virus and acquired immunodeficiency syndrome;
8. Explanation of the process under Section 48.195 under which a parent of a newborn child may relinquish custody of the child to a law enforcement officer, emergency medical services practitioner, or hospital staff member.

The Board authorizes the curriculum to include separation of students from members of the opposite sex.

Upon the determination of the board to offer a human growth and development curriculum, the board shall establish a citizens' advisory committee, in accordance with 118.019(5), Wis. Stats., in order to ensure the effective

participation of staff, parents, health care professionals, members of clergy, and other residents of the District in the design and implementation of this program area.

The District shall provide parents or guardians at least annually, at the beginning of the school year, with an outline of the human growth and development program used in their child's grade level as well as information regarding how the parent may inspect the complete program and instructional materials. Prior to use in the classroom, the program shall be made available to parents for inspection.

Parental notice of human growth and development topics shall be provided for any instruction on the topics listed in Wis. Stat. § 118.019. For all units or classes providing instruction on such topics, parents shall be provided notice in advance of the instruction and given the opportunity to opt their child out, regardless of whether the class is specifically a "human growth and development" class or not. The notice shall state that, in the event a student is excused, that student will still receive instruction on hygiene, sanitation, the effects of controlled substances and alcohol on the human system, symptoms of disease, and the proper care of the body (under Wis. Stat. § 118.01(2)(d)(2c)) and on knowledge of effective means to recognize, avoid, prevent, and halt physically or psychologically intrusive or abusive situations which may be harmful to students including child abuse, sexual abuse, and child enticement (under Wis. Stat. § 118.01(2)(d)(8)), unless exempted.

If a parent opts his or her child out from participating in all or part of the human growth and development curriculum, or any class that teaches the topics covered in Wis. Stat. § 118.019, the District shall not penalize the student in any way for not taking the instruction. However, if the human growth and development course is a required course for graduation, the Board may require the student to complete "a similar assignment that is similar in length of time necessary to complete." Wis. Stat. § 118.01(2)(d)2.c.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as grandparent or stepparent with whom the child lives).

Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis

This policy is based on Wisconsin law. *See* Wis. Stat. §§ 118.019, 118.01(2)(d)(2c), 118.01(2)(d)(8), and 118.01(2)(d)2.c. Laws regarding this type of instruction are generally state-specific.

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MODEL POLICY #31

HUMAN GROWTH AND DEVELOPMENT ADVISORY COMMITTEE (WISCONSIN)

Why Adopt This Policy?

If a Wisconsin school district adopts a human growth and development curriculum, the district must have an advisory committee. The only information available on this advisory committee is located at Wis. Stat. § 118.019(5), which is arguably both very descriptive and very vague. This policy sets up clear guidance and best practices for a school board on how to assemble the advisory committee, indicates who must be on the committee, and clarifies the role of the committee.

Policy

This school board has elected to include a Human Growth and Development (HGD) curriculum to be taught in its schools. As such, an ad hoc advisory committee shall be appointed by the school board to (a) review the HGD curriculum for the district and then (b) advise the board on the implementation and design of the curriculum.

To assemble the committee, the school board will inform the district community that it is assembling an advisory committee. The school board will work with district administration to create an application form for individuals who wish to serve on the committee. Interested individuals can request to be considered for the committee through the application form by the date set by the school board.

Because age-appropriateness of the HGD curriculum must be considered consistent with community standards, only committee members that reside in the district, or are otherwise part of the district (teachers, students, administrators, etc.) will be considered for the committee.

The advisory committee must be made up of parents, teachers, school administrators, pupils, health care professionals, members of the clergy, and other residents of the school district. No one category of member shall constitute more than one fifth of the membership of the committee, except parents may constitute more than one fifth of the membership. No more than one quarter of the committee may be made up of employees of the school district or their spouses, or members of the school board or their spouses.

No one advisory committee member has ultimate authority, but the committee may decide to select a leader to facilitate review of the curriculum and make a recommendation to the board.

Committee members should review all the curricula and instructional materials used to teach any of the recommended or required topics in § 118.019 when taught in any class in the district. For purposes of this policy, “instructional materials” means instructional content that is provided to a student, regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the internet). This includes copyrighted materials used by a teacher, materials created by a teacher, and any tests or assessments.

The advisory committee should meet as needed to review the curriculum, but at least once every three years. If new curriculum is considered, the advisory committee shall meet to review and advise the board regarding its implementation.

Whenever a substantive change or update is considered, the HGD advisory committee must review the change and make a recommendation to the Board. The Board will then decide whether to implement the change. A substantive change includes adding an additional topic to be taught, updating a change in medical perspective, or changing a medical definition. Updating statistics to be accurate and relevant does not count as a substantive change and does not need to be reviewed by the committee and approved by the Board to be included in the curriculum.

The advisory committee should agree on a verbal or written presentation to the school board. At least one member of the committee shall be present to respond to any questions from the school board.

The committee is advisory, and the school board has the authority to make the final decision on whether to adopt the HGD curriculum and its contents.

Enforcement and accountability: If a parent or district taxpayer believes there is an issue with the advisory committee, they shall submit a request in writing to the school board. The request must explain the concern regarding the committee and include any applicable state laws or regulations. Upon receipt of this letter, the school board must include the concern on school board meeting agenda within 60 days of letter being received.

The HGD advisory committee meetings must adhere to Wisconsin's open meetings laws. As such, meetings must be noticed at least 24 hours in advance, including the date, time, place, and subject matter of the meeting. Anyone, regardless of whether he or she is on the committee or lives in the community, can attend these meetings.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as a grandparent or stepparent with whom the child lives). Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis — National

This policy is based on Wisconsin law. There are no federal laws that require local school districts to have human growth and development advisory committees or dictate requirements for them. Most laws regarding human growth and development or sexual education instruction are state-specific.

Legal Analysis — Wisconsin

Instruction of Human Growth and Development (HGD) is not required of Wisconsin public schools. Wis. Stat. 118.019(2). If a school elects to teach HGD, an advisory committee must be appointed by the board to review and recommend the design and implementation of the HGD curriculum. Wis. Stat. § 118.019(5). Most governmental committees such as HGD advisory committees are considered "authorities" subject to Wisconsin's public records and open meetings laws. Wis. Stat. § 19.82(1); *See also*, *State ex rel. Krueger v. Appleton Area Sch. Dist. Bd. of Educ.*, 2017 WI 70, 376 Wis. 2d 239, 898 N.W.2d 35.

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MODEL POLICY #32

STUDENT GENDER IDENTITY AND PARENTAL NOTIFICATION AND CONSENT

Why Adopt This Policy?

School boards should consider adopting this policy to respect parental rights in determining how their children are referred to at school, ensuring clarity and consistency in communication. Importantly, this policy recognizes the limits of school personnel in diagnosing or treating gender confusion or gender dysphoria of minor students. This policy emphasizes parental autonomy in seeking professional support for their child. It also acknowledges the transition of rights to students who are legally adults.

Policy

Parents have the right to determine the names and pronouns that staff use to refer to their children while at school. Staff shall not refer to or address minor students by a different name or pronouns that differ from their biological sex, during school hours, without written authorization from a parent. The document authorizing the change of name and/or pronoun shall be kept on file in the administrative offices. This policy does not require parental consent for shortened versions of the legal name of a student.

The District shall not be responsible for the diagnosis and treatment of gender dysphoria. The Board acknowledges that District staff and volunteers are not experts in diagnosing or treating gender dysphoria or related mental health conditions. Parents have the right to determine whether to seek professional and medical support for their child.

If District personnel have reason to believe that a student is seeking to transition or has begun to socially transition to a gender that differs from his or her biological sex, personnel may, but are not required to, inform parents.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child (such as grandparent or stepparent with whom the child lives).

Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis — National

The Fourteenth Amendment of the U.S. Constitution recognizes the "inherent right" of parents to "direct the upbringing and education of children under their control." *See also Meyer v. Nebraska*, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923); *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (U.S. 1925).

Legal Analysis — Wisconsin

WILL recently won a lawsuit on this issue. In *T.F., et. al. v. Kettle Moraine Sch. Dist.*, the Court found that parents have a fundamental liberty interest in the decisions regarding care, custody, and control of their children, and that school districts cannot supplant a parent's rights to control the healthcare and medical decisions for their children. As such, the school district could not socially transition a child against the parents' wishes. Specifically, the court said, "[t]he School District could not administer medicine to a student without parental consent. The School District could not require or allow a student to participate in a sport without parental consent. Likewise, the School District cannot change the pronoun of a student without parental consent without impinging on a fundamental liberty interest of the parents."

The court agreed with WILL experts that social transitioning is a powerful psychotherapeutic intervention which should usually be preceded by a mental health professional conducting a psychological assessment in order to assess the benefits and challenges of such a transition. Thus, whether to address a child as the opposite sex is undisputedly a medical and healthcare issue.

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MODEL POLICY #33

EMPLOYEE USE OF STUDENT PRONOUNS

Why Adopt This Policy?

School boards should consider adopting this policy to uphold parental rights in determining how their children are addressed at school, while also respecting the free speech and beliefs of professional staff members. This policy provides a framework for finding a balanced approach that respects various viewpoints and sincerely held beliefs, while ensuring respect for the dignity of all students and rights of district parents.

Policy

Parents have the right to determine the names and pronouns that staff use to refer to their children while at school. Subject to the provisions of the following paragraph, professional staff members must address students by the name and pronouns as indicated by the student's parents.

In addition to respecting parents' rights to direct the upbringing and education of their children, the district also respects the rights of its professional staff members to free speech and to teach while remaining consistent with their sincerely held beliefs and religious practices. Any professional staff member that has an objection to using names and pronouns which correspond with a gender identity inconsistent with the biological sex of a student will not be forced to do so. Instead, professional staff members may refer to a student by last name or other neutral means as approved by the building principal, with a focus on finding a balance between accommodating sincerely held beliefs and religious practices and respecting the dignity of students and rights of all parents.

The district will not discipline teachers for refraining from using the preferred names and pronouns of students if doing so would conflict with teachers' sincerely held beliefs.

For purposes of this policy, the term "parent" includes a legal guardian or other person standing in loco parentis (such as grandparent or stepparent with whom the child lives, or a person who is legally responsible for the welfare of the child).

Rights under this policy transfer from the parents to a student who is 18 years old or emancipated under state law.

Legal Analysis

The Fourteenth Amendment of the U.S. Constitution recognizes the "inherent right" of parents to "direct the upbringing and education of children under their control." *See Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925).

With respect to rights of professional staff members, courts have held that the government cannot compel speech that contradicts individuals' sincere beliefs. *See also 303 Creative LLC v. Elenis*, No. 21—476, Slip Op. (June 30, 2023) (holding that the State of Colorado could not use its public accommodations law to compel a graphic artist to speak message that contradicts her beliefs and stating that our commitment to free speech does not allow "a government to coerce an individual to speak contrary to her beliefs on a significant issue of personal conviction"); *West Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 640 (1943) (holding that the Constitution forbids the state from using the public schools as a tool "to coerce uniformity of sentiment in support of some end thought essential" by the government); *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (stating that "the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all").

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MODEL POLICY #34

EMPLOYEE EXPRESSION IN NON-SCHOOL SETTINGS

Why Adopt This Policy?

School boards should consider adopting a policy acknowledging the free speech rights of district staff to discuss issues of public concern in non-school settings and establish guidelines for when the district may take adverse action based on an employee's speech outside of school. This policy ensures clarity and fairness in addressing matters related to employee expression outside of school. This approach promotes transparency, protects constitutional rights, and maintains a balance between employee expression and organizational interests.

Policy

The School Board acknowledges the right of its professional staff members, as citizens in a democratic society, to speak out on issues of public concern in non-school settings. The District issues this policy to balance its employees' right to free speech against the District's interests in an efficient, disruption-free workplace.

Consistent with this balance, there are certain limited occasions when the statements of District employees, even in non-school settings, and on issues of public concern, can adversely affect the District and when the District may take action adverse action against the employee.

These include, but are not limited to:

1. Where the employees speaks as an employee of the District rather than as a private citizen;
2. Where the employee makes threats or abusive comments about co-workers, administrators, officials in the District, students, or parents or guardians of students;
3. Where the employee discloses any confidential information that the employee has obtained during the course of his or her employment with the District;
4. Where the employee makes statements that are false and defamatory; or
5. Where the employee makes statements that so disrupt the employee's workplace that the District is justified in taking adverse action against the employee.

Violations of this policy, as determined by the Board to be sufficiently severe and disruptive, may result in disciplinary action.

Legal Analysis

Public employees do not surrender all their First Amendment rights by reason of their employment; Rather, the First Amendment protects the right of a public employee to speak as a citizen addressing matters of public concern. *Garcetti v. Ceballos*, 547 U.S. 410, 126 S. Ct. 1951, 164 L.Ed.2d 689 (2006). Teachers may not constitutionally be compelled to relinquish First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public school in which they work. *Pickering v. Board of Education of Tp. High School Dist. 205*, Will County, Illinois, 391 U.S. 563, 88 S. Ct. 1731, 20 L.Ed.2d 811 (1968). In determining a public employee's rights of free speech, courts balance interests of the employee as a citizen, commenting upon matters of public concern, and the interest of the employer, in promoting the efficiency of the public services it performs through its employees. *Connick v. Myers*, 461 U.S. 138, 103 S. Ct. 1684, 75 L.Ed.2d 708 (1983).

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