



Book	Policy Manual
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## INDIANA OVERVIEW AND COMMENTS

### Volume 33, Number 2 May, 2021

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This update includes proposed revisions to seventeen (17) policies, one (1) new proposed policy, proposed revisions to four (4) administrative guidelines, and four (4) Legal Alerts. The proposed revisions to current policies as well as the new policy and revised guidelines that are provided are the result of our ongoing work with our Indiana clients, as well as our ongoing review of statutory language at the State and Federal level, court decisions, et cetera. The revisions recommended in this update are deemed necessary to comply with changes in the law, both State and Federal.

Legislation approved during the last legislative session has been the subject of scrutiny by Neola and its Indiana outside counsel, Karen Glasser Sharp of Lewis Kappes. As is our practice, Neola will make revisions to policies and guidelines impacted by legislation passed in the most recent session of the General Assembly in the update that follows this Fall.

For ease of use, the policies, guidelines, and legal alerts in this update are organized in numerical order in the sub-folder that has been posted in the School Corporation's folder on the VPN or in the hard copy packet if your Corporation still chooses to receive its material in that form.

However, policies from multiple sections are grouped together in this Overview when and if the explanation is the same for the proposed revisions to a group of policies/guidelines.

### Questions?

Any content-related questions should be directed to your Corporation's associate.

All production related questions should be directed to the Coshocton Production Office at 632 Main Street, Coshocton, Ohio 43812 (email [production@neola.com](mailto:production@neola.com), phone 800-407-5815, fax 740-622-2557).

Billing questions should be directed to the Corporate Office at 3914 Clock Pointe Trail, Suite 103, Stow, Ohio 44224 (email [tkee@neola.com](mailto:tkee@neola.com), phone 330-926-0514, fax 330-926-0525).

## The Update Material

The proposed new and revised policies included in this update have been thoughtfully prepared and have been reviewed by Lewis Kappes, Neola's outside legal counsel in Indiana, for compliance with Federal and State law, Federal and State Regulatory Agencies, and applicable Federal and State court decisions.

If you make substantive changes to a Neola template, or substitute in its entirety a policy or other material of your own drafting, that material should be reviewed by the legal counsel for your Corporation to verify compliance with applicable laws, regulations and court decisions. Neola does not review any Corporation-Specific Material.

If the Corporation authors language and adds it to a policy template or deletes content that is not marked as a choice in the policy template, then these actions will constitute Corporation-specific edits. Neola does not review Corporation-specific edits to update materials or Corporation-specific policies for statutory compliance. (See "Caveat RE: Corporation-Specific Edits" below.)

If a policy or guideline is marked revision, the proposed revisions will include material to be added and material to be deleted. As you review a revised policy or guideline, you may choose to accept one, many or all of the changes presented.

If a policy or guideline is marked as a replacement, that means there have been enough changes made that instead of showing each individual change, a complete, clean replacement copy has been provided. As you review a replacement policy or guideline, you should also compare the replacement materials to your current policy or guideline to determine if there is some Corporation-specific wording in your current material that you want included in the replacement policy. If so, any wording from the current policy should be added using BoardDocs "Track Changes" tool before returning the replacement policy electronically to the Coshocton production office for processing.

Policies that are to be deleted from the Corporation's Board-adopted Policy Manual require School Board action to rescind the policy.

Your Neola Associate will contact you in the near future to schedule an appointment to review this update and ensure you are current on this and previous updates.

If you are not an administrative guidelines client, you did not receive those materials in this packet. Contact your Associate for more information about becoming an administrative guidelines client.

## Submitting Material

The Corporation can incorporate the proposed edits in the Update documents into the Corporation's current policies using "Track Changes" or the editing tool in the BoardDocs platform. Mark the current materials indicating which of the proposed revisions and additions you choose to include and/or to make additional edits, before presenting them to the Board for adoption. After adoption, return the materials on the BoardDocs policy site to Neola for processing and publishing. Please be sure to leave the "track changes" in the marked-up version that you submit to the production office in Coshocton, Ohio.

Please remember to email [production@neola.com](mailto:production@neola.com) when you've posted your material and the disposition sheet so we know to go to your folder and retrieve it, and what we can expect to find there when we access it.

Please note, even if a Corporation chooses not to include a policy or administrative guideline in their management documents that describes a statutory requirement, the Corporation still is obligated to follow applicable Federal and State laws relating to that policy or guideline.

## Caveat RE: Corporation-Specific Edits

Please note also that if the Corporation chooses during any step of the Update process to incorporate Corporation-specific material into a new policy that has been proposed or insert Corporation-specific material into a current policy for which revisions have been proposed in an update issued by Neola, then the Corporation agrees to hold Neola harmless for those Corporation-specific edits and acknowledges that Neola's Warranty for legal challenges to the Corporation-specific language in that policy will be voided. In addition, Neola retains ownership of the text from the original policy template that remains in a policy to which Corporation-specific edits have been made. Corporation-specific materials include the following:

1. materials from the existing materials for the Corporation that the Corporation requests be incorporated into Neola templates during the drafting process;
2. new policies or guidelines developed in their entirety by the Corporation, exclusive of Neola; and
3. revisions to or deletions from a Neola template that substantively depart from that template.

Further, Neola does not advocate the use or incorporation of Corporation-specific materials. Neola will, at the request of the Corporation, incorporate Corporation-specific materials into the licensed materials, with the implicit understanding that the Corporation accepts all risks associated with the decision to request that such Corporation-specific materials be incorporated. Neola reserves the right to, but is not obligated to, advise the Corporation to seek its own legal review of Corporation-specific materials by the school board attorney who represents the Corporation. And Neola retains the copyright to any intellectual property from its template.

## **Caveat RE: Neola's Warranty**

Neola proudly warrants that the content of the policy templates is legally correct.

However, when Federal and State law is amended or new provisions are added to State or Federal law and revision or replacement of an existing policy template is necessitated, the copyright date noted at the end of the policy is updated as well.

Please note, Neola's warranty applies only to the policy template with the most current copyright date. All previous iterations of the policy template are no longer warranted.

Therefore, material included in each update should be adopted if the Corporation wants assurance that their adopted policies are warranted by Neola.

## **Notifying Neola of a Challenge to the Legal Accuracy of a Policy**

The Neola staff in Indiana is vigilant in providing policy language to our clients that has been vetted for legal accuracy by our outside counsel. Should questions arise as to the legal compliance or accuracy of Neola materials, it is our expectation that our outside counsel would have the opportunity to assist in the resolution of such a claim. That can occur only if we are notified immediately upon receipt of such a challenge. Please notify Neola's corporate office (330-926-0514) if an issue arises in which such a review or assistance is necessary. To be eligible for assistance under our warranty we must be notified with ten (10) business days of the receipt of such a challenge.

## **Social Media (Policy/AG 7544) Revisited**

In November 2019 a collection of policies were prepared by a team of twenty-two (22) lawyers, IT experts and Neola staff to provide Corporations with a means to establish controls that govern the use of social media in their Corporation. These policies and related documents were released as a Special

Update specifically relating to Social Media in November 2019 along with a toolkit for use with these policies.

Although regulating an employee's personal use of social media is possible only in the narrowest of circumstances, establishing rules about employees' use of social media as it relates to communication regarding the business of the Corporation is something that schools can, and in Neola's judgment, should do.

Three existing policies also were suggested for revision in the Social Media Special Update. A comprehensive definition of "social media" was added to Bylaw 0100 Definitions, and the definition of "apps and services" was revised as well. Additionally, revisions were proposed for Policy 7540 Technology to replace the previous definition of "social media." Finally, revisions were made to Policy 7540.04 Staff Technology Acceptable Use and Safety so that the language is current and compliant with the new social media policy.

While the suggested revisions were put in place before a global pandemic pushed Corporations to utilize on-line learning platforms and more virtual methods of engagement with students, parents, and the community, such use makes consideration of these materials even more important today.

Although the new and revised policies have been thoughtfully prepared and reviewed by Neola's legal counsel for statutory compliance, each Corporation must decide what specific language to include in its own unique policy collection.

It is highly recommended that at this juncture the Corporation reevaluate the materials in the updates referenced above that are still available on each Corporation's BoardDocs platform. While much thought will be necessary to consider these new materials and revised policies, each Corporation should take the time necessary to be sure that there is adequate policy guidance provided for current use of social media technology and applications.

In the next update, Neola will revisit Policy 5722 – School Sponsored Publications and Productions and issue a revised document and toolkit. The social media policy materials issued in November 2019 played a large role in the development of the revised Policy 5722 materials.

Therefore, it is highly recommended that at this juncture the Corporation reevaluate the materials in the update from November 2019 that are still available on each Corporation's BoardDocs platform and consider the Corporation and school level application of these technologies.

## Title IX/Nondiscrimination/Anti-Harassment

This update includes a revised version of Policy 2266 - **Nondiscrimination on the Basis of Sex in Education Programs or Activities (Title IX) due to the updated definition of "rape" under Federal law.** Forms related to the complaint process and investigation procedures in Policy/AG 2266 and in the nondiscrimination/anti-harassment policies included in the Special Update - Nondiscrimination and Anti-Harassment - May 2021, along with a Title IX Toolkit, will be made available to you separately upon adoption of Policy 2266. **If your Corporation already has adopted Policy 2266, you now have access to these forms and the toolkit. Please contact your Corporation's associate with any questions about those forms and the Title IX Toolkit.**

## Reminders

- A. Indiana's minimum wage is currently \$7.25 an hour, however, there is a bill with the Indiana General Assembly that, if passed, would raise the minimum wage to \$10.00 an hour starting June 30, 2021 and again increase to \$13 by 2022 and \$15 by 2023.
- B. The Internal Revenue Service (IRS) issued Notice 2020-279 which provides the 2021 mileage rate at 56 cents per mile for business travel (1.5 less than 2020 rate).

c. The U.S. Department of Labor maintains regulatory authority over State and local government employers, including public school corporations. Note that the following Federal laws have poster requirements which apply to school corporations (no federal or federally-assisted contracts or subcontracts):

1. The Employee Polygraph Protection Act (EPPA)
2. The Fair Labor Standards Act (FLSA) Minimum Wage Notification
3. The Family and Medical Leave Act (FMLA)
4. Uniformed Services Employment and Reemployment Rights Act (USERRA)
5. Occupational Safety and Health Act (OSHA - Workplace Safety)
6. Whistleblower Protections

In addition, certain organizations may be required to display posters that can be obtained only from DOL's Office of Workers' Compensation Programs (OWCP). More information on these posters is available. Links to all Federal employment posters are always available on the Poster Page as are answers to frequently asked questions. Note that corporations with federal or federally-assisted contracts or subcontracts may have additional requirements.

## Legal Alerts

1. Important Questions About COVID-19 Vaccination Programs;
2. Use of Facial Recognition Technology in School Settings;
3. Legal Issues that School Officials and Employees Need to be Aware of When Using Social Media; and
4. Student Employment.

## BYLAWS AND POLICIES

### **Bylaw 0112 - Purpose (Revised)**

This Bylaw has been revised to provide two options. One option is for school corporations that accept transfer students pursuant to Board Policy 5111. The other option is for those school corporations that elected not to accept transfer students per Board Policy 5111.

The revision to this Bylaw should be recommended by the Superintendent and adopted by the Board in order to have Bylaw 0112 conform to the option selected in Board Policy 5111.

### **Policy 1220 - Employment of the Superintendent (Revised)**

### **Policy 3120 - Employment of Professional Staff (Revised)**

### **Policy 4120 - Employment of Support Staff (Revised)**

These policies have been revised to update the language in the anti-nepotism provisions regarding family members and to add an optional non-fraternization provisions. Further, Board Policy 1220 has been revised to add an anti-nepotism provision not previously included. Additionally, Board Policy 3120 has been revised to reflect that the qualifications for teachers have changed due to the passage of the Every Student Succeeds Act (ESSA), including that the requirement of highly qualified teachers applies only to Title I teachers.

The proposed revisions to these policies should be recommended for adoption by the Superintendent and adopted by the Board to remain up-to-date and to permit the Board to adopt a non-fraternization policy if it chooses.

### **Policy 2240 - Controversial Issues (Revised)**

Because we have seen an increase in the discussion of controversial issues in the classroom, it was time to update this policy, last revised in 1993. The proposed revisions are intended to limit discussion of controversial issues to topics related to the curriculum and to remind teachers of the importance of maintaining the role of exemplar when expressing personal opinions in the classroom.

The proposed revisions to these policies should be recommended for adoption by the Superintendent and adopted by the Board to remain current.

### **Policy 2266 – Nondiscrimination on the Basis of Sex in Education Programs or Activities (Revised)**

This policy has been revised to reflect the recognized definition of "Rape" as of January 2021, deleting the original reference to the definition required by the Clery Act at the time of the release of the regulations in May 2020. The revised definition is that provided by the National Incident-Based Reporting System (NIBRS). Also, there is a suggested revision in the Appeals section of the policy. While the current regulation does not specifically address the implementation of remedies during the appeals process, it seems to be inappropriate to impose disciplinary sanctions while an appeal is pending.

These revisions are recommended for adoption.

### **Policy 4425 - Nursing Mothers (New)**

This new policy has been added pursuant to the provisions of Federal law that require a Corporation to permit additional unpaid break time for support staff members for the purpose of breastfeeding or to express milk.

This new policy is recommended for adoption.

### **Policy 4430 - Leaves of Absence (Technical Correction)**

This policy has been modified to correct a word misplacement in the prior version.

This is a technical correction that should be incorporated in the Corporation's policy for consistency.

### **Policy 5111 - Determination of Legal Settlement and Eligibility for Enrollment of Students without Legal Settlement in the Corporation (Revised)**

This policy has been revised to include information regarding the verification of Indiana residency documentation required by the Indiana Department of Education (IDOE). This information is to be collected for each student submitted for the State Average Daily Membership (ADM) count. The collected information is to be retained in the student file for each counted student.

The Superintendent should recommend this policy revision, and the Board should adopt the revised policy to comply with the IDOE requirements on documentation of verification of residency.

### **Policy 5410 - Promotion, Placement and Retention (Revised)**

This policy has been revised to clarify that the Corporation has an obligation to ensure any decision regarding retention is made in accordance with the student's IEP or service plan, per State law, in addition to providing for an option that requires those decisions be made by the case conference committee if the Corporation prefers.

The Superintendent should recommend the Board adopt the revised policy, and the Board should adopt the revised policy to ensure compliance with State law.

### **Policy 6250 - Required ADM Counts for the Purpose of State Funding and Verification of Residency for Membership (Revised)**

This policy has been revised to incorporate the requirements for verification of Indiana residency listed in the August 27, 2020 memorandum issued by the IDOE, which provided guidance on this subject.

The Superintendent should recommend and the Board should adopt the revised policy.

### **Policy 7440.01 – Video Surveillance and Electronic Monitoring (Revised)**

Due to the significant increase in the use of virtual/online learning, this policy has been issued to allow a Corporation to use prerecorded lessons or observations of online or virtual learning sessions as part of an employee's evaluation, subject to discussion with the exclusive representative of the Corporation's teachers prior to adoption of this policy.

It is advisable for the Superintendent to recommend and the Board to approve adoption of the revised policy.

### **Policy 7450 - Property Inventory (Revised)**

### **Policy 7455 - Accounting System for Capital Assets (Revised)**

In December 2014, the U.S. Department of Education (ED) released the newly updated Education Department General Administrative Regulations (EDGAR). This major rewrite of the regulations was issued after nearly 40 years of very little change in the compliance measures that federally funded programs must meet. The regulations covered the application process, financial management, procurement, inventory management, time and effort accountability, cost allowability, record retention, and program oversight.

The Office of Management and Budget (OMB) has now revised sections of OMB Guidance for Grants and Agreements, also known as Uniform Grant Guidance (UGG). Proposed changes to 2 C.F.R. Part 200 were published in the Federal Register in January 2020, comments closed on March 23, 2020, and Final Revisions were published in August 2020. Despite the intervening pandemic, OMB released its final revisions to the Uniform Grant Guidance (2 C.F.R. Part 200) right on schedule! The revisions continue the OMB's push for results-oriented accountability for grants, significantly rewrite the sections on procurement, and attempt to clarify prior requirements, including provisions related to period of performance and indirect costs. The revised rules became effective November 12, 2020.

These revisions reflect changes outlined in the President's Management Agenda (PMA). This guidance is intended to focus on improved stewardship and ensuring that the American people are receiving value for funds spent on grant programs. The revisions are limited in scope to support implementation of statutory requirements, alignment of these provisions with other Federal requirements, and clarification of existing requirements to minimize risk in financial transactions.

These new regulations require some revision to current policies. The greatest focus, however, will continue to be on compliant written procedures relative to many of the financial and program management functions. These procedures will necessarily be corporation-specific, providing a clear picture of how these functions are carried out in the Corporation.

Neola has conducted a thorough review of policy and administrative guidelines templates and will be providing any additional appropriate revisions and modifications in future updates to assist Corporations in meeting compliance standards put forth by EDGAR.

Neola will, upon request, process and post corporations' procedures/manuals as electronic links to provide for convenient flow from policy to administrative guidelines to corporation procedure.

### **Policy 7530.02 - Staff Use of Personal Communication Devices (Revised)**

The policy has been revised to comply with House Enrolled Act (HEA) 1070 (2020) and I.C. 9-21-8-59. Some options in the policy in the subsection entitled "Safe and Appropriate Use of Cell Personal Communication Devices, Including Cell Phones" have been removed and replaced with required language that complies with the above-cited HEA and Indiana Code provision.

The Superintendent should recommend, and the Board should adopt the revision to comply with the current law in Indiana.

### **Policy 8500 – Food Services (Revised)**

This policy has been revised to add the emphasis being sought by the United States Department of Agriculture (USDA) to prohibit stigmatizing students who lack the funds to pay for their meal or have unpaid meal charges.

This revision is recommended for adoption.

### **Policy 8510 - Wellness (Revised)**

Revisions to this policy reflect updated requirements for evaluation and review of Corporation wellness policies (at least every three years) and the updated regulations issued by the U.S. Department of Agriculture (USDA). These regulations provide the basis for USDA review and monitoring of Corporation compliance with the Health and Hunger-Free Kids Act. WELLSAT:3.0 is the assessment tool widely used to audit school wellness policies.

These revisions reflect the updated USDA regulations and are recommended for adoption.

### **Policy 8606 - Bus Drivers and Cellular Telephone Use (Revised)**

Like Policy 7530.02, this policy has been revised to comply with HEA 1070 and I.C. 9-21-8-59.

The Superintendent should recommend the revised policy, and the Board should adopt the revised policy to comply with the current Indiana law.

## **ADMINISTRATIVE GUIDELINES**

### **AG 4162A - Alcohol Testing Program for CDL Holders and Employees Who Perform Safety-Sensitive Functions - (Technical Correction)**

The revision to this administrative guideline is purely a technical correction of an erroneously omitted word in the previous draft.

The Superintendent should make the technical correction to this administrative guideline.

### **AG 5111.01 - Homeless Students (Technical Correction)**

The revisions to this administrative guideline are solely technical corrections of capitalization errors in the previous draft.

The Superintendent should make the technical corrections to this administrative guideline.

### **AG 8500B – Meal Charge Accounts Procedures (Revised)**

See note on Policy 8500. The revision clarifies that a student may receive meals even if there is a significant negative lunch account balance; however, collection efforts must be commenced.

The Superintendent should adopt the revised administrative guideline.

### **AG 8600B - Bus Safety Procedures (Revised)**



This administrative guideline has been revised to comply with amendment of the Indiana Code provision on the use of telecommunication devices while operating a moving motor vehicle (I.C. 9-21-8-59), which provides that holding such a device while driving is prohibited.

This revised administrative guideline should be approved by the Superintendent.