

## MEMORANDUM SRS-492

To: School Board Members

FROM: Office of the Superintendent

DATE: April 29, 2009

SUBJECT: School Board Policy 5121 Review

On November 2, 2006 the current Board Policy Manual was adopted in its entirety from the Alaska Associations of School Board's (AASB) template with changes to match former District policies and procedures.

Board Policy (BP) 5121 contains the following language regarding Unexcused Absences which was a major change from previous policy and practice:

The Board desires to emphasize the importance of school attendance. Therefore, students with excessive unexcused absences (12 absences per semester) shall receive a failing grade and shall not receive credit for the class(es).

At the March 24<sup>th</sup> Board Meeting the Board approved a Waiver to School Board Policy 5121 for all high school students for the 2008-2009 school year. The Board also directed District Administration to get legal consultation into the validity of this policy.

The District received correspondence from John Sedor and Allen Clendaniel, District Legal Counsel regarding this issue. Their conclusion is:

Board Policy 5121 is most likely enforceable under Alaska law. In order to increase the likelihood of enforceability of the policy, it is important that it be applied evenly and consistently.

**RECOMMENDED ACTION: Motion to remove this item from further consideration. This action will keep this policy as written with the understanding that it will be enforced evenly and consistently across the District during the 2009/2010 and future school years.**

**GRADES/EVALUATION OF STUDENT ACHIEVEMENT**

The School Board believes that students and parents/guardians have the right to receive course grades that represent an accurate evaluation of the student's achievement. Teachers shall evaluate a student's work in relation to standards which apply to all students at his/her grade level, not in relation to the work of other students in one particular class.

Grades should be based on impartial, consistent observation of the quality of the student's work and his/her mastery of course content and objectives as demonstrated through classroom participation, homework and tests. The student's behavior and effort shall be reported in separate evaluations, not in his/her academic grade.

(cf. [5113](#) – Absences and Excuses)

(cf. [5123](#) – Promotion/Acceleration/Retention)

(cf. [5124](#) – Communication with Parents/Guardians)

(cf. [5125.3](#) – Challenging Student Records)

(cf. [6154](#) – Homework/Make-up Work)

The Superintendent or designee shall establish and regularly evaluate a uniform grading system. Principals shall ensure that student grades conform to this system.

**Unexcused Absences**

Note: The following optional policy authorizes teachers to assign failing grades to students who have excessive unexcused absences and may be revised or deleted as desired. While the use of academic penalties for truancy is probably permissible, districts must bear in mind that academic penalties are a severe form of sanction with the potential for permanent harm. In adopting such a policy, several precautions should be followed. First, the school policy must be applied fairly and consistently among students; there should be no question about arbitrary or capricious enforcement. Second, the severity of the academic penalty should correspond to the gravity of the offense. Third, students should be warned ahead of time of all requirements and consequences pertaining to the use of academic penalties. Finally, students should be accorded due process before penalties are consummated, including an opportunity for the student to explain his or her conduct.

The Board desires to emphasize the importance of school attendance. Therefore, students with excessive unexcused absences (12 absences per semester) shall receive a failing grade and shall not receive credit for the class(es).

If a student misses class without an excuse and does not subsequently turn in homework, take a test or fulfill another class requirement which he/she missed, the teacher may lower the student's grade for nonperformance. Teachers shall inform students about the class grading system at the beginning of the semester.

*Revised 9/98*

**SOUTHWEST REGION SCHOOL DISTRICT**

**Adopted: November 2, 2006**

**Reviewed: December 14, 2006**

**Adopted: January 31, 2007**

April 21, 2009

David Piazza, Director of Instruction  
Southwest Region School District  
P.O. Box 90  
Dillingham, Alaska 99576

Re: Southwest Region School District; Board Policy Regarding Absences  
File No. 1113-0300

Dear David:

Board Policy 5121 provides:

The Board desires to emphasize, the importance of school attendance. Therefore, students with excessive unexcused absences (12 absences per semester) shall receive a failing grade and shall not receive credit for the class(es)."

This letter addresses the enforceability of the twelve-absence policy.

While the Alaska Supreme Court has not addressed such an attendance policy, courts from other jurisdictions have found such policies enforceable. See *Campbell v. Bd. of Educ. of the Town of New Milford*, 475 A.2d 289 (Conn. 1984) (upholding policy that withheld course credit from any student who was absent from a year-long course for more than twenty-four class periods against substantive due process, procedural due process and equal protection challenge); *Slocum v. Holton Bd. of Educ.* 429 N.W.2d 607 (Mich. Ct. App. 1988) (upholding policy that reduced letter grades because of absences).

Courts have drawn a distinction between disciplinary policies and academic policies. This tension reflects the difficulty in setting the balance between pure academic achievement and the recognized importance of class attendance. When an attendance policy is disciplinary in nature, a due process hearing is required before a student's grade can be lowered. *State ex rel. Yarber v. McHenry*, 915 S.W.2d 32 (Mo. 1995) (finding that attendance policy that took away earned credit was disciplinary in nature and required hearing). Critical to whether an attendance policy is disciplinary in nature is whether the grades have been earned. If credit is being withheld and not taken away, the policy is not disciplinary. *McHenry*, 915 S.W.2d at 330; see also *Slocum*, 429 N.W.2d at 611 (finding no property right to unearned grade).



One court refused to enforce a policy that withheld credits based on excused absences, holding that the policy violated the local board's authority because it was unreasonable to withhold credit for *excused* absences. *State ex rel. Barno v. Crestwood Bd. Of Educ.*, 731 N.E.2d 701, 711 (Ohio. Ct. App. 1998).

In light of the precedent from other jurisdictions, the Alaska Supreme Court would most likely uphold Board Policy 5121. This is because the District's absence policy would likely be deemed an academic policy as it does not apply retroactively to earned grades. It also only counts unexcused absences, which makes the policy more reasonable.

While the policy is likely facially valid, improper and inconsistent implementation of the policy could lead to successful legal challenges of specific applications of the policy. In order to avoid such challenges, all students should be given adequate notice of the policy and the academic sanctions that can result from unexcused absences. *See Campbell*, 475 A.2d at 108 (noting that a student must be given notice of the absence policy). It is also beneficial if students are given an opportunity to contest whether absences occurred and whether they were excused or unexcused before credit is withheld. *Id.* It would also be beneficial if students were given notice that they were approaching the twelve-absence limit. An example of policy language that would accomplish these two goals follows:

Exceptions may be granted by the Superintendent (or his designee) based on extenuating circumstances reviewed on a case-by-case basis.

3. Schools will place students on attendance probation when the student reaches eight absences in any class. A probation notice including the attendance summary for all classes will be sent to the parents of the students.

5. Schools will provide a process to evaluate requests for consideration of special and extenuating circumstances which impact student attendance. The school will have the ability to not count absences toward the thirteen (13) day standard if the absences are due to special circumstances or extenuating circumstances beyond student or family control. Special or extenuating circumstances do not include family vacations.

a. Special circumstances include but are not limited to activity absences, required court appearances, significant events such as competing in international, national, or regional sport events, or recognized cultural events.

b. Extenuating circumstances include but are not limited to chronic medical problems, extended illness, death in the family, physical or sexual abuse and documented family problems affecting student attendance. Provisions will be made to allow consideration of special or extenuating circumstances prior to the absence and after the absence takes place. A



school decision to deny consideration may be appealed using the grievance procedure published in the student handbook.<sup>1</sup>

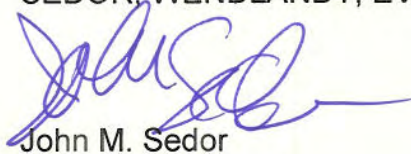
The policy must also be applied fairly and consistently among students and schools so that there is no question as to whether there was arbitrary or capricious enforcement of the policy. See *Ochsner v. Bd. of Trustees of Wash. Comm. College*, 811 P.2d 985, 987 (Wash. App. Ct., 1991) (finding that apparent uneven application of attendance policy created a genuine issue of a fact as to whether the policy was enforced in an arbitrary and capricious manner). Courts may find an attendance policy unenforceable when arbitrary or capricious decision making is present. *Id.* at 986.

The current policy does not contain a procedure to request consideration of special and extenuating circumstances that would allow each school or district to not count certain absences. Although such a policy would create the possibility for uneven and inconsistent application of the policy, it would likely be enforceable. *Campbell*, 475 A.2d at 298. If the Board wishes to increase flexibility to avoid harsh cases, it is preferable to have a formal district-wide policy, rather than have individual teachers or principals waive the policy on an ad-hoc basis. *Id.* As the policy is currently written, any ad-hoc waivers of the policy increase the chance that a court would find arbitrary and capricious enforcement of the policy and refuse to uphold enforcement of the policy.

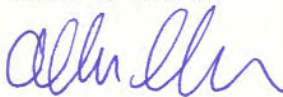
Board Policy 5121 is most likely enforceable under Alaska law. In order to increase the likelihood of enforceability of the policy, it is important that it be applied evenly and consistently.

Sincerely,

SEDOR, WENDLANDT, EVANS & FILIPPI, LLC



John M. Sedor



Allen F. Clendaniel

enclosure

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<sup>1</sup> This is taken from West Anchorage High School's Student/Parent Handbook. A copy is enclosed. The West Anchorage High School policy makes no distinction between excused and unexcused absences, which one court has refused to enforce. *State ex rel. Barno v. Crestwood Bd. Of Educ.*, 731 N.E.2d 701, 711 (Ohio. Ct. App. 1998). West Anchorage's procedure for consideration of extenuating circumstances and its attendance probation at eight absences, however, is preferable to ad-hoc individual waivers.



**Student Council** The Student Council promotes the general welfare of the school by acting in an advisory capacity to the principal on school issues pertaining to the student body. The Student Council sponsors and supports those activities which contribute to the betterment of the school.

A copy of the constitution is available in the Activities Office.

## Student Services

West High School is an institution founded and staffed for the purpose of educating students. With this purpose in mind, it becomes necessary to set standards of acceptable behavior.

### Absenteeism and Tardiness

Any high school student who is absent eight (8) times in at least one class will be placed on attendance probation. Any high school student who is absent thirteen (13) times or more in a class will not be granted credit for that class. Exceptions may be granted by the Superintendent (or his designee) based on extenuating circumstances reviewed on a case-by-case basis.

Any student who is late for class shall be noted as tardy. Sanctions for tardiness may be given at the discretion of the unit administrator.

1. The school will call (through a phone robot) a designated phone number on each period absence each school day. Calls will be placed in the evening after the close of business. Home numbers can be changed by contacting the high school attendance office.
2. Through school newsletters, parents will be advised regarding the timing and content of the call.
3. Schools will place students on attendance probation when the student reaches eight absences in any class. A probation notice including an attendance summary for all classes will be sent to the parents of the student.
4. Schools will withhold credit for any class with thirteen (13) absences. The student and parents will be contacted on a class-by-class basis. A letter with notification of withdrawal of credit will be mailed to parents in each instance. Students and parents will have the right to request evaluation of special and extenuating circumstances related to the absences. Schools will seek information concerning special and extenuating circumstances at the time non-granting of credit is considered.
5. Schools will provide a process to evaluate requests for consideration of special and extenuating circumstances which impact student attendance. The school will have the ability to not count absences toward the thirteen (13) day standard if the absences are due to special circumstances or extenuating circumstances beyond student or family control. Special or extenuating circumstances do not include family vacations.
  - a. Special circumstances include but are not limited to activity absences, required court appearances, significant events such as competing in international, national, or regional sport events, or recognized cultural events.
  - b. Extenuating circumstances include but are not limited to chronic medical problems, extended illness, death in the family, physical or sexual abuse and documented family problems affecting student attendance.Provisions will be made to allow consideration of special or extenuating circumstances prior to the absence and after the absence takes place. A school decision to deny consideration may be appealed using the grievance procedure published in the student handbook.
6. Schools will have the option of allowing a student to remain in a class on audit status after credit has been withheld. The student must agree to stay current in attendance and school work in order to be afforded this special status. Status will be granted at the discretion of the school.
7. Additional conditions:
  - a. Students with illness that extend or are projected to extend beyond thirteen (13) school days should apply for services under the Visiting Teacher Program. Absences from school while in the Visiting Teacher Program will not count toward probation or non-granting of credit. Students with chronic medical problems should contact the school if absences due to the health problem are likely to exceed thirteen (13) days in a semester. Absences associated with chronic illness will not be counted if a medical waiver is secured.

- b. Absences in quarter classes will accumulate on a semester rather than quarter basis.
- c. The number of absences permitted is based on a rotating schedule. For a school using a non-standard schedule, the number of absences will be adjusted accordingly.
- d. Students withdrawn for non-attendance will have a "WF" (Withdrawal-Failing) recorded on his/her transcript. That grade will be included in the calculation of his/her grade point average and will affect eligibility.
- e. Days suspended from school are counted for probation or withdrawal of credit.
- f. Pre-acknowledged absences will be counted for probation and withdrawal of credit if a waiver of the standard is not granted. Pre-acknowledged absence status is intended only to allow the student to make up work missed due to absence.

**Blue Passes** All students who are present during part of the day and plan to miss a class or classes are required to report to the office and obtain a blue pass before leaving. Parents or legal guardians must in person, by telephone, or by note contact the attendance office to excuse and acknowledge the absence(s) forthcoming. Failure to use the procedure will cause the absence to become unexcused. Contact by parents at a later time after the absence has occurred will not change the absence to an excused absence.

*Example:* A student leaves campus for lunch and does not return. Result: The absence is unexcused. The student's parent calls later in the day or the following day to excuse. Result: The absence remains unexcused.

*Students who leave the building during the day without a blue pass will be regarded as truant.*

**Building Neatness** Students have a major responsibility in maintaining all parts of the buildings and grounds in a clean and orderly manner. Paper and other materials to be discarded must be placed in the numerous trash receptacles throughout the building and grounds. Students littering the buildings or grounds will be assigned work details and/or suspension.

**Cell Phones and Electronic Devices** The West High Administration discourages the use of possession of cell phones and other electronic devices at school. West High is not responsible for the loss or theft of cell phones and other electronic devices. The use of cell phones and other electronic devices during the instructional day is not allowed. Disruption of the educational environment due to the possession or use of a cell phone or other electronic device may result in confiscation with required parent pick-up. Repeated offenses will result in appropriate disciplinary action including detention, work detail and/or suspension.

**Changing Schools** If you have to leave West, your parent or legal guardian must contact the attendance secretary two days before you plan to leave. On your last full day's attendance get a transfer/withdrawal form from the office. Return all books and materials to each teacher during your regular class time. Have the teacher, nurse, counselor, librarian, etc. sign your form and return it to the Attendance Office at the end of the day.

**Cheating** West High School disapproves of cheating in any form and will take disciplinary action whenever it is appropriate. Cheating is officially defined as working in collaboration with other students in an activity that had been assigned by the teacher to be done alone. Because the West High faculty and staff take academic honesty seriously, a grade of "0" will be assigned for any work that involves cheating and the following disciplinary action may be taken:

#### 1st and subsequent offenses:

- work detail(s)/detention(s)
- 1-9 day suspension and parent conference

In extreme cases, a WF may be assigned for the semester grade and the student removed from the class.

**Clearing Absences** Students are responsible for making sure all absences are cleared through the Attendance Office. Absences should be cleared by a phone call from the parent or guardian. The Attendance Office telephone numbers are 742-2502. Notes and phone calls regarding absences should contain the following information: Student's full name, date(s) of absences, reason for absence(s), telephone number where a parent or guardian can be contacted, and the signature on the note of the parent or guardian.

*Truancies cannot be cleared after they occur. Absences must be cleared within 24*