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Department of Defense INSTRUCTION

October 30, 1996
NUMBER 1342.25

ASD(FMP)

SUBJECT: School Boards for Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS)

- References:
- (a) Section 2164 of title 10, United States Code, as added by Section 351(a) of Public Law 103-337, "The National Defense Authorization Act for Fiscal Year 1995," October 5, 1994
 - (b) DoD Directive 1342.21, "Department of Defense Section 6 Schools," October 13, 1992
 - (c) U.S. Constitution
 - (d) Joint Travel Regulations, Volume 2, "Department of Defense Civilian Personnel," current edition

A. PURPOSE

This Instruction implements policy, assigns responsibilities, and prescribes procedures for the establishment and operation of elected school boards for schools operated by the Department of Defense under references (a) and (b).

B. APPLICABILITY AND SCOPE

This Instruction:

1. Applies to the Office of the Secretary of Defense (OSD), the Military Departments (including the Coast Guard when operating as a Service of the Department of the Navy or by agreement between the Department of Defense and the Department of Transportation), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Uniformed Services University of the Health Sciences, the Defense Agencies, and the DoD Field Activities.
2. Applies to the schools (prekindergarten through grade 12) operated by the Department of Defense under references (a) and (b) within the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, known as DoD DDESS Arrangements.
3. Does not apply to elected school boards established under state or local law for DoD DDESS special arrangements.

C. DEFINITIONS

Terms used in this Instruction are defined in enclosure 1.

D. POLICY

1. Each DoD DDESS arrangement shall have an elected school board, established and operated in accordance with 10 U.S.C. 2164 and DoD Directive 1342.21 (references (a) and (b)); this Instruction; and other pertinent guidance.

2. Because members of DoD DDESS elected school boards are not officers or employees of the United States appointed under the Appointments Clause of the United States Constitution (Article II, Section 2, Clause 2 of reference (c)), they may not exercise discretionary governmental authority, such as the taking of personnel actions or the establishment of governmental policies. This Instruction clarifies the role of school boards in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for DoD DDESS arrangements, subject to these constitutional limitations.

3. The DoD DDESS chain of command for matters relating to school arrangements operated under Section 2164 of 10 U.S.C. and DoD Directive 1342.21 (references (a) and (b)) shall be from the Director, DoD DDESS, to the Superintendent of each school arrangement. The Superintendent will inform the school board of all matters affecting the operation of the local school arrangement. Direct liaison among the school board, the Director, and the Superintendent is authorized for all matters pertaining to the local school arrangement.

E. RESPONSIBILITIES

The Assistant Secretary of Defense for Force Management Policy, or designee (who may not be below the level of a Deputy Assistant Secretary of Defense), under the Under Secretary of Defense for Personnel and Readiness, shall:

1. Make the final decision on all formal appeals to directives and other guidance submitted by the school board or Superintendent.

2. Ensure the Director, DoD DDESS, shall:

a. Ensure the establishment of elected school boards in DoD DDESS arrangements.

b. Monitor compliance by the Superintendents and school boards with applicable statutory and regulatory requirements, and this Instruction. In the event of suspected noncompliance, the Director, DoD DDESS, shall take appropriate action, which will include notification of the Superintendent and the school board president of the affected DoD DDESS arrangement.

c. Determine when the actions of a school board conflict with an applicable statute, regulation, or other guidance or when there is a conflict in the views of the school board and the

Superintendent. When such conflicts occur, the Director, DoD DDESS, shall assist the Superintendent and the school board in resolving them or direct that such actions be discontinued. Such disapprovals must be in writing to the school board and the Superintendent concerned and shall state the specific supporting reason or reasons.

3. Ensure the school boards for DoD DDESS arrangements shall:

a. Participate in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for the DoD DDESS arrangement concerned, consistent with this Instruction.

b. Approve agendas and prepare minutes for school board meetings. A copy of the approved minutes of school board meetings shall be forwarded to the Director, DoD DDESS, within 10 working days after the date the minutes are approved.

c. Provide to the Director, DoD DDESS, names of applicants for a vacancy in the Superintendent's position after a recruitment has been accomplished. The school board shall submit to the Director, DoD DDESS, a list of all applicants based on its review of the applications and interviews (either in person or telephonically) of the applicants. The list of applicants will be accompanied by the recommended choice of the school board. The Director will select the Superintendent and will submit written notice with justification to the school board if the recommendation of the school board is not followed.

d. Prepare an annual written on-site review of the Superintendent's performance for consideration by the Director, DoD DDESS. The written review shall be based on critical elements recommended by the school board and Superintendent and approved by the Director, DoD DDESS. The school board's review will be an official attachment to the Superintendent's appraisal.

e. Participate in the development of the school system's budget for submission to the Director, DoD DDESS, for his or her approval as endorsed by the school board; and participate in the oversight of the approved budget, in conjunction with the Superintendent, as appropriate for operation of the school arrangement.

f. Invite the Superintendent or designee to attend all school board meetings.

g. Provide counsel to the Superintendent on the operation of the school and the implementation of the approved budget.

h. Channel communications with school employees to the DoD DDESS Superintendent. Refer all applications, complaints, and other communications, oral or written, to the DoD DDESS Arrangement Superintendent.

i. Participate in the development of school policies, rules, and regulations, in conjunction with the Superintendent, and recommend which policies shall be reflected in the School Policy

Manual. At a minimum, the Policy Manual, which shall be issued by the Superintendent, shall include the following:

- (1) A statement of the school philosophy.
- (2) The role and responsibilities of school administrative and educational personnel.
- (3) Provisions for promulgation of an annual school calendar.
- (4) Provisions on instructional services, including policies for development and adoption of curriculum and textbooks.
- (5) Regulations affecting students, including attendance, grading, promotion, retention, and graduation criteria, and the student code of rights, responsibilities, and conduct.
- (6) School policy on community relations and noninstructional services, including maintenance and custodial services, food services, and student transportation.
- (7) School policy and legal limits on financial operations, including accounting, disbursing, contracting, and procurement; personnel operations, including conditions of employment, and labor management regulations; and the processing of, and response to, complaints.
- (8) Procedures providing for new school board member orientation.
- (9) Any other matters determined by the school board and the superintendent to be necessary.

j. Prepare and submit formal appeals to directives and other guidance that in the view of the school board adversely impact the operation of the school system either through the operation and management of DoD DDESS or a specific DoD DDESS arrangement under 10 U.S.C. 2164 (reference (a)). Written formal appeals with justification and supporting documentation shall be submitted by the school board or Superintendent to the Assistant Secretary of Defense for Force Management Policy (ASD(FMP)). The ASD(FMP) shall make the final decision on all formal appeals. The Director, DoD DDESS, will provide the appealing body written review of the findings relating to the merits of the appeal. Formal appeals will be handled expeditiously by all parties to minimize any adverse impact on the operation of the DoD DDESS system.

4. Ensure school board operating procedures are as follows:

- a. The school board shall operate from a written agenda at all meetings. Matters not placed on the agenda before the start of the meeting, but approved by a majority of the school board present, may be considered at the ongoing meeting and added to the agenda at that time.
- b. A majority of the total number of school board members authorized shall constitute a quorum.

c. School board meetings shall be conducted a minimum of 9 times a year. The school board President or designee will provide school board members timely notice of all meetings. All regularly scheduled school board meetings will be open to the public. Executive session meetings may be closed under Section 2164(d)(6) of 10 U.S.C. (reference (a)).

d. The school board shall not be bound in any way by any action or statement of an individual member or group of members of the board, except when such action or statement is approved by a majority of the school board members during a school board meeting.

e. School board members are eligible for reimbursement for official travel in accordance with the DoD Joint Travel Regulations (reference (d)) and guidance issued by the Director, DoD DDESS.

f. School board members may be removed by the ASD(FMP), or designee (who may not be below the level of a Deputy Assistant Secretary of Defense) for dereliction of duty, malfeasance, or other grounds for cause shown. The school board concerned, may recommend such removal with a two-thirds majority vote. Before a member may be removed, the member shall be afforded due process, to include written notification of the basis for the action, review of the evidence or documentation considered by the school board, and an opportunity to respond to the allegations.

F. PROCEDURES

1. Composition of the School Board

a. The school board shall recommend to the Director, DoD DDESS, the number of elected school board voting members, which shall be no fewer than 3 and no more than 9, depending upon local needs. The members of the school board shall select by majority vote of the total number of school board members authorized at the beginning of each official school board term, one member to act as President and another to act as Vice President. The President and Vice President shall each serve for 1 year. The President shall preside over school board meetings and provide leadership for related activities and functions. The Vice President shall serve in the absence of the President. If the position of President is vacated for any reason, the Vice President shall be the President until the next regularly scheduled school board election. The resulting vacancy in the position of the Vice President shall be filled by the majority vote of all members of the incumbent board.

b. The DoD DDESS Arrangement Superintendent, or designee, shall serve as a non-voting observer to all school board meetings. The Installation Commander, or designee, shall serve as a non-voting observer to the school board. The Installation Commander, or designee, shall convey command concerns to the school board and the Superintendent and keep the school board and the Superintendent informed of changes and other matters within the host installation that affect school expenditures or operations.

c. School board members may not receive compensation for their service on the school board.

d. Members of the school board may not have any financial interest in any company or organization doing business with the school system. Waivers to this restriction may be granted on a case-by-case basis by the Director, DoD DDESS, in coordination with the Office of General Counsel of the Department of Defense.

2. Electorate of the School Board

The electorate for each school board seat shall be composed of parents of the students attending the school. Each member of the electorate shall have one vote.

3. Election of School Board Members

a. To be elected as a member of the school board, an individual must be a resident of the military installation in which the DoD DDESS arrangement is located or, in the case of candidates for the Antilles Consolidated School System School Board, be the parent of an eligible child currently enrolled in the school system. Personnel employed by a DoD DDESS arrangement may not serve as school board members.

b. The board shall determine the term of office for elected members, not to exceed 3 years, and the limit on the number of terms, if any. If the board fails to set these terms by the first day of the first full month of the school year, the terms will be set at 3 years, with a maximum of 2 consecutive terms.

c. When there is a sufficient number of school board vacancies that result in not having a quorum, which is defined as a majority of seats authorized, a special election shall be called by the DoD DDESS Arrangement Superintendent or designee. A special election is an election that is held between the regularly scheduled annual school board election. The nomination and election procedures for a special election shall be the same as those of regularly scheduled school board elections. Individuals elected by special election shall serve until the next regularly scheduled school board election. Vacancies may occur due to the resignation, death, removal for cause, transfer, or disenrollment of a school board member's child(ren) from the DoD DDESS arrangement.

d. The board shall determine a schedule for regular elections. Parents shall have adequate notice of the time and place of the election. The election shall be by secret ballot. All votes must be cast in person at the time and place of the election. The candidate(s) receiving the greatest number of votes shall be elected as school board member(s).

e. Each candidate for school board membership must be nominated in writing by at least one member of the electorate to be represented by the candidate. Votes may be cast at the time of election for write-in candidates who have not filed a nomination petition if the write-in candidates otherwise are qualified to serve in the positions sought.

f. The election process shall provide staggered terms for board members; e.g., on the last day of the last month of each year, the term for some board members will expire.

g. The DoD DDESS Superintendent, in consultation with the school board, shall be responsible for developing the plans for nominating school board members and conducting the school board election and the special election process. The DoD DDESS Superintendent shall announce election results within 7 working days of the election.

G. EFFECTIVE DATE

This Instruction is effective immediately.


F. Pang

Enclosure - 1

1. Definitions

DEFINITIONS

1. Arrangements. Actions taken by the Secretary of Defense to provide a free public education to dependent children under Section 2164 of 10 U.S.C. (reference (a)) through DoD DDESS arrangements or DoD DDESS special arrangements:

a. DDESS Arrangement. A school operated by the Department of Defense under reference (a) and DoD Directive 1342.21 (reference (b)) to provide a free public education for eligible children.

b. DDESS Special Arrangement. An agreement, under reference (a), between the Secretary of Defense, or designee, and a local public education agency whereby a school or a school system operated by the local public education agency provides educational services to eligible dependent children of U.S. military personnel and federally employed civilian personnel. Arrangements result in partial or total Federal funding to the local public education agency for the educational services provided.

2. Parent. The biological father or mother of a child when parental rights have not been legally terminated; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, provided that such person stands in loco parentis to that child and contributes at least one-half of the child's support.