Chalkboard

RFR

An Education Newsletter from the Attorneys of Rosenstein, Fist & Ringold   2014 Issue 2

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Confidentiality of School District Personnel Records

by Staci L. Roberds

A school district may have a general policy to keep personnel records of employees confidential. However, such a policy is subject to the Open Records Act. If a proper request for information is made under the Open Records Act, a school district may be required to disclose certain information kept in an employee's personnel file.

The Open Records Act specifically deals with personnel records of employees of public bodies. The provision discusses what information is considered confidential and may or may not be disclosed in response to an open records request. A school district is not required to disclose confidential information from personnel records if it relates to internal personnel investigations, involves records of the examination and selection material for hiring school district employees or materials which pertain to the appointment, promotion, demotion, discipline, or resignation of an employee. A school district also may keep information in personnel records confidential when such disclosure would constitute "a clearly unwarranted" invasion of the employee's privacy. Examples of disclosures of information that constitute "a clearly unwarranted" invasion of privacy include the disclosure of employee evaluations, payroll deductions, applications for applicants who were not hired by the school district, and the transcripts of certified school district employees.

However, if requested, a school district is required to disclose the degree and the curriculum obtained from the transcripts of certified school employees. Moreover, the Oklahoma School Code provides for the disclosure of teacher evaluations in certain circumstances. Teacher evaluations and responses thereto may be made available to the board and any administrative staff of any

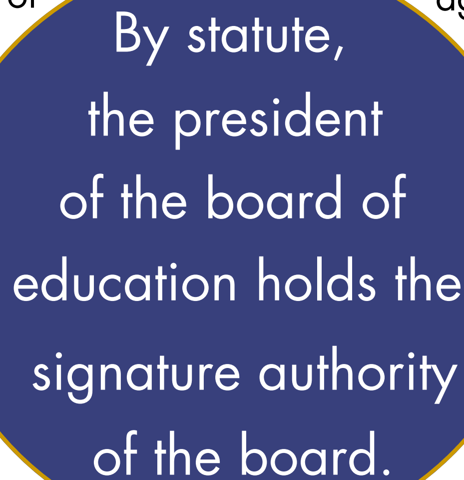
school district to which a teacher applies for employment.

If the information contained in a personnel record does not fall into one of the above-mentioned categories, it must be made available under the Open Records Act, including dates of employment, title and position, and any final disciplinary action if it results in a loss of pay, suspension, demotion, or termination. The school district, however, must keep confidential social security numbers, home addresses, and telephone numbers for any current or former school district employee.

Authority to Sign Contract for the School District

by Kelsey K. Bardwell

What types of contracts are required to be approved by the board of education and what types are not? This is actually a trick question. Every agreement that obligates the school district to pay money or to take or refrain from taking action requires board approval. This is true regardless of whether the document is called an "Agreement," a "Contract," a "Letter Agreement," a "Memorandum of Understanding," or something else. The key is whether the document obligates the school district in some fashion. Importantly, such an obligation does not always take the form of a requirement to pay money.



Does this mean that superintendents cannot execute contracts on behalf of their respective school district? Generally, yes. However, in some cases a board may choose, through an appropriate agenda item and vote, to delegate the authority to approve specific types of contracts and routine purchase orders. For example, the board could adopt a policy authorizing the superintendent or designee to approve the purchase of goods and services where the cost does not exceed a preset amount. Without such authority, the superintendent cannot bind the school district through contract.

Who, then, must execute school district contracts? By statute, the president of the board of education holds the signature authority of the board.

In fact, if the board has not given the superintendent or another designee the specific authority to execute an agreement, an agreement signed by the superintendent or a designee is technically invalid. If the proper procedures are not followed to enter into an agreement, a school district might find itself in a situation where the parties to an agreement dispute its validity. This can lead to the unnecessary and costly expenditure of time, energy, and money to resolve. This is why it is so important for each contract to be submitted and approved by the board at a lawfully called board meeting and executed by the president of the board.

If you would like additional information on this subject, please contact your school district's attorney.

OCR Clarifies Position on Students with Disabilities in Extracurricular Athletics

by Cheryl A. Dixon

On December 16, 2013, the U.S. Department of Education Office of Civil Rights (OCR) responded to a letter from the National School Boards Association (NSBA) seeking clarification on OCR's January 25, 2013 "Dear Colleague" letter on students with disabilities in extracurricular athletics. The January 25 letter reminded that school districts are required to provide students with disabilities an equal opportunity to participate in extracurricular athletic activities in accordance with the Department of Education's regulations under Section 504 of the Rehabilitation Act.

In its response to the NSBA, OCR clarified that while students with disabilities must be provided with equal access to a school district's existing extracurricular athletic activities, this "does not mean every student with a disability has the right to be on an athletic team, and it does not mean that school districts must create separate or different activities just for students with disabilities." OCR further clarified that providing this equal opportunity does not mean compromising student safety, changing the nature of selective teams, giving a student with a disability an unfair advantage over other competitors, or changing essential elements that affect the fundamental nature of the game. More important, OCR clarified that school districts are not required to create separate extracurricular athletic opportunities for disabled students who are unable (with reasonable accommodations or aids and services) to participate in the school district's existing athletic opportunities, although OCR does "urge" districts to create separate opportunities. Significantly, if a school district wishes to provide separate opportunities, such opportunities must be supported equally as compared with the school district's existing programs.

OCR also elaborated on the requirement that school districts must conduct an individualized inquiry to determine whether reasonable modifications or necessary aids and services would provide a student with a disability an equal opportunity to participate in an extracurricular athletic activity. This inquiry does not require that a formal meeting be convened. Rather, it must involve only "a reasonable, timely, good-faith effort by the individuals with the appropriate knowledge and expertise to determine whether there are reasonable modifications or aids and services that would provide that student with equal access to the particular activity."

Payment for Internet Access From Oklahoma's Universal Service Fund

by John E. Howland

At the beginning of March, you most likely received a request for information from the Oklahoma Corporation Commission concerning your school's receipt of funding for internet access from the Oklahoma Universal Service Fund ("OUSF"). The Commission's Public Utility Division ("PUD") administers the OUSF. As representatives of the PUD explained in a question and answer session in Oklahoma City on March 7, the request for information was initiated in response to an audit of the PUD by the State Auditor and Inspector. The representatives stated that the purpose of sending the requests for information to the state's school districts is to establish a baseline of information on how the state's school districts have used funding from the OUSF in the past. They stated that the purpose is not to "ding" school districts for past actions. However, they did not rule out the possibility of using the information that is developed in the future to enforce compliance with the rules governing the OUSF. With that in mind, it may be useful to review what the OUSF is and the requirements for funding from the OUSF.

The Oklahoma Telecommunications Act of 1997, as amended, has made Oklahoma one of the few states to provide funding to school districts to supplement the funding provided under the federal E-Rate Program. The Act provides for the creation of the OUSF, one purpose of which is to provide free internet access to classrooms in Oklahoma's public schools. Importantly, the Act provides not just internet access to school districts, but to "each public school building wherein classrooms are contained." It also states that the Commission has the authority "to investigate and modify or reject in whole or part" a request for funding from the OUSF. As this article discusses, both of these provisions may have particular significance to school districts.

What constitutes a "building" for the purpose of eligibility for OUSF funding is not self evident. What might appear to be a single structure may qualify as multiple "buildings" under the Commission's rules. As an example, if a facility contains a distinctive structural firewall, with a change in roofline that is distinctive from the exterior of the building and firewall doors (double doors) located on the interior that function to shut off one section of the facility from the rest of the facility, the facility may be counted as two (or more, in the event of multiple firewalls) "buildings" for the purpose of OUSF funding. A

gymnasium or athletic facility likely will not, but may, qualify as an eligible building. Similarly, administrative buildings that do not contain classrooms may qualify if they are used throughout the year for online state testing.

The limitations on OUSF funding are equally significant. The Commission interprets its rules as providing funding through the OUSF for only a single internet access line for each building. It has advised that it will disallow funding for "redundant" services. This has several potential consequences for school districts. First, when a school district changes to a new provider of internet access, it is critical for the school district to provide written notice to the prior provider to disconnect and discontinue service. In part this is because it has been the Commission's position that until such notice is given, the OUSF will continue to provide funding to the original provider and will not provide funding to the new provider. This can create problems for schools because many if not all contracts between school districts and providers state that, in the event all charges are not paid by OUSF (or E-Rate), the school district will be liable for the unpaid charges. In some cases, without diligence by the school district, it may not be obvious for some time that the OUSF has continued to pay the old provider and not the new one. This problem may not be discovered quickly because the Commission's rules don't require the new provider to bill the OUSF for up to 18 months after beginning service. In fact, with a waiver, the period can be longer. The potential problem for a school district may be made worse by the fact that many of the providers' contracts contain "evergreen" provisions, which state that the contract with the service provider is renewed each year, without board action, unless notice has been provided that the contract is terminated. The best protection for a school district is not only to provide prompt written notice to the old provider to disconnect and discontinue service but also to obtain written confirmation from the old provider that it has received the disconnect notice.

In July, 2013, the Commission amended its rules to require that all providers of services for which OUSF funding will be sought provide the school district with written information on the limitations on funding from the OUSF before a contract is signed. School districts should take notice of those limitations and take appropriate steps to assure that their contractual obligations to their providers will meet the requirements for payment by the OUSF.

Matthew P. Cyran

Matthew P. Cyran Returns to RFR

Rosenstein, Fist & Ringold is pleased to announce that **Matthew P. Cyran** has joined the firm as a member attorney. Mr. Cyran first joined Rosenstein, Fist & Ringold in 2000 and returned to the firm March 1, 2014 after six years of public service as Assistant United States Attorney in the Northern District of Oklahoma.

Matt was born in North Tarrytown, New York, and admitted to the Oklahoma bar in 1997. His undergraduate degree is from the University of Arizona (1989), and he earned his Juris Doctorate from the University of Tulsa in 1997. Mr. Cyran is admitted to practice in the United States Court of Appeals for the Tenth Circuit as well as the United States District Courts for the Northern, Eastern, and Western Districts of Oklahoma. Prior to joining the firm, Mr. Cyran served as Assistant District Attorney for Tulsa County.

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Chalkboard is designed to provide current and accurate information regarding current education law issues. Chalkboard is not intended to provide legal or other professional advice to its readers. If legal advice or assistance is required, the services of a competent attorney familiar with education law issues should be sought.

We welcome your comments, criticisms and suggestions. Correspondence should be directed to: Rosenstein, Fist & Ringold, 525 South Main, Seventh Floor, Tulsa, Oklahoma 74103-4508, or call (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.

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