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EXPLANATION: NONRENEWAL OF PROFESSIONAL STAFF MEMBERS

MSBA has added language to this policy in an attempt to protect districts from claims that the district did not provide adequate due process to employees when complying with the requirements of Senate Bill 54 (2011), § 162.068, RSMo. This new law requires districts to disclose to a potential public school employer who contacts the district regarding the possible employment of a district employee whose job involved contact with children whether the employee was dismissed or resigned in lieu of being fired as a result of allegations of sexual misconduct. Although the law is unclear, it appears to require districts to disclose the allegations even if the allegations have not been substantiated by the Children's Division (CD) of the Department of Social Services. Districts that fail to disclose information as required in the statute become legally liable for damages to any student who becomes a victim of the former employee's sexual misconduct at a subsequent employing district. The district also becomes liable to the subsequent employing district. The statute explicitly states that the district will be liable for the legal fees, costs and expenses incurred by the subsequent employing district if the appropriate information is not revealed. Needless to say, this is a severe financial penalty.

MSBA is concerned that districts following this new law could be sued by a former employee for violating the former employee's due process liberty interest in his or her reputation by releasing stigmatizing statements regarding the employee without first providing the employee adequate due process as is required under the Missouri and U.S. Constitutions. To prove a violation of an employee's liberty interest, the employee must prove that 1) the employee was stigmatized by the allegations, 2) the allegations were made public, and 3) the employee denied the allegations. *Putnam v. Keller*, 332 F.3d 541 (8th Cir. 2003).

When a district provides another potential employer a negative reference regarding an employee who left due to allegations of sexual misconduct, the district is making the allegations public. Allegations of sexual misconduct are certainly stigmatizing, which means that if the employee denies the allegations, the district needs to provide adequate due process to the employee prior to providing the information to the potential employer to avoid this federal constitutional claim. Due process has been provided if an employee has received a termination hearing before the Board; however, many employees resign, are nonrenewed or are at-will employees and are not entitled to a hearing before the Board. This policy was revised to remind districts that in some narrow circumstances they may be obligated to provide a hearing or some other due process to an employee who is leaving the district, even if the employee is not otherwise entitled to a hearing or normally provided a hearing.

MSBA recommends that districts offer an opportunity for a hearing before the Board to employees who are terminated, nonrenewed or allowed to resign in lieu of termination due to

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allegations of sexual misconduct with a student. This will help provide school districts protection from federal claims while still complying with the new state law. Appropriate language has been added to this policy.

MSBA recommends that copies of this document be routed to the following areas because the content is of particular importance to them. The titles on this list may not match those used by the district. Please forward copies to the district equivalent of the title indicated.

	Board Secretary		Business Office		Coaches/Sponsors
	Facility Maintenance		Food Service		Gifted
X	Human Resources	X	Principals		Library/Media Center
	Health Services		Counselor		Special Education
	Transportation		Public Info/Communications		Technology

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NONRENEWAL OF PROFESSIONAL STAFF MEMBERS

Probationary Teachers

On or before April 15 of each school year, the Board of Education shall notify in writing a probationary teacher who will not be retained by the school district of the nonrenewal of his or her contract. If the teacher was nonrenewed due to a decrease in student enrollment, school district reorganization or the financial condition of the school district, the written notice will include the reason for nonrenewal. Otherwise, upon request, the district will provide a concise written statement of the reason or reasons the contract was not renewed.

Certificated Administrative Staff Ineligible for Tenure

On or before April 15 of the year in which a contract expires, the Board of Education shall notify in writing an administrator ineligible for tenure (other than the superintendent) concerning his or her re-employment. Any motion regarding re-employment of such certificated employee shall include only one person and shall be made in the positive. A majority of the elected members voting in the affirmative shall constitute re-employment.

Nonrenewed administrators who have tenure as a teacher in the district will be offered a teaching position in accordance with law and must provide written notice to the district by June 1 if they do not intend to accept the position.

If an administrator is nonrenewed or demoted, and if the employee has been re-employed five times by the district, the employee may, within ten days following receipt of notice, request a written statement of reasons. The statement shall be provided within ten days of receipt of the request. The employee shall be granted a hearing, if requested in writing within ten days after receipt of the statement of reasons. The hearing shall be held within ten days of the receipt of the request, and shall be open at the employee's request. The employee may have counsel, testify, offer evidence and cross-examine witnesses. After the hearing, no further action by the Board shall be required.

Noncertificated Professional Staff

Unless otherwise required by law, the district may nonrenew the contracts of a noncertificated professional staff members by notifying the employee prior to entering into a new contract with the employee that his or her contract will not be renewed.

Allegations of Sexual Misconduct with a Student

If a former district employee whose job involved contact with children was terminated, nonrenewed or allowed to resign in lieu of termination as a result of an allegation of sexual misconduct with a

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student, or as a result of such allegations being substantiated by the Children's Division (CD) of the Department of Social Services' child abuse and neglect review board, the district is required by law to release information regarding the sexual misconduct to a potential public school employer who contacts the district regarding the former employee. In addition, if the CD substantiates a complaint of sexual misconduct with a student against a former employee of the district, the law requires the district to release the results of the CD investigation to any potential public school employer who contacts the district.

When employment ends as a result of an allegation of sexual misconduct with a student, the district will provide appropriate due process prior to the release of information regarding the sexual misconduct to a potential public school employer, if feasible. The superintendent or designee is authorized to consult with the district's attorney to determine the appropriate level of due process to provide.

For the purposes of this policy, employees are considered "former employees" if they have resigned, been terminated, had their contracts nonrenewed, or been notified that their contracts with the district will not be renewed or that the district is pursuing termination, even if the process has not been completed.

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Note: The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.

Adopted: FIELD(AdoptDate)

Revised:

Cross Refs: AC, Prohibition against Discrimination, Harassment and Retaliation
BDDF, Voting Method
JHG, Reporting and Investigating Child Abuse/Neglect

Legal Refs: §§ 162.068, 168.101, .126, RSMo.
U.S. Const. amend. XIV

FIELD(DistrictLocationLine)