

REFERENCE COPY (Version 2)

FILE: GDPB
BasicCritical

EXPLANATION: RESIGNATION OF SUPPORT 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

REFERENCE COPY (Version 2)

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

RESIGNATION OF SUPPORT STAFF MEMBERS

Employees Not Under Contract

Any support staff member who desires to resign must submit a written letter of resignation to his or her immediate supervisor. The letter should specify when the resignation is to be effective and should be submitted at least two weeks prior to the effective date. A resignation is final upon submission and cannot be withdrawn unless authorized by the supervisor to whom it was submitted. The resignation need not be approved by the Board.

Employees Under Contract

The employee must submit a written letter of resignation to his or her immediate supervisor. If the contract contains a notice period, the resignation is final upon submission and effective at the end of the notice period.

If the contract does not include a notice provision, the resignation is final upon submission and effective at the end of the contract period. Resignations for employees under contract require Board approval only if the employee wishes the resignation to be effective prior to the end of the contract period.–

The district may pursue all legal remedies available to address a breach of an employment contract. A resignation is final upon submission and cannot be withdrawn unless authorized by the supervisor to whom it was submitted.

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 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

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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:

Legal Refs: U.S. Const. amend. XIV

FIELD(DistrictLocationLine)