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Perry Law Firm 2016 Annual Policy Update Service

To: Dr. Wayne Bell, Administrator, ESU 10
From: Gregory H. Perry and Rex R. Schultze
Date: June 7, 2016

This is the 2016 Annual Policy Update.

For policies that are not entirely new, we have provided both “redline” and “clean” versions.

1. Policy 3090—Sale and Disposal of Property

Policy 3090 was changed to include the sale of real estate. In addition, approval of any sale of school property was changed from requiring four members, to two-thirds of the members of the Board of Education, at a regular meeting.¹

2. Policy 3130—Purchasing Policies

As a result of the State Auditor’s increased attention to and scrutiny of credit card use, we have added a section for the use of credit cards for purchases on behalf of the School District. The procedures set forth in the section of Policy 3130 should satisfy the State Auditor.

3. Policy 3570 – ESSA

The Every Student Succeeds Act was signed on December 10, 2015. The law requires that schools that receive Title I funding:

- Notify parents of the right to receive information about the professional qualifications of their child’s teachers;
- Notify parents that they may opt out of testing; and
- Notify parents of certain matters related opportunities related to the Language Instruction (ELL) program.

¹ Section 79-10,114 requires a vote of “at least two-thirds of all members of the board” for the sale of school property.

4. Policy 4026—Prohibition on Aiding and Abetting Sexual Abuse

Section 8038 of the ESSA requires school districts to have a policy prohibiting helping a person get a job if it is known that the person engaged in sexual misconduct regarding a minor or a student in violation of the law.²

Policy 4026 has been prepared to comply with this part of the ESSA.

² SEC. 8038. PROHIBITION ON AIDING AND ABETTING SEXUAL ABUSE.

Subpart 2 of part F of title VIII, as amended and redesignated by section 8001 of this Act, is further amended by adding at the end the following:

“SEC. 8546. PROHIBITION ON AIDING AND ABETTING SEXUAL ABUSE.

“(a) IN GENERAL.—A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this Act shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

“(b) EXCEPTION.—The requirements of subsection (a) shall not apply if the information giving rise to probable cause—

“(1)(A) has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and

“(B) has been properly reported to any other authorities as required by Federal, State, or local law, including title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the regulations implementing such title under part 106 of title 34, Code of Federal Regulations, or any succeeding regulations; and

“(2)(A) the matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law;

“(B) the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or

“(C) the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

“(c) PROHIBITION.—The Secretary shall not have the authority to mandate, direct, or control the specific measures adopted by a State, State educational agency, or local educational agency under this section.

“(d) CONSTRUCTION.—Nothing in this section shall be construed to prevent a State from adopting, or to override a State law, regulation, or policy that provides, greater or additional protections to prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee who engaged in sexual misconduct regarding a minor or student in violation of the law in obtaining a new job.”

5. Policy 4027 – Workplace Privacy Act

LB 821 prohibits employers from accessing employees' electronic information, including passwords to social media accounts.

6. Policy 5006 – Option Enrollment

LB 1066 amended Nebraska's Option Enrollment statute. Specifically, LB 1066 provides that, when adopting standards for accepting or denying late-filed applications (applications filed after March 15) as follows: "Standards shall not include that a request occurred after the deadline set forth in this subsection."

The option enrollment policy we provided previously had included an option of denying an application for the sole reason that the application was filed late. In response to LB 1066, we have deleted that as an option. If your current policy uses that as an option, you will need to amend your policy. If your policy uses different reasons for accepting or denying an application than simply that the application was filed late, you do not need to amend the standards in your policy.

LB 1067 amended the option enrollment statutes to state: "Option students who qualify for free lunches shall be eligible for either free transportation or transportation reimbursement as described in section 79-611 from the option school district pursuant to policies established by the school district . . ." We have revised the option policy to meet this requirement.

7. Policy 5203—Academic Progress

Policy 5203 requires the academic reports (e.g. report cards) be "sent" to parents each quarter. With many schools now using electronic student records systems, it is not quite accurate to say that report cards are "sent" to parents. So we have changed the term to "made available."

8. Policy 5418—Homeless Student Policy

Schools that have been audited by the NDE in the last year have been advised of the need to have a homeless policy with a more robust grievance procedure. Accordingly, Policy 5418 has been amended to provide an enhanced grievance procedure.

The ESSA also added a notice requirement that is reflected in the revised Policy 5418.

We have also removed the NCLB reference in the homeless policy forms.

9. Policy 5419 – Mental Health Assessments or Reporting

The ESSA requires that parental consent be obtained prior to a child under the age of 18 participating in any mental health assessment or service. We have revised Policy 5419 to meet this requirement.

10. Policy 6020—ESSA-Copyright instruction

The ESSA requires that students be given education about the harms of copyright piracy. We have revised Policy 6020 to incorporate this requirement.

11. Policy 6212—Assessments—Academic Content Standards

The statute related to adoption of state standards³ requires districts to adopt academic content standards in the subject areas of reading, writing, mathematics, science, and social studies in accordance with timelines established by the State Board of Education, but in no event later than one year following the adoption or modification of state standards.

We have amended Policy 6212 to incorporate the Mathematics standards that were adopted by the State Board in September, 2015.

12. Policy 6284—Initiations, Hazing, Secret Clubs and Outside Organizations

The anti-hazing statute⁴ had formerly been applicable only to post-secondary students. LB 710 extended the statute to include everyone. LB 710 also expanded the list of what constitutes hazing.

Policy 6284 was developed in 2013 even though the anti-hazing statute had not yet been extended to public school students. We have now revised the policy to include the additional hazing activities that were added by LB 710.

13. Policy 6286—Return to Learn from Cancer

LB 511 from the 2015 legislative session requires schools to “establish a return-to-learn protocol for students returning to school after being treated for pediatric cancer.” Policy 6286 was developed in response.

The policy references training approved by the chief medical officer of the State. However, we have been informed that there is no one currently with HHS in that position. Moreover, HHS does not intend to approve any training on the subject of a student returning to school after being treated for cancer. Accordingly, the reference to the chief medical officer has been stricken from the policy.

³ Section 79-760.02.

⁴ Section 28-311.06.

14. Policy 6410— Title I Parental and Family Involvement ESSA

The ESSA includes changes to parental involvement in the Title I schools. The primary impact is to expand the requirements from parents to “parents and family members.” We have revised Policy 6410 accordingly.

15. Policy 6800—Internet Safety and Acceptable Use Policy/COPPA

Policy 6800 provides that the district’s technology resources are not to be used for personal use. Given that many districts permit personal use if the employee has entered into a limited lease agreement with the district, we have revised the policy to allow personal use where a lease exists.

Also, COPPA requires that schools obtain verifiable parental consent before allowing third parties to access student data on-line. We have updated the internet use policy to incorporate the requirements of COPPA.

16. Policy 6920—Student Self-Management of Asthma, Anaphylaxis, and/or Diabetes

The statute on student self-management of asthma and anaphylaxis⁵ requires medical authorization by the student’s physician. LB 1086 amends the physician reference to also include “other health care professional who prescribed the medication for treatment of the student's condition.”

Policy 6920 and the attendant asthma and self-management plan form have been revised to provide for authorization from other health care professionals (instead of only the student’s physician).

We note that a similar change was not made to the statute on self-management of diabetes.⁶

We have also included these changes made by LB 1086 on Form 6920A.

17. Policy 8270—Conflict of Interest Procedures

The conflict statute related to the employment of family members⁷ requires that Nebraska Accountability and Disclosure Commission (NADC) Form C-4 be filed with the Board of Education.

⁵ Section 79-224.

⁶ Section 79-225.

⁷ Section 49-1499.04: (1) An official or employee of a political subdivision may employ or recommend or supervise the employment of an immediate family member if (a) he or she does not abuse his or her official position as described in section 49-1499.05, (b) he or she makes a full disclosure on the record to the governing body of the political subdivision and a written disclosure to the person in charge of keeping records for the governing body, and (c) the governing body of the political subdivision approves the employment or supervisory position.

Policy 8270 had provided that the form was also to be filed with the NADC. However, the form now provides: “Disclosure need not be made to the Nebraska Accountability and Disclosure Commission.” We have revised Policy 8270 to delete the reference to filing with the NADC.

18. Policy 9341—Voting

The Open Meetings Act requires that motions be made and seconded by “roll call vote of the public body in open session.”⁸ LB 876 amended the Act to permit electronic voting, so long as the votes of the board members may be readily seen by the public.

Policy 9341 was amended to provide for the use of an electronic voting device in the event any Board of Education chooses to use that option.

19. ESSA Changes

The Every Student Succeeds Act was signed on December 10, 2015. It will replace the No Child Left Behind Act of 2001. Policies that refer to the NCLB have been amended to reflect the enactment of the ESSA.

The policies affected include:

- Index – Series 3000
- Index – Series 4000
- Policy 5104—Drug Free Schools
- Index – Series 6000

In addition, the ESSA requires that a notice be posted, in a public place, to inform taxpayers how to report suspected improper use of taxpayer funds. This requirement can be met by posting the enclosed notice in a public place in your District’s building.

Conclusion

If you need anything further with regard to these documents or have questions, please contact either Greg (gperry@perrylawfirm.com) or Rex (rschultze@perrylawfirm.com).

School Districts that receive this Memo and the enclosures should consult with their school attorney for independent legal advice.

⁸ Section 84-1413(2).