

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

October 6, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: First Reading-Personnel Records-5:150

This policy strikes the former language of simply referring to the collective bargaining agreement for certified staff and the general paragraph for the support staff members. Instead, it is replaced by what IASB recommends as the most updated legal requirements.

We ask that you use this as your first reading period and then put this on the next BOE meeting agenda for a second reading and approval.

## General Personnel

### Personnel Records <sup>1</sup>

The Superintendent or designee shall manage the maintenance of personnel records in accordance with State and federal law and School Board policy. Records, as determined by the Superintendent, are retained for all employment applicants, employees, and former employees given the need for the District to document employment-related decisions, evaluate program and staff effectiveness, and comply with government recordkeeping and reporting requirements. Personnel records shall be maintained in the District's administrative office, under the Superintendent's direct supervision.

An employee will be given access to his or her personnel records according to State law and guidelines developed by the Superintendent. <sup>2</sup> No one else may have access to an employee's personnel files and personal information except for: (1) a supervisor or management employee who has an employment or business-related reason to inspect the record, or (2) anyone who has the employee's written consent. <sup>3</sup>

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The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>1</sup> State or federal law controls this policy's content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right.

This policy is consistent with the minimum requirements of State law. The local collective bargaining agreement may contain provisions that exceed these requirements. When a policy's subject matter is superseded by a bargaining agreement, the board policy can state, "Please refer to the current [*insert name of professional CBA*]."

<sup>2</sup> An employee has the right to view his or her personnel file contents, with a few exceptions (Ill. Personnel Record Review Act, 820 ILCS 40/1 *et seq.*). Thus, personnel files should contain only factual and accurate job-related information. In addition, the Personnel Record Review Act identifies records that may not be kept, that is, a record of an employee's associations, political activities, publications, communications, or non-employment activities as well as records identifying an employee as the subject of an investigation by DCFS if the investigation resulted in an unfounded report as specified in the Abused and Neglected Child Reporting Act.

<sup>3</sup> Personnel files and personal information are exempt from a request for disclosure under the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.*). This is true when the requested record concerns an issue on which there is significant public interest, such as, whether the superintendent is doing a good job. See *Copley Press, Inc. v. Peoria Sch. Dist. No. 150*, 834 N.E.2d 558 (Ill.App.3, 2005), (upholding a board's denial of a request for the superintendent's evaluation), but compare *Reppert v. Southern Ill. Univ.*, 874 N.E.2d 905 (Ill.App.4, 2007), (holding that an employment contract, even when contained in a personnel file, must be disclosed because it is a *public record* and constitutes "information that bears on the public duties of public employees and officials") and *Stern v. Wheaton-Warrenville CUSD #200*, 2008 WL 385011 (Ill.App.2, 2008), (following *Reppert*, holding that the FOIA statute requires the public body to delete information in requested items that are exempt and disclose the remaining portions that are not exempt). Consult the board attorney when a request includes documents contained within personnel files.

Generally individual board members do not have the authority to view personnel files. This material is exempt from disclosure under FOIA (5 ILCS 140/7). Individual board members have no greater authority than members of the public to review material exempt from disclosure under FOIA, e.g., personnel files. However, the board itself is a supervisor; under the sample policy, the board may, by majority vote of a quorum, request specific information from a personnel file or even to inspect the file, provided it has an employment or business-related reason.

The Health Insurance Portability and Accountability Act (HIPAA) created national standards to protect individuals' medical records and other personal health information. If a district is a "covered entity" (i.e., offers a self-insured group health plan or flexible spending account), it must establish clear procedures to protect the employee's health information (45 C.F.R. §164.502). Such districts should consult their attorneys and insurance provider for assistance.

The Superintendent or designee shall manage a process for responding to inquiries by a prospective employer concerning a current or former employee's job performance. <sup>4</sup> The Superintendent shall execute the requirements in the Abused and Neglected Child Reporting Act whenever another school district asks for a reference concerning an applicant who is or was a District employee and was the subject of a report made by a District employee to DCFS. <sup>5</sup>

When requested for information about an employee by an entity other than a prospective employer, the District will only confirm position and employment dates unless the employee has submitted a written request to the Superintendent or designee.

LEGAL REF.: 745 ILCS 46/10.  
820 ILCS 40/1 et seq.  
23 Ill.Admin.Code §1.660.

CROSS REF.: 2:250 (Access to District's Public Records), 7:340 (Student Records)

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<sup>4</sup> The Employment Record Disclosure Act (745 ILCS 46/10) provides conditional immunity to employers responding to a reference request; it states: "Any employer or authorized employee or agent acting on behalf of an employer who, upon inquiry by a prospective employer, provides truthful written or verbal information, or information that it believes in good faith is truthful, about a current or former employee's job performance is presumed to be acting in good faith and is immune from civil liability for the disclosure and the consequences of the disclosure." This immunity statute does not, however, create an exemption to the requirements in the Personnel Record Review Act. The Review Act requires an employer to give an employee written notice before divulging a "disciplinary report, letter of reprimand, or other disciplinary action to a third party," (820 ILCS 40/7). An employment application may contain a waiver of this notice (Id.).

<sup>5</sup> 325 ILCS 5/4, as amended by P.A. 95-908, requires a superintendent, upon being asked for a reference concerning an employee or former employee, to disclose to the requesting school district the fact that a district employee has made a report involving the conduct of the applicant or caused a report to be made to DCFS. For more information, see 5:150-AP, *Personnel Records*.

## **General Personnel**

### **Personnel Records**

**Please refer to the “Agreement between the District #24 Board of Education Millburn Community Consolidated School Lake County, Illinois and the Millburn Teachers.”**

**For employees not covered by this agreement:**

The District maintains a complete personnel record for every current employee and former employee. The employees' personnel records shall be maintained in the District's administrative office, under the Superintendent's direct supervision. An employee will be given access to his or her personnel records according to guidelines developed by the Superintendent.

LEGAL REF.: 820 ILCS 40/1 et seq.

23 Ill. Admin. Code § 1.660.

CROSS REF.: 2:250 (Access to District's Public Records), 7:340 (Student Records)

ADOPTED: May 20, 2002