

**ORANGE COUNTY
BOARD OF EDUCATION
AGENDA ITEM ABSTRACT**

Meeting Date: February 7, 2011

**AGENDA
ITEM No.** 11-02-15

ACTION ITEM: (Y/N) Y

SUBJECT: Personnel Files # 7820 Revised – 1st Reading Approval

INFO. CONTACT Ms. Marcie Holland **PHONE:** 919-732-8126

ATTACHMENT: 1. Personnel Files Policy # 7820.

PURPOSE: To revise the Personnel Files Policy #7820.

BACKGROUND: Revised policy # 7820 has been updated to reflect statutory changes to G.S. 115C-320 and -325(o) and provide compliance with the federal No Child Left Behind Act. During the 2010 legislative session, significant changes were made to the North Carolina open records law. These changes specify what information is considered public and is open to inspection. For the purposes of federal statute compliance, this policy specifies what personnel information is available to parents of students in Title I schools. Finally, the revisions provide cross reference information with the Resignation Policy 7900 as it requires documents to be placed in the personnel file.

This policy has been reviewed by counsel.

FINANCIAL IMPACT: None.

RECOMMENDATION: The Superintendent recommends the Board of Education approve the revised Personnel Files Policy #7820 for first reading approval.

*Rescinds Policy Number:**Issued: 08/02/1999, 04/19/2004*

Personnel files will be maintained in the personnel office for all employees as provided by law. The Superintendent and all supervisors are directed to ensure that all appropriate employment-related information is submitted to the file. Employees will be provided all procedural protections as provided by law.

The superintendent has overall responsibility for granting or denying access to personnel records consistent with this policy.

A. RECORDS MAINTAINED

The following records must be maintained in the personnel file:

- evaluation reports made by the administration;
- commendations for and complaints against the employee (see subsection B C);
- written suggestions for corrections and improvements made by the administration;
- certificates;
- employee's standard test scores;
- employee's academic records;
- application forms; and
- *any request to the State Board of Education to revoke the employee's teaching license; and*
- other pertinent records or reports.

~~Any pre-employment data or other information obtained about an employee before his or her employment by the Board will be kept in a separate file and will not be made available to the employee.~~

~~Medical information, including health certificates, will be maintained in confidential files separate from personnel files. Drug test results also will be kept in the medical file, except that drug use or alcohol use contrary to Board policy or law also may be documented in the personnel file.~~

B. CERTAIN EMPLOYEE RECORDS MAINTAINED SEPARATELY

The following employee information must be kept separate from the employee's general personnel information, in accordance with legal and/or board requirements:

1. Pre-Employment Information

Letters of reference about an employee obtained before his or her employment and, for teachers, any other pre-employment information collected, must be filed separately from the employee's general personnel information and must not be made available to the employee.

2. Criminal Record Check

Data from a criminal history check must be maintained in a locked, secure location separate from the employee's personnel file. The superintendent shall designate which school officials have a need to know the results of the criminal history check. Only those officials so designated may obtain access to the records.

3. Medical Information

Employee medical information, including the following, must be kept in a separate confidential file and may be subject to special disclosure rules:

- i. health certificates (see policy 7120, Employee Health Certificate);
drug test results, except that drug use or alcohol use contrary to board policy or law also may be documented in the employee's personnel file (see policy 7240, Drug Free Workplace);*

- ii. *information related to an employee's communicable disease/condition or possible occupational exposure to bloodborne pathogens (see policies 7260, Occupational Exposure to Bloodborne Pathogens, and 7262, Communicable Diseases – Employees);*
- iii. *medical information related to leave under the Family and Medical Leave Act (see policy 7520, Family and Medical Leave); and*
- iv. *genetic information, as defined by the Genetic Information Nondiscrimination Act of 2008.*

4. Complaints/Reports of Harassment or Discrimination

The superintendent or designee shall maintain records of all reports and complaints of harassment and discrimination and the resolution of such complaints. Allegations of harassment or discrimination must be kept confidential to the extent possible. Employees involved in the allegations will be identified only to individuals who need the information to investigate or resolve the matter or to ensure that due process is provided to the accused employee (see policies 7230, Prohibition Against Discrimination, Harassment and Bullying, and 7225, Discrimination, Harassment and Bullying Complaint Procedure). If the allegations are substantiated through investigation, the superintendent or designee shall ensure that the provisions of Section C, below, are followed to the extent that they do not conflict with the rights of any individual.

C. PLACEMENT OF RECORDS IN PERSONNEL FILE

All evaluations, commendations, complaints or suggestions for correction or improvement must be placed in the central office personnel file after the following requirements are met:

- the comment is signed and dated by the person making the evaluation, commendation, complaint or suggestion;
- *if the comment is a complaint*, the *employee's* supervisor has attempted to resolve the issue raised in a ~~letter of complaint~~ *therein*, and documentation of such efforts is attached with the supervisor's recommendation to the superintendent as to whether the complaint contains any invalid, irrelevant, outdated or false information; *and*
- the employee has received a copy of the evaluation, commendation, complaint or suggestion five days before it is placed in the file.

All written complaints that are signed and dated must be submitted regardless of whether the supervisor considers the complaint resolved.

The supervisor is expected to use good judgment in determining when documents should be submitted to the file immediately and when a delay is justified, such as a plan of improvement that is frequently revised. However, all evaluations, commendations, complaints or suggestions for correction or improvement should be submitted by the end of the school year or in time to be considered in an evaluation process, whichever is sooner. The supervisor or principal should seek clarification from the ~~Assistant Associate Superintendent of~~ *for Human Resources Support Services* as necessary to comply with this policy.

The employee may offer a denial or explanation of the evaluation, commendation, complaint or suggestion, and any such denial or explanation will become part of his or her personnel file provided it is signed and dated.

The Superintendent may exercise statutory authority not to place in an employee's file a letter of complaint that contains invalid, irrelevant, outdated or false information or a letter of complaint where there is no documentation of an attempt to resolve the issue.

As provided in policy 7900, Resignation, if a career employee who has been recommended for dismissal under G.S. 115C-325(e)(1) resigns without the written consent of the superintendent, then: (1) the superintendent shall report the matter to the State Board of Education; (2) the employee shall be deemed to have consented to the placement of the written notice of the superintendent's intention to recommend dismissal in the employee's personnel file; and (3) the employee shall be deemed to have consented to the release to prospective employers, upon request, of the fact that the superintendent has reported this employee to the State Board of Education. For purposes of this provision, "career employee" means (1) a teacher or an administrator with career status, or (2) an administrator or a probationary teacher during the term of his or her contract.

D. ACCESS TO PERSONNEL FILE

Every employee will have the right during regular working hours to inspect his or her personnel file, provided three days notice is given to the personnel office.

Access to a personnel file may be permitted to the following persons without the consent of the employee about whom the file is maintained:

- *school officials involved in the screening, selection or evaluation of the individual for employment or other personnel action;*
- ~~Those school officials, including the Board attorney,; involved in the evaluation process of the individual and the School Board if its examination of the file relates to the duties and responsibilities of the Board; and~~
- members of the board of education, if the examination of the file relates to the duties and responsibilities of the board member;
- *the superintendent and other supervisory personnel;*
- *The Case Manager in a demotion or dismissal procedure regarding the employee; and*
- *law enforcement and the District Attorney to assist in the investigation of a report made to law enforcement pursuant to G.S. 115C-288(g) or regarding an arson; an attempted arson; or the destruction of, theft from, theft of, embezzlement from or embezzlement of any personal or real property owned by the board. Five days' written notice will be given to the employee prior to such disclosure.*

No other person may have access to a personnel file except under the following circumstances:

- when an employee gives written consent to the release of his or her records which consent specifies the records to be released and to whom they are to be released;
- when subpoenaed or pursuant to court order; or
- when the board has determined and the superintendent has documented that the release or inspection of information is essential to maintaining the integrity of the Board or the level of quality of services provided by the Board.

Each request for consent to release records must be handled separately.

It is a criminal violation for an employee or board member to do either of the following:

- *knowingly, willfully and with malice permit any unauthorized person to have access to information contained in a personnel file; or*
- *knowingly and willfully examine, remove or copy a personnel file that he or she is not specifically authorized to access pursuant to G.S. 115C-321.*

E. INFORMATION AVAILABLE TO PARENTS OF STUDENTS ATTENDING TITLE I SCHOOLS

The following information about a student's teacher(s) or paraprofessional(s) providing services to a student must be provided upon request to the parent of a student attending a Title I school:

- *whether the teacher has met North Carolina qualification and licensing criteria for the grade level(s) and subject area(s) in which the teacher provides instruction;*
- *the teacher's baccalaureate degree major and any post-graduate certification or degree held;*
- *whether the teacher is teaching under emergency or other provisional status through which North Carolina qualification or licensing criteria have been waived; and*
- *the qualifications of any paraprofessional providing services to the student.*

F. PUBLIC INFORMATION

- All personnel information that is classified as public records may be disclosed in accordance with applicable laws. *The following information contained in an employee's personnel file must be open to inspection upon request by members of the general public:*
 - *name;*
 - *age;*
 - *the date of original employment or appointment;*
 - *the terms of any past or current contract by which the employee is employed, whether written or oral, to the extent that the board has the written contract or a record of the oral contract in its possession;*
 - *current position;*
 - *title;*

- *current salary (includes pay, benefits, incentives, bonuses, deferred compensation and all other forms of compensation paid to the employee);*
- *the date and amount of each increase or decrease in salary with the board;*
- *the date and type of each promotion, demotion, transfer, suspension, separation or other change in position classification with the board;*
- *the date and general description of the reasons for each promotion with the board;*
- *the date and type of each dismissal, suspension or demotion for disciplinary reasons taken by the board, and if the disciplinary action was a dismissal, a copy of the written notice of the final decision of the board setting forth the specific acts or omissions that are the basis of the dismissal; and*
- *the office or station to which the employee is currently assigned.*

Unless an employee submits a written objection to the personnel office, the Board also may make the following information available about each employee as part of an employee directory:

- address;
- telephone number;
- photograph;
- participation in officially recognized activities and sports; or
- degrees and awards received.

Employees will be notified of their right to object before any such directory is compiled or revised.

The name of a participant in the North Carolina Address Confidentiality Program is not a public record, is not open to inspection, and must be redacted from any records released.

Volunteer records are not considered public records.

E. REMOVAL OF RECORDS

An employee may petition the Board of Education to remove any information from his or her personnel file that the employee deems invalid, irrelevant or outdated.

Legal References: *Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. 2000ff et seq.; No Child Left Behind Act of 2001, 20 U.S.C. 6311(h)(6); G.S. 114-19.2; G.S. 115C-36, -47(18), -209.1, -288(g), -319, -320, -321, -325(b). and (o); 16 N.C.A.C. 6C.0313*