



GARRETT HEMANN ROBERTSON P.C.

School Law Update

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2013 LEGISLATIVE CHANGES

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PERSONNEL

HB 2184 – Sexual (Mis)Conduct Reporting Laws

- Education provider obligation to provide information must report all information upon request that is known by the employer, regardless of whether the conduct predated the reporting laws if the education provider complied with the procedural requirements of the sexual conduct law. This is in response to concerns about ambiguities in the law and a recent court decision.
- Districts are prohibited from entering into agreements that suppress or agree to keep confidential any sexual misconduct report or information, regardless of whether the conduct predated the laws.

Action Item: District policies and practice should clarify that in response to a request to the employer district, all of an applicant's conduct known by the employer, regardless of when it occurred, must be disclosed.

Reminder: Laws cover *sexual conduct* for *students*, not limited to students under the age of 18.

HB 2654 – Prohibits Employer from Accessing Employee/Applicant Social Media

- Cannot request user name, or password or other means of access to personal social media account.
- Cannot require employee to “add” employer to account.
- Can require employee to provide account access information if the account is provided by employer or used on behalf of employer.
- Employer can conduct investigations to ensure employee compliance with applicable laws regarding work-related employee misconduct based on specific information about employee on personal account BUT without requiring access information from employee.
- Employer can conduct investigations that require an employee to share content that has been reported to the employer that is necessary for the employer to make a factual determination about the matter BUT without requiring access information from employee.
- Employer can access information available to the public.
- Employer not liable for inadvertently having accessed information through electronic monitoring of the employer's network BUT cannot use information to access the employee's account.

Action Item: Update policies and practices for human resources interviews and investigations.



2013 LEGISLATIVE CHANGES, continued

HB 2669 – Provides Specific Employee Protections to Interns under State Antidiscrimination/ Civil Rights Laws Chapter 659A

- Intern is defined as a person who performs works for an employer for the purpose of training if:
 - employer is not committed to hire at end of training
 - agreement in writing that there is no entitlement to wages for work performed, **and** the work performed
 - supplements training in an educational environment that may enhance employability
 - provides experience to benefit the worker
 - does not displace regular employees
 - is performed under close supervision of existing staff
 - provides no immediate advantage to employer to train and may occasionally impede employer operations

Only selected laws listed apply:

- State discrimination laws for protected classes, military, victim laws (but not religious accommodations)
- Medical examinations and inquiries, breathalyzer and genetic testing
- Whistleblowing
- Aiding in criminal/civil proceedings, unemployment hearings, Legislature testimony

Action Item: Update policies and supervisor training for hiring and direction of eligible interns.

HB 2903 – Requires Posting of Additional Notices for Victims of Domestic Violence, Harassment, Sexual Assault and Stalking (659A.270-.285)

Action Items:

- Obtain required postings from BOLI website. First copy without charge and upon request BOLI provides complete text of all rules pursuant to statute without charge.
- Review policies on postings and update as needed.

HB 2950 – Bereavement Leave

- Includes bereavement leave in state law definition of “family leave.”
- Allows eligible employees to “deal with the death of a family member” by attending funeral/funeral alternative, make necessary arrangements, grief.
- Leave must be taken within 60 days of notice of death.
- Entitled to a total of two weeks within any one-year period.
- Two or more family members of employer can take concurrent leave.
- May not require employee to take multiple periods of leave concurrently if more than one family member dies during the one-year period.
- Counts against total of authorized state family leave.

Action Item: Review collective bargaining agreements to determine compliance with law, revise/develop policies.



2013 LEGISLATIVE CHANGES, continued

HB 3045 – Injury Reporting Law

- District board must have policy for reporting incidents that result in injury of an employee of the district, sustained in performance of the duty. The policy must align with any existing reporting requirements.

Action Item: Review policy to include legal citation.

HB 3254 – Licensure changes

- Teacher leader license:
 - 1) Holder qualified to provide leadership that “may include” mentoring, curriculum development support, teacher preparation support and other educational leadership.
 - 2) Deemed to be highly effective in teaching by TSPC standards.
- Model career pathways for EAs to become licensed teachers: OEIB shall develop, includes requirements for EA to participate and guidelines for districts and higher education to collaborate to assist EAs in program.
- Continuing license renamed to “professional.”

Initial licensure renewable limits 9 years: 3 times, every 3 years, limited exception for teacher that does not qualify for a professional license due to lack of employment. Only for initial licenses after effective date of the law.

HB 3342 – Public Employer Accountability Act

- Revisions to Chapter 243. A public employer “may not use public funds to support actions to assist, promote or deter union organizing.”
- Purpose of law is “to maintain the neutrality of public bodies in labor organizing by forbidding the use of public funds for unintended purposes and to conserve public resources by ensuring that public funds are used as intended.”
- If the employee requests the opinion of his or her employer about union organizing, nothing prohibits responding to the request.
- Violation constitutes an Unfair Labor Practice.
- Also requires petition filed for representation to include a statement of desire by employees and be signed and dated by 30% of employees during the 180 days prior to filing a petition with ERB.

Action Item: Supervisor training for “neutrality” in responses to requests for information about union organizing.

SB 1 – Veterans Day holiday for veterans

- Must provide paid or unpaid time off for veterans on Veterans Day.
- Employee must request 21 days in advance with appropriate documentation that demonstrates veteran status under state law.
- Employer provides response to request within 14 days.
- Employer has methods to request hardship exemption.

Action Item: Develop policy and guidelines.



2013 LEGISLATIVE CHANGES, continued

STUDENT ISSUES

HB 2192 – Changes to Discipline Policies

- Changes use of force standard from when “the individual reasonably believes it necessary to maintain order” to only when “the student’s behavior imposes a reasonable threat of imminent, serious bodily injury to the student or others and less restrictive interventions would not be effective.”
- Changes “zero tolerance” policy for weapons. Now only includes firearms, not dangerous and deadly weapons.
- Expulsions only allowed for health and safety threats, when other strategies to change student conduct have been ineffective or when student possesses/uses firearm at school.
- Requires certain elements be included in student handbook regarding code of conduct.
- Requires policy regarding the management of student who threaten violence or harm in public schools.
- Requires policy regarding use of physical force upon a student.
- Effective 2014-15 school year.

Action Item: Prior to the 2014-15 school year, review and revise all student discipline policies and student handbooks to comply with new discipline standards.

HB 2386 – Radio Frequency Location Device

- Districts can’t use radio frequency location devices for student location purposes (e.g. on name badges to monitor student attendance) unless it notifies the State Board of Education and parents grant permission.
- Location devices are acceptable to track or locate property such as electronic equipment and instructional materials if notice is provided.

Action Item: If the District intends to use these devices, notify the State Board of Education first. The State Board of Education must then develop rules related to these devices.

HB 2426 – Student Personal Electronic Devices

- Requires district to adopt policy related to students’ use of personal electronic devices for educational purposes.
- Districts also required to determine whether there are free online resources when adopting textbook lists.
- District required to provide annual professional development for specified employees about use of online resources for students with print disabilities.
- Districts can’t use this law to require students to provide passwords to students’ email or online accounts.
- Law applies to charter schools.
- Effective 2014-15 school year.

Action Item: Adopt required policy. Provide training to personnel assisting students with print disability by October 1, 2013. Search for free online resources when developing textbook list. Amend contract with charter school to include reference to this law.



2013 LEGISLATIVE CHANGES, continued

HB 2585 – Restraint/Seclusion Complaint Process

- Provides process for parents to submit complaints to ODE regarding the district's use of restraint or seclusion after the parent exhausts board complaint process.
- Directs ODE to develop minimum standards for seclusion rooms applicable at beginning of 2014-15 school year. Free-standing seclusion cells are prohibited.
- Adds additional information districts must provide to ODE on annual basis regarding restraint/seclusion of students.

Action Item: Monitor ODE rules regarding seclusion rooms to ensure compliance.

HB 2644 – Reporting Class Size

- Each school year the district must report information regarding the total # of students in classes and totally number of licensed teachers regularly assigned to the students to ODE.
- Effective 2014-15 school year.

HB 2747 – Interdistrict Transfers

- Prohibits districts that admit nonresident students from considering race, religion, sex, sexual orientation, ethnicity, national origin, disability, health, IEP, income level, resident, English proficiency, athletic ability and academic record.
- On IDT forms can only require name, contract info, birthdate, grade level and expulsion information.
- Can't require student to provide information about IEP, TAG or academic record.
- Can't require student to come in for interview or tour prior to granting IDT.
- Can limit # of nonresident students admitted. Must have lottery if applications exceed available spots.
- Can establish minimum behavior and attendance standards (but not academic standards).
- Must have MD if special ed. student before IDT consent can be withdrawn related to behavior or attendance issue.
- Special ed funding issue (non-resident district will be unlikely to recoup cost from resident district of high-cost special ed student).
- District must provide written explanation to student if IDT not granted.
- Effective 2014-15 school year.

Action Item: Revise all IDT policies, procedures, admission forms prior to 2014-15 school year. Consider ramifications to special education program.

HB 2749 – Inhalers/EpiPens

- Upon parent request, must allow inhalers and EpiPens to be kept in classroom.
- District must train specified number of school employees in use of EPI pens. Provides process for parents to submit complaints to ODE regarding the district's use of restraint or seclusion after the parent exhausts board complaint process.
- No liability for district employee attempting to assist child in self-administration of medication.
- Effective 2013-14 school year.

Action Item: Revise policy to reflect new law.



2013 LEGISLATIVE CHANGES, continued

HB 2753 – Restraint/Seclusion

- Removes 2017 sunset on 2011 prohibitions of the use of mechanical, chemical and prone restraint on students.

HB 2756 – Seclusion Cells

- Prohibits district from purchasing, building or possessing freestanding seclusion cells. Does not apply to “time-out rooms.”
- Seclusions cells must be removed from classrooms by July 1, 2013 and from district property by September 1, 2013.

Action Item: Immediately remove seclusion cell from district property.

HB 2789 – Emergency Drills

- Districts must provide two drills per school year and safety instructions for fire, earthquakes, safety threats, including lock down drills. If students are in coastal zones, must provide tsunami drills three times per year.
- Effective 2013-14 school year.

Action Item: Review emergency drill procedures and frequency to ensure compliance with new law.

HB 3000 – Vision Screenings

- Any student under the age of 7 must submit documentation that they have received a vision screening within 120 days of the student beginning the educational program.
- Failure of parents to provide the vision certification cannot result in exclusion, but district can withhold grade reports.
- Effective 2014-15 school year.

HB 3264 – Transition Services for Disabled Students

- Five school districts will participate in a pilot program to develop and implement strategies for assisting disabled student with the transition to life after high school.

HB 3474 – Mental Health Screenings

- Two weeks in advance of mental health screening that are conducted for all students in a particular grade, the district must mail notices to parents. Parents can request in writing that their child not participate.
- Parents must give consent for *individual* mental health screening.
- Effective 2013-14 school year.



2013 LEGISLATIVE CHANGES, continued

SB 610 – Service Animals

- Conforms state law to federal ADA.
- Limits assistance animal definition to dogs and miniature horses. Districts must provide two drills per school year and safety instructions for fire, earthquakes, safety threats, including lock down drills. If students are in coastal zones, must provide tsunami drills three times per year.
- Effective 2013-14 school year.

Action Item: Review emergency drill procedures and frequency to ensure compliance with new law.

MISCELLANEOUS

HB 2212 – Public Contracting changes

- Limit for small procurements of goods and services is raised from \$5,000 to \$10,000; specifically prohibits contracting agency “artificially dividing or fragmenting the procurement.” Intermediate procurements are correspondingly raised from \$10,000 to the \$150,000 limit (2012) with the same prohibition on artificially dividing or fragmenting the procurement.

Reminder: Attorney General Public Contracts Manual is not updated for the multiple legal revisions since 2010. Administrative rules are current with 2012 changes.

Action Item: Review contracting agency rules adopted by Board and determine if revisions are needed for the 2012 and 2013 revisions to the laws and administrative rules.

SB 46- Construction Statute of Limitations

- Amends the statute of limitations for architects, landscape architects, and engineers to 10 years after substantial completion or abandonment of construction on most structures, six years for large commercial structures. Previously, had been 10 years for both.
- Maintains two years statute of limitations upon discovery of injury or damage that should have been discovered in the exercise of reasonable care.

HB 3014 – US/OR Flag Procurement

- Each school board must procure and display U.S. flags “of a suitable size for classrooms” in each classroom. Provide students weekly opportunity to recite pledge of allegiance.
- Charter schools must procure and display U.S. flags “only if” the school is located in a public building or if the private building has appropriate equipment for display of flags.
- Effective 2013-14 school year.

Action Item: Obtain flags. Amend charter agreements to reflect new requirement.



2013 LEGISLATIVE CHANGES, continued

HB 3075 – Open Enrollment

- District representative must meet with resident student that has expressed an interest in attending another school district and encourage person to continue to attend for remainder of year. Districts may not encourage or require resident of District to attend schools of another district as a condition to avoid discipline.
- Achievement compact advisory committee must present its recommendations to school board no later than May 1 of each year. (Previously February 1)
- Transportation costs are not approved for transportation solely to persons that are residents of another district if it is outside district boundaries and for the purposes of transportation between home and school. This does not include transportation if required by federal law.
- Open enrollment districts may not use SSF or local revenues for advertisements outside of the boundaries of the district or to be directed at non-residents.

Action Item: Review policies/practices.

SB 529 – ESD Component District Withdrawal

- Now all component school districts may withdraw from its ESD if the board affirms by a two-thirds vote. (Previously only HDESD, NWRESD and WESD)
- Must submit a notice of intent to withdraw to the ESD by no later than November 1 of the year prior to withdrawal.

Stealth stuffing: HB 2501 – Small Schools Funding → Revisions to ORS 343.961

- Resident district obligated to pay for transportation of students to eligible day treatment programs placed by public or private entity or child's parent.

CHARTER SCHOOL

HB 2150 – Charter School Application Process

- Modified procedures for charter school proposals. Now must submit at least 180 days prior to opening, previously 120 days.
- School district board member prohibited from serving as voting member of charter school board, if located in district.
- Proposed charter school board must provide acknowledgement of standards of conduct and liabilities as nonprofit organization.
- Clarifies that public contracting law and ORS 339.119 (consideration for educational services) applies to charter schools.

Action Item: Update charter school policy. Amend charter school contracts to reflect changes.



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2013 LEGISLATIVE CHANGES, continued

HB 2875 – Expiration of Charter Contract

- Allows expiring charter to remain in effect until new charter is negotiated if school board has renewed charter.

HB 3093 – Termination of Charter Contract

- ODE can withhold SSF if charter school does not provide annual audit by April 1.
- Can terminate if charter schools fails to maintain sound financial management system for one or more consecutive years. (Previously two or more years)
- Charter and sponsor can develop plan to address financial issues prior to termination.
- In a charter proposal, applicants must now provide information related to its prior history in operating a public charter school or providing educational services.

Action Item: Update charter school policy. Amend charter school contracts to reflect changes.

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