

Georgia School Superintendents Association

Spring Bootstrap Conference

Legal Issues Update

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LEGISLATIVE ISSUES FROM THE GENERAL ASSEMBLY



Open Meetings Act

HB 397

'Meeting' means:

The gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon

'Meeting' shall not include:

(i) The gathering of a quorum for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency at which no other official business of the agency is to be discussed or official action is to be taken;

(ii) The gathering of a quorum for the purpose of attending state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency at which no official action is to be taken by the members;

'Meeting' shall not include:

(iii) The gathering of a quorum for the purpose of meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices and at which no official action is to be taken by the members;

(iv) The gathering of a quorum for the purpose of traveling to a meeting or gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter is formulated, presented, **discussed**, or voted upon by the quorum; or

'Meeting' shall not include:

(v) The gathering of a quorum at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, **presented, discussed,** or voted upon by the quorum.

This subparagraph's exclusions from the definition of the term 'meeting' shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.

Voting

All votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter.

This chapter shall not apply to the following:

(5) Mediation of a dispute between the agency and any other party. In such a gathering, the neutral party may caucus jointly or independently with the parties to the mediation to facilitate a resolution to the conflict, and any such caucus shall not be subject to the requirements of this chapter. Any decision or resolution agreed to by an agency at any such caucus shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public. Any final settlement shall be subject ... to the [ORA].

This chapter shall not apply to the following:

(7) Incidental conversation unrelated to the business of the agency; or

(8) E-mail communications among members of an agency; provided, however, that such communications shall be subject to disclosure pursuant to [the ORA].

Executive Session

- (1) Meetings when any agency is discussing or voting to:
 - (A) Authorize the settlement of any matter which may be properly discussed in executive session in accordance with paragraph (1) of Code Section 50-14-2;
 - (B) Authorize negotiations to purchase, dispose of, or lease property;
 - (C) Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;
 - (D) Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote; or
 - (E) Enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote.

Executive Session cont'd

No vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, claims, or administrative proceedings, shall be binding on an agency until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote;

Executive Session cont'd

(2) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee or interviewing applicants for the position of the executive head of an agency. This exception shall not apply to the receipt of evidence or when hearing argument on personnel matters, including whether to impose disciplinary action or dismiss a public officer or employee or when considering or discussing matters of policy regarding the employment or hiring practices of the agency. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself shall at all times be open to the public as provided in this chapter;

Minutes of Executive Session

Minutes of executive sessions shall also be recorded but shall not be open to the public. Such minutes shall specify each issue discussed in executive session by the agency or committee. In the case of executive sessions where matters subject to the attorney-client privilege are discussed, the fact that an attorney-client discussion occurred and its subject shall be identified, but the substance of the discussion need not be recorded and shall not be identified in the minutes. Such minutes shall be kept and preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session.

Sanctions

Any person knowingly and willfully conducting or participating in a meeting in violation of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this chapter against any person who **negligently** violates the terms of this chapter in an amount not to exceed \$1,000.00 for the first violation. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date that the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions."

OPEN RECORDS ACT

Procedures ...

- Board of education may designate recipient for written requests
- Must provide notice of designee
- Three days runs from notice to designee
- 10 cents, not 25 cents per page
- Notice of costs over \$25, prepayment above \$500
- Portable copiers allowed
- Specificity as to emails
- Specific FERPA exception
- Penalties same as OMA but only for written requests

REDUCTION IN FORCE

The Fair Dismissal Act

- O.C.G.A. § 20-2-940 provides for termination of a written employment contract during its term:
 - “(6) to reduce staff due to loss of students or cancellation of programs”
- This has been broadly interpreted by the State Board of Education and the courts to give local boards power to cut staff for any valid financial or reorganizational reason.

Board Policy

Descriptor Code: GAKA

Reduction in Force

RESPONSIBILITIES AND PREROGATIVES OF BOARD OF EDUCATION

The most important functions of the Board of Education are to employ personnel and

(3) any combination of (1) and (2). Factors to be considered by the Superintendent in devising a RIF plan may include, but shall not be limited to, the professional expertise, effectiveness, overall job performance, tenure status, level of certification, and length of continuous service of individual employees with the Board.

NOTICE AND HEARING PROCEDURES

If the Board accepts the recommendation of the Superintendent, the Superintendent shall

Factors to be considered by the Superintendent in devising a RIF plan may include, but shall not be limited to, the professional expertise, effectiveness, overall job performance, tenure status, level of certification, and length of continuous service of individual employees with the Board.

a decrease in personnel or a discontinuation of programs;

2. A change in state or local curriculum, personnel, or financial practices that would necessitate a change in or elimination of program or services provided by the School District;
3. A loss of funds due to a reduction in state funds, reduction in local funds or other funds that make necessary a reduction in spending;
4. A lack of funding for programs, personnel, or services provided by the School District;
5. Any reasonable reorganization plan to achieve a more efficient school district.

APPLICABILITY OF POLICY

This RIF policy shall apply to all personnel employed by the Board of Education, but nothing in this policy shall be construed to extend to any employee substantive or procedural rights not required under state law. Specifically, nothing in this policy shall extend to professional personnel any expectation of re-employment or due process rights greater than are available under the Fair Dismissal Act of Georgia. This policy is not to be construed to mandate the promotion, transfer or reassignment of an employee to any other position with the School District, even though the employee who is to be terminated may be qualified or certified for a higher or other position

RIF PROCEDURE

When the Superintendent determines that the application of this reduction in force policy is necessary, it shall be his or her primary responsibility to prepare for presentation to the Board of Education a plan for reduction in force (RIF).

In proposing the plan, the Superintendent may: (1) determine the group(s) of employees to which the RIF will be applied, (2) select individuals or positions to be subject to the RIF, or

Senate Bill 184

- (a) A local board of education shall not adopt or implement a policy that allows length of service to be the primary or sole determining factor when implementing a reduction in force. **The local board shall consider as the primary factor the performance of the educator, one measure of which may be student academic performance.**
- (b) Any policy that does not comply with subsection (a) of this Code section shall be considered invalid and the State Board of Education shall be authorized to take action to withhold all or any portion of state funds in accordance with Code Section 20-2-243.
- (c) This Code section shall not apply if a local board of education eliminates an entire program.

SB 153

To reduce staff due to loss of students or cancellation of programs and due to no fault or performance issue of the teacher, administrator, or other employee. In the event that a teacher, administrator, or other employee is terminated or suspended pursuant to this paragraph, the local unit of administration shall specify in writing to such teacher, administrator, or other employee that the termination or suspension is due to no fault or performance issues of such teacher, administrator, or other employee;

Other Personnel Issues

Health Insurance for Classified Staff

- Unlike certified staff, the School District has the option of not providing coverage through the SHBP for classified staff, but a review of personnel policies and handbooks will be necessary to insure there is no argument about a contract or vested rights.
- If the School District provides coverage, it must cover all eligible classified staff and apparently must provide coverage by making the payments required by the Plan.
- The School District can contract with a private insurance company to provide coverage for its classified employees.
- If an employee is not covered by the SHBP at the time of retirement, they will not be covered during retirement.

Health Insurance for Classified Staff cont'd

- SHBP is considering the issue of how to deal with School Districts which withdraw from the Plan and the apparent obligation to continue to provide financial support toward retired employees.
- Obviously, one option is to eliminate classified employees or large groups of classified employees through out-sourcing, but there are legal issues that have to be addressed as well.
 - Multi-year contracts and making sure the right language is used
 - Terminating contract before the end of the year
 - Role of the District in supervising, hiring, terminating employees

Teacher Contracts

- What about the old 190 day rule?
- What does the SBOE rule say today?
- What does the salary schedule say?
- Will there be another waiver or continued guidance?

100% Retirees Return to Work Expires 6/30/13

- Temporarily withdraw from TRS
- Negotiate out of contract
- Renegotiate to 49% status

Districts Can Answer Garnishments Without An Attorney

But Be Careful Out There

Other Student Issues

Follow-up to SBOE/OCR Statewide Agreement

- Options for the District
- Have to Decide by June 15, 2012
- What Has to Go into the Handbook

HB 879 – Students with Diabetes

- Diabetes Medical Management Plan – developed by doctor
- Trained district personnel
 - Guidelines to come
 - Can't be forced – must volunteer
 - Must have at least 2 at each school
- Information to all bus drivers
- Parents or designees allowed on field trips
- Student permitted to self treat in any area of school
- Negligence standard v. ministerial duty

HB 1176 – Child Abuse Reporting

- ‘Child Service organization personnel’ means persons employed by or volunteering at ... an organization, whether public, private, for profit, not for profit, or voluntary, that provides ... education, ... coaching, counseling, recreational programs, ... to children.
- If a person is required to report child abuse ... because that person attends to a child pursuant to such person’s duties as an employee of or volunteer at ... school, ... that person shall notify the person in charge of the facility, or the designated delegate thereof, and the person so notified shall report or cause a report to be made in accordance with this Code section.

HB 1176 – Child Abuse Reporting cont'd

- Under no circumstances shall any person in charge of such ... school, ... exercise any control, restraint, modification, or make other change to the information provided by the reporter, although each of the aforementioned persons may be consulted prior to the making of a report and may provide any additional, relevant, and necessary information when making the report.

Questions

