

Legal Hot Topics for Rural Schools Small

2022 OREGON SMALL
SCHOOLS CONFERENCE,
APRIL 21-22, 2022

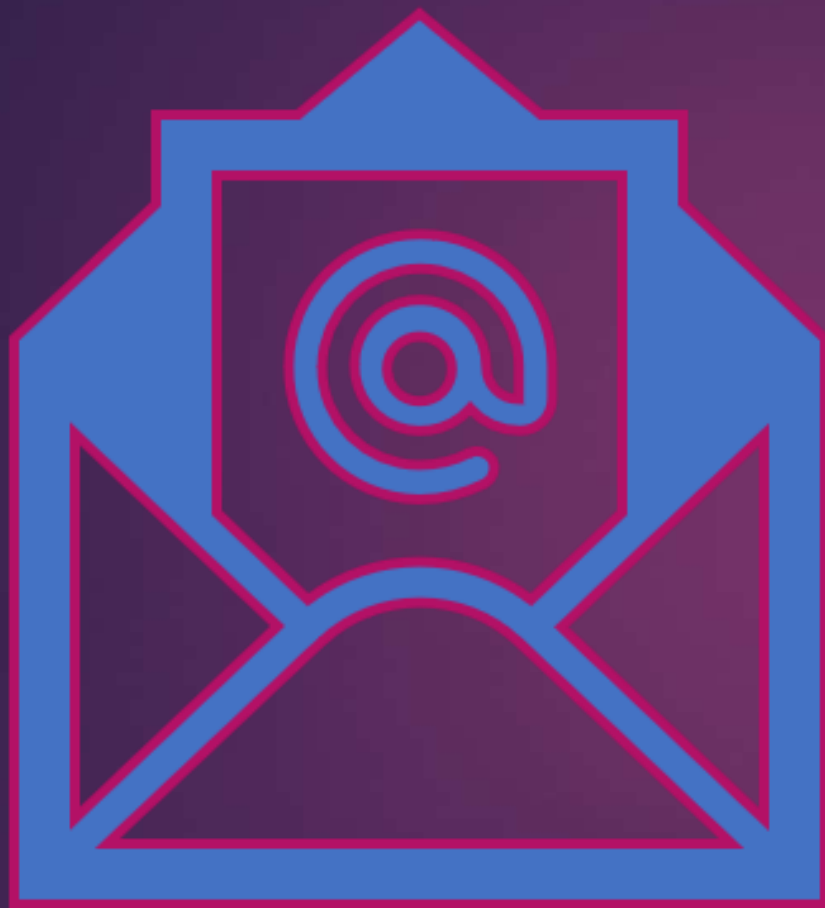


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Scope of PACE Legal Services

PACE Legal Services-the ER of Legal Services

General Counsel—public
contracting/contract reviews, public
meetings, public record requests

Labor Counsel

Special Education Counsel

AGENDA

- ▶ The school board's role in school operations
- ▶ Employment terminations and the board's role
- ▶ Political speech
- ▶ Parent complaints about curriculum
- ▶ Complaints about board members and superintendents
- ▶ Document requests
- ▶ Employment of family members



The School Board's Role in School Operations

The School Board's Role in School Operations

ORS 332.072 Legal status of school districts. All school districts are bodies corporate, and **the district school board is authorized to transact all business coming within the jurisdiction of the district** and to sue and be sued. Pursuant to law, district school boards have control of the district schools and are responsible for educating children residing in the district.

The School Board's Role in School Operations

See also:

- ▶ ORS 332.075 Powers of board (contracts, curriculum, policies, etc.)
- ▶ ORS 332.105 General duties of board.

The School Board's Role in School Operations

The school board hires a superintendent to conduct operations of the district.

The school board delegates many of its powers to the superintendent.

However, the school board ultimately retains legal authority over operations of the school district.

Best Practice Tip for Superintendents

Best Practice: Superintendents should get to know their board members and establish a good working relationship with them.

OSBA board development offers board roles and responsibilities trainings and can facilitate team building between board members and superintendents.



Employment terminations and the board's role

Employment Termination Deductible



\$25,000 deductible waived if you contact a PACE attorney pacelegal@osba.org at least 72-hours in advance of the termination



Termination includes contract non-extensions and non-renewals



A notification will not be sufficient to waive your deductible



A call the day of the termination will not be sufficient to waive your deductible

Licensed Employment Terminations

Only the school board has the authority to terminate a licensed teacher or administrator, this task may not be delegated to the superintendent

All licensed individuals must have a hearing before the board unless they decline, advised that the hearing take place before the board votes to terminate

ORS 342.805 to 342.937

“Classified” Employment Terminations

- ▶ The school board may delegate termination decisions of all non-licensed staff to the superintendent or superintendent’s designee
- ▶ All non-licensed “classified” staff are entitled to an appeal hearing before the school board regarding their termination
- ▶ “classified school employee” includes all employees of a public school district except those for whom a teaching or administrative license is required as a basis for employment in a public school district.
- ▶ ORS 332.544 Procedure for demoting or dismissing classified school employees.

Employment Terminations Best Practice

- ▶ Always remember that the school board has the ability to review and overrule your termination decisions
- ▶ Know thy board, will they support the termination or termination recommendation?
 - ▶ Know this in advance!
- ▶ Make sure you are working with the board's designated general counsel as you work through terminations
- ▶ Make sure you are consulting with PACE preloss pacelegal@osba.org.

Political Speech

What is Speech?



VERBAL



WRITTEN



IMAGES—PICTURES, FLAGS,
POSTERS, T-SHIRTS, HATS,
ZOOM BACKGROUND IMAGES

ORS 260.432 Political Activities of Public Employees During Working Hours

Prohibited on Duty

- ▶ Promote or oppose election petitions
- ▶ Promote or oppose candidates
- ▶ Promote or oppose a political committee
- ▶ Promote or oppose ballot measures

Not Prohibited on Duty

- ▶ Prepare and distribute impartial written material or make an impartial presentation that discusses election subjects
- ▶ Wear political buttons subject to applicable employer policies

ORS 260.432 Activities of Public Employees During Working Hours

- ▶ Additional Resources:
 - ▶ ORS 260.432
 - ▶ Oregon Secretary of State Quick Reference Guidance
 - ▶ No Case Law



Parent Complaints about Curriculum

Common Parental Complaints

Complaints about human
sexuality curriculum

Complaints about critical race
theory

Complaints about news stories
shown or distributed during class

Curriculum Transparency Legislation

State legislators in at least nineteen states have introduced bills requiring school districts to post lists of all of their teaching materials online, including books, articles and videos.

Oregon had such a bill this session, but it died, it will be back, [Oregon 2022 SB 1575](#).

Best Practices Tips for Educators

Post	Post your curriculum in a place that is accessible to parents preferably in advance of the lesson
Email	If you plan to use a story from the news, email parents in advance letting them know what you plan to discuss and how it relates to the curriculum
Know	Know thy audience—if you live in a Fox news community and bring in an NPR article without letting parents know in advance and explaining why it is relevant to the curriculum, you might receive a complaint
Provide	If you receive a request for something that was used in class, provide it—more info in record request section...

Best Practice Tips for Administrators

Make sure your educators are aware of the best practice tips on the proceeding slide

When responding to complaints, explain how the lesson at issue relates to the curriculum being taught

Explain where the curriculum comes from, i.e. which state curriculum standards does the curriculum support, if a board policy applies, i.e. OSBA Model Policy IGAI Human Sexuality Education, cite to the policy (more info on following slides)

Human Sexuality Curriculum Resources

- ▶ [ODE Human Sexuality FAQ](#)
- ▶ [OAR 581-022-2050 Human Sexuality Education](#)
- ▶ OSBA Model Policy IGAI (last updated 7/18/19)
 - ▶ Requires advance notice to parents of certain lessons
 - ▶ Allows student opt out pursuant to ORS 336.465

Critical Race Theory Curriculum Resources

[OSBA Critical Race Theory
Resource](#)

[ODE's Communicating
about Racial Equity in a
Charged Environment
Toolkit](#)



Complaints about board members and superintendents

Complaints about Board Members



Complaints against board members by community members, staff, other board members



Assist the board chair with identifying which policy may be involved—most typically policy KL



Encourage board chair to reach out to legal counsel

Complaints about Board Members

In executive session or closed session?

- Encourage board chair to reach out to legal counsel

Investigation by board member(s) or outside investigator?

- Again, encourage board chair to reach out to legal counsel

If complaint is about board chair?

- Suggest that the vice chair handle the matter
- Again, encourage board chair to reach out to legal counsel

Complaints about Board Members-- Recourse

Public censure by other board members

- There is no policy, no statute, no formal process
- Encourage board chair to reach out to legal counsel
- OSBA attorneys may not be able to assist due to conflict, again, reminder of importance of general counsel

Recall

- Encourage board chair to reach out to legal counsel
- OSBA attorneys cannot assist due to conflict

Lawsuits by complainants

- OSBA attorneys cannot assist because we represent the school board

Complaints about Superintendents

Refer to board chair

Remind board chair about any complaint process provisions in the superintendent contract

Encourage board chair to reach out to legal counsel

OSBA attorney assistance is limited due to relationship between OSBA attorneys and superintendents

Document Requests

Public Record Requests

- ▶ Anyone can make a public record request: community members, parents, board members, for-profit businesses, out-of-state individuals or entities, ANYONE.
- ▶ You can charge a reasonable fee—make sure you have it in your policy in advance of the request!
- ▶ District Policy KBA and KBA-AR; ORS Chapter 192.
- ▶ OSBA attorneys can assist with small record request matters, but if it is complex, we will be referring you to your general counsel—another reminder that your board should have a designated general counsel!

Student Record Requests

Parents are entitled to student records pursuant to state and federal law

Parents are not entitled to records of other people's kids, only their own

Parents are also entitled to records pursuant to Oregon's public record law--be mindful of copyright requirements

Again, consult with your general counsel when in doubt



Employment of Family Members



"Luck, son, is when preparation meets nepotism."

Nepotism

- ▶ Does Oregon Government Ethics law prevent two or more relatives from being employees of the same public body?
- ▶ No. Public officials who are relatives can be employed by the same public body employer at the same time, or serve on the same governing body of a public body at the same time.
- ▶ [Public Official Guide](#)

Nepotism

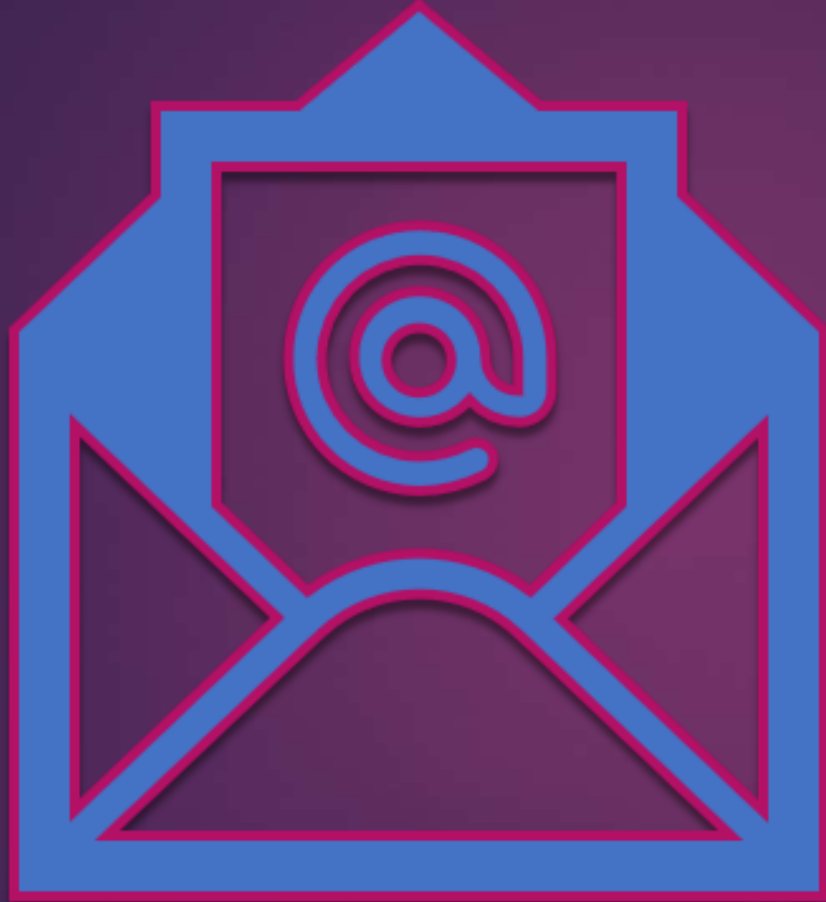
- ▶ Public officials cannot participate in any personnel action taken by the school that would impact the employment of a relative or member of the public official's household. A public official may not participate in the following [ORS 244.177(1)]:
 - ▶ Appointing, employing or promoting
 - ▶ Discharging, firing or demoting
 - ▶ Interviewing
 - ▶ Discussing or debating the appointment, employment, promotion, discharge, firing or demotion

Nepotism

- ▶ A public official may serve as a reference or provide a recommendation for a relative who has applied for a position of employment, promotion or is subject to any personnel action.
- ▶ A public official may not directly supervise a person who is a relative or member of the public official's household [ORS 244.179], except when:
 - ▶ The public official is supervising an unpaid volunteer for the public body

Employing Family Members

- ▶ 659A.309 Discrimination solely because of employment of another family member prohibited; exceptions. (1) Except as provided in subsection (2) of this section, it is an unlawful employment practice for an employer solely because another member of an individual's family works or has worked for that employer to:
 - ▶ (a) Refuse to hire or employ an individual;
 - ▶ (b) Bar or discharge from employment an individual; or
 - ▶ (c) Discriminate against an individual in compensation or in terms, conditions or privileges of employment.



QUESTIONS?

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