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Honorable Patrick H. Boone
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Education, Boards of – Personnel Records – Employees, Employers, Employment – Records Retention – Local Government Records Commission – Jefferson County

The supervision and maintenance of personnel files is the responsibility of the executive officer or superintendent of the Vestavia Hills Board of Education ("Board"). The school board may establish policies governing the contents of personnel files.

The mechanism for storing and disposing of personnel files is an administrative issue that would best be handled by policies and procedures implemented by the Vestavia Hills Board of Education. Retention practices should be consistent with the procedures established by the Local Government Records Commission.

Dear Mr. Boone:

This opinion of the Attorney General is issued in response to your request on behalf of the Vestavia Hills Board of Education.

QUESTION 1

What personnel records should be kept and maintained in the personnel file for an employee of the Vestavia Hills Board of Education?

FACTS, ANALYSIS, AND CONCLUSION

Section 16-22-14 of the Code of Alabama addresses certain aspects of personnel record administration (e.g., establishment and maintenance of personnel files, public access to personnel files, notice to employees of materials placed in personnel files that reflect adversely on the employee's performance, transfer of contents of personnel file, or availability of personnel file contents to investigatory officials), but does not fully address the question you posed. For example, section 16-22-14(a)(5) defines the term "personnel record" as "[a]ll records, information, data, or materials pertaining to an employee kept by the executive officer of the school board or other employees of the school board in any form or retrieval system whatsoever." ALA. CODE § 16-22-14(a)(5) (2001).

This section, however, does not identify or specify any particular document that must be included in a personnel file. In any case, section 16-22-14 states, in pertinent part, as follows:

> (a) *Definitions*. When used in this section, the following words shall have the following meanings:
>
> . . . .
>
> (5) PERSONNEL RECORD. All records, information, data, or materials pertaining to an employee kept by the executive officer of the school board or other employees of the school board in any form or retrieval system whatsoever.
>
> (6) SCHOOL BOARD or BOARD OF EDUCATION or BOARD. As applied to employees in the public schools, grade kindergarten through grade 12, any county or city board of education; the Board of Trustees of the Alabama Institute for Deaf and Blind; the Alabama Youth Services Board in its capacity as the Board of Education for the Youth Services School District; the Board of Directors of the Alabama School of Fine Arts; the Board of Directors of the Alabama High School of Mathematics and Science; and, as applied to two-year postsecondary education institutions only, the State Board of Education.

(b) *Establishment and maintenance of records.* Each board shall establish and maintain a personnel file on each employee. It shall be the responsibility of the executive officer of each school board to supervise the maintenance of personnel files and to maintain updated, complete, and accurate records.

. . . .

(d) *Public access.* This section is supplemental to the statutes which apply to the public's access to government records. Public access to school personnel files is affirmed subject to the privacy rights rulings of the various federal and state courts.

(e) *Work performance records.* Any materials pertaining directly to work performance may be placed in the record of the employee and a copy of the materials shall be provided to the employee. Statements, reports, and comments relating to work performance, disciplinary action against the employee, suspension of the employee, or dismissal of the employee shall be reduced to writing and signed by a person reasonably competent to know the facts or make a judgment as to the accuracy of the subject information. Additional information related to the written materials previously placed in the personnel file may be attached to the material to clarify or amplify them as needed. A copy of all materials to be placed in an employee's record which may tend to diminish the employee's professional or work status or reflect adversely on the employee's record of performance or character shall be provided to the employee.

(f) *Anonymous materials.* Any anonymous complaint or material received by a school official shall be immediately transmitted to the executive officer. If the material is deemed worthy of an investigation by the executive officer, it may be investigated. The results of the investigation shall be reduced to writing, signed by the executive officer, principal, or other designated official in charge of the complaint, dated, attached to the material in question,

and placed in the personnel file of the employee. Any anonymous complaint which is not investigated within 30 calendar days of its receipt by the executive officer shall not be retained, but shall be destroyed.

(g) *Transfer of information*. Notwithstanding any other provision in this section to the contrary, the following provisions shall apply:

(1) The transfer of the personnel file or any parts, summation, or copies of the personnel file of the employee shall be effectuated upon the written request of the employee.

(2) The employer may transfer an employee's personnel file or copies or parts thereof to another employer or prospective employer.

(3) The provisions contained in Section 16-22-6 shall remain in effect. Payroll deductions which the employee has authorized shall continue effective.

(4) Any documents which may be lawfully contained in the personnel file of an employee shall be made available to a lawfully authorized hearing officer or panel conducting an investigation into the competency or performance of the employee, and to all appropriate law enforcement officials. Statistical information on employees and former employees may be transmitted to the Department of Archives and History and to the State Department of Education for historical research and information.

(h) *Policies*. Written policies established by a school board pertaining to personnel files which are not inconsistent with this section may remain in effect, consistent with Section 16-1-30.

> (i) This section shall be implemented by each school board no later than September 1, 1998.

ALA. CODE § 16-22-14 (2001).

Although the Code appears to contemplate the inclusion of certain types of materials such as "work performance records" [as described therein by section 16-22-14(e)], this section does not mandate the inclusion or retention of such documents. The terms "personnel record" and "personnel file" are not synonymous. *See Ex parte Jackson*, 881 So. 2d 450, 452 (Ala. 2003). In some contexts, the term "personnel" records may include materials that are not found in a personnel file.

Based on the foregoing statutory authority, a personnel file could include information pertaining to an employee's current assignment, work history, payroll status, job qualifications, certification, licenses, employment contract(s), evaluation data, and disciplinary information. A personnel file could also include documents reflecting professional achievement, recognition, or letters of commendation. Federal laws may also require the maintenance of other documents. This list, however, is not exhaustive.

QUESTION 2

> What personnel records should not be kept and maintained in the personnel file for an employee of the Vestavia Hills Board of Education?

FACTS, ANALYSIS, AND CONCLUSION

Pursuant to section 16-22-14(b), it is the responsibility of the executive officer of each school board to supervise the maintenance of personnel files. We note, however, that various provisions of federal law may prohibit or counsel against inclusion of certain documents and materials in employee personnel files. Federal laws may also require the maintenance of other documents. As such, it is the opinion of this Office that the executive officer may establish various policies that would explicitly dictate the materials that should be maintained within a personnel file versus the materials that may be maintained in separate files that would encompass the personnel record of an employee.

Other than the specific prohibition relating to retention of uninvestigated anonymous material found in section 16-22-14(f), Alabama law does not expressly prohibit the inclusion of particular materials or documents in an

employee's personnel file. Locally adopted policies and procedures, however, should take into account the practical implications of including certain types of documents in personnel files. For example, it may be advisable to segregate correspondence and documentation pertaining to litigation or legal claims from the main personnel file.

The various methods of organizing such files are exhaustive. Although some information may be relative to the performance of an employee, that information does not necessarily have to be maintained within the personnel file of an employee. Instead, such information may be located in another part of that person's personnel record.

The supervision and maintenance of personnel files is the responsibility of the executive officer or superintendent of the Vestavia Hills Board of Education. The superintendent, along with the school board, may set out specific policies relative to personnel files.

Although this Office is of the opinion that information relating to an employee's selection or placement should be contained within the personnel file of that employee, nothing precludes the Vestavia Hills Board of Education from setting forth different parameters regarding information that should be maintained directly within the personnel file of employees versus information that may be contained within an employee's personnel record.

QUESTION 3

> If certain personnel records are not to be kept in the personnel file for an employee, then where should such records be kept and maintained?

FACTS, ANALYSIS, AND CONCLUSION

The answer to this question may depend on the type of record in question. State law does not require that employee records be stored or maintained in a particular location. Storage practices and procedures, however, should permit reasonable retrieval of or access to the records consistent with their nature and function.

QUESTION 4

How long is the Vestavia Hills Board of Education legally required to keep and maintain personnel records of an employee?

FACTS, ANALYSIS, AND CONCLUSION

A question regarding disposition of records is an inquiry best suited for the Local Government Records Commission. The Local Government Records Commission is authorized to approve an alternative schedule for disposition of records. To the extent employee files include public records, the disposal or destruction of such records without the prior approval of the Local Government Records Commission is statutorily prohibited. ALA. CODE § 36-12-5 (2001).

QUESTION 5

Please advise the Vestavia Hills Board of Education if the following personnel records should be kept in an employee's personnel file:

1. Application for employment
2. Resumes
3. Letters of Recommendation
4. Interview documentation
5. Unofficial notes or thoughts regarding interviews
6. Evaluation forms
7. Work performance evaluations
8. Inadequate and/or wrong evaluations
9. Documentation pertaining directly to work performance
10. Training and educational background

11. Academic transcripts

12. Work experience

13. Signed copies of all documents employees are required to sign if they are actually employed

14. Teaching certificates and/or other documents showing that the employee is legally qualified for the position for which he or she applied

15. Recommendation for disciplinary actions

16. Records of disciplinary actions, including reprimands, suspensions, and terminations

17. Documents reflecting change and employment status such as promotions, demotions, transfers, leaves, probationary status, tenure status, and termination

18. Salary, wage and hour documentation

19. Payroll deductions authorized by employee

20. Marital status

21. Names and addresses of previous employers

22. Attendance records

23. Results of background check

24. Grievances filed by employee

25. Documents submitted by the employee in support of each grievance

26. Documents generated during the grievance process and resolution of each grievance

27. Documents reflecting the ultimate resolution of the grievance

28. Informal complaints or letters of concern furnished by employees' supervisors

29. Records evidencing settlement of employee disputes

30. Information regarding pending criminal investigations

31. Employment discrimination charges filed by employee with EEOC and/or OCR

32. Documentation used in preparation of response to charges

33. Response to discrimination charges

34. Minutes of meeting of the Board of Education regarding discrimination charges

35. Documentation of the results of discrimination charges

36. Medical records of employee

37. Information as to whether an applicant has a disability

38. Documentation of preemployment inquiries into the ability of the applicant to perform job-related functions

39. Confidential correspondence with legal counsel

40. Any documents relative to a lawsuit filed by or against an employee

FACTS, ANALYSIS, AND CONCLUSION

As noted earlier, it is within the Board's discretion to establish policies regarding the contents of personnel files. ALA. CODE § 16-22-14(h) (2001). In this connection, we note that various provisions of federal law may prohibit or counsel against inclusion of certain documents and materials in employee

personnel files. Federal laws may also require the maintenance of other documents.

For reasons set forth in the response to Question 2, this Office cannot provide a definitive response to the recitation of documents set forth in your question.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Juliana Dean, Legal Division, Department of Education.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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