



LEGAL BRIEFS

by Julia A. Bauer, staff attorney

Top 10 steps toward compliance with new public records law

The Sept. 29 deadline to comply with the new provisions of the Ohio Public Records Act is almost here. There are a number of steps each board of education should take to prepare for the implementation of the new law, House Bill (HB) 9.

10. Update and review your records retention schedule and commission meetings.

Each school district has a public records commission, consisting of the board president, superintendent and treasurer. The responsibility of this commission is to review applications for one-time disposal of obsolete records (RC-1) and schedules of records retention and disposition (RC-2).

Each district should ensure that its commission is meeting annually and that the records retention schedules are kept current. Adhering to the records retention schedule will ensure that only the required records are kept so that records will be easily located and produced when requested (Ohio Revised Code Section (RC) 149.41).

9. Make a copy of the records retention policy available in main office.

The new law requires that boards of education have their records retention schedules "readily available" (RC 149.43 (B)(2)).

8. Develop a public records policy or update existing policy.

The new law requires every board of education to adopt a public records policy by Sept. 29, 2007 (RC 149.43 (E)(1)). The board of education is responsible for the contents of this policy, within the requirements of the law.

HB 9 limits what may be in the policy. The policy may not limit the number of records an office will make available to a single person, limit the number of records it will make available during a fixed period of time or establish a set period of time before it will respond to a request, unless that period of time is less than eight hours. Each board should review its existing public records policy to ensure that it does not contain any of these provisions that are now prohibited.

The Ohio Attorney General has created a model public records policy, which boards are not required to adopt.

7. Post policy in main office and each building.

HB 9 requires every public office to prepare and display a poster describing its public records policy (RC 149.43 (E)(2)). This poster should be in the main office, and in the office of each building in the district.

6. Give policy to appropriate employees; get acknowledged receipt in writing and keep it.

The new law requires the board to deliver the public records policy to the records custodian, records manager or other employee who otherwise has custody of the records (RC 149.43 (E)(2)). This employee must acknowledge receipt of the policy and the board should keep a signed acknowledgement on file.

5. Include policy in employee manual or handbook.

The law now requires that if a board of education has an employee manual or handbook, then the policy must be included in the manual or handbook (RC 149.43 (E)(2)).

4. Contact school attorney about providing a form letter explanation if records denied.

Under the new law, whenever a request is denied, the board of education is required to provide an explanation which includes the legal authority for the denial (RC 149.43 (B)(3)). Boards of education should consult with their board attorney to obtain form letter language to respond to frequently requested items that may not be disclosed, such as personally

identifiable information of students or employee home addresses.

3. Develop payment in advance, cost of copies guidelines for district.

Under prior law, boards of education were permitted to charge for copies and require payment in advance. HB 9 did not change this. Boards may also charge the costs for postage and shipping, if requests are made by mail. As before, boards may not charge for staff time spent preparing and copying public records pursuant to a request.

2. Arrange who will attend public records training or appoint designee.

The new law requires public officials who hold a local or statewide elected office to attend three hours of public records training for each term of office for which he or she is elected or appointed (RC 149.43 (E)(1)). The law allows boards of education to designate a person to attend

training on behalf of the entire board. A board of education may designate anyone to attend this training: the treasurer; the superintendent; one board member to attend on behalf of the entire board; or the front office secretary. Because board terms are staggered, the board will need to designate a designee every two years to meet the requirement of having each board member attend once per term. If a new board member is appointed, either the appointee or the board's designee will need to attend the training. It is recommended that boards appoint a different designee each time so that as many people as possible can be trained. RC 109.43 permits the attorney general to allow the attendance of other interested persons at any of its public records training or seminars, so boards may be able to send additional personnel to these training sessions.

1. Train your staff on the new requirements.

The most critical thing each

board of education should do to prepare for the implementation of HB 9 is to train its staff, not only on HB 9, but also the entire Ohio Public Records Act. The new law includes enhanced penalties, so the stakes are higher when mistakes are made.

In Ohio, all political power is inherent in the people (Ohio Constitution Article 1, Section 2). As a board member or public employee, you serve the people, and are charged with the important task of preserving and protecting the people's records. With that duty comes the responsibility to provide public access to the records, except in those circumstances where you are prohibited by state or federal law from releasing the records.

OSBA's sample public records policy and our *Communique* on this important issue is available at www.osba-ohio.org

If you have questions about complying with the new requirements, policy or training, call OSBA's legal division.

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Batavia Local Schools

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