

no rigged baffles, deflectors or barriers affixed;

● provide adequate ventilation to prevent reasonable health complaints and to remove or dilute contaminants within each capacity of the system.

Specific provisions regarding the use of animals in schools are included in the policy and regulation provided online.

Specialty classrooms

Fume hoods in science classrooms must be used when hazardous airborne contaminants are generated. The hoods must be properly maintained in accordance with the manufacturer's instructions and inspected annually. Documentation of all maintenance and inspections must be readily available upon inspection.

Food and drink must be prohibited in all science, visual arts and industrial arts classrooms.

Dry or powdered pigments; dry or powdered clays; highly toxic pigments or paints; materials containing heavy metals, highly toxic solvents, solvent-based inks or markers that are not ACGIH approved;

asbestos-containing materials; and western cedar woods are not to be used or stored in industrial arts classrooms.

A written safety plan must be available in industrial arts classrooms.

Administrative and non-classroom areas

Inspection areas include auditoriums and student dining areas; library/media centers; indoor athletic facilities; locker rooms; weightlifting rooms; restrooms; custodial closets; mechanical rooms; attics; mezzanines; basements and crawl spaces; water and waste treatment systems; health care areas; and administrative areas.

Restroom sinks supplied by automatic or low-flow fixtures must provide a continuous flow of water for at least 10 seconds. Hand-washing posters must be visible from all sinks.

Attics, mezzanines, basements and crawl spaces must be free from animal or insect nests, waste or debris.

Each school building administrator must have, available upon inspection, administrative rules or protocols regarding the following topics:

- dangerous or recalled products,
- radon testing,
- asbestos,
- schoolwide safety or crisis management plan,
- bloodborne pathogen guidance,
- comprehensive safety plan,
- chemical hygiene plan,
- materials safety data sheet,
- hand-washing protocol,
- no-smoking signs posted.

No later than June 30, 2008, schools must adopt a written integrated pest management policy that includes identification of pests and conditions that attract pests; prevention techniques, such as sanitation, vacuuming, structural repair and sealing; monitoring; education and training; approved least-toxic chemical use; and pre-notification of chemical use.

A password to view online sample policies on many of the issues covered by Jarod's Law is included in this issue of *PDQ*. If you have any questions regarding policies or the development of the required administrative regulations, please contact OSBA's policy services staff.

New obligations under Ohio's Public Records Act

by *Julia A. Bauer*
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On Sept. 29, the House Bill (HB) 9 changes to the Ohio Public Records Act became effective. The law now includes several types of monetary damages that may be assessed against school districts for failure to comply with the new law. There is a new training requirement for all elected public officials or their designee. Now that the new law is effective, school districts must be aware of the new requirements of the law and the basics of responding to public records requests.

A public record is a record kept by a public office that (1) contains information stored on a fixed medium, (2) is created, received, stored or sent under the jurisdiction of a public office and (3) documents the organization, functions, policies, decisions, procedures, operations or other activities of the office, unless the record

is otherwise exempt (Ohio Revised Code (RC) 149.41 (A)(1) and RC 149.011 (G)). The above definition is the starting point when determining whether a requested item is a public record.

The difficulty is that the Ohio Revised Code contains many exceptions to the Public Records Act. Even if the requested record meets the definition, it may be exempt and therefore not a public record. The public office must promptly prepare requests for public records, but the office may not disclose certain types of protected information, such as medical records, confidential law enforcement investigatory records, trial preparation records, student records, and infrastructure and security records.

Whether a requested record is a public record requires applying the definition and exceptions to the facts and circumstances of that particular record. For some records, the courts

have applied the facts to the law and a clear answer is available. For many others, the public office will need to review the definition above, any exemptions and perhaps consult legal counsel for assistance. Below are some frequently asked questions about the public records law that highlight some of the common requests school districts receive and some of the items that are exempt from the public records law.

Frequently asked questions

What should we be doing to get ready for public records requests?

The most important thing a school district can do is train its staff on both the changes from HB 9 and the underlying substantive public records law. This can be done by reading and reviewing publications on the topic or by attending a seminar. OSBA offers a public records resource page at www.osba-ohio.org/prl.htm.

Are personnel files public records? What about administrator contracts? Are job applications?

Yes, yes, and yes. Nearly all the information in a personnel file is a public record, and therefore must be available for inspection and copies. This includes salary information, evaluations and disciplinary data. It is important to note that certain information within personnel files may not be disclosed and must be redacted. These include medical records, psychological records, Social Security numbers and student records. Administrator contracts and job applications are also public records. Bureau of Criminal Identification and Investigation background checks, another item often found in personnel files, are exempt from the public records law and do not have to be disclosed.

Can our collective bargaining agreement make provisions for keeping records in an employee's personnel file private?

No. The State Employment Relations Board has held that where there is a conflict between the bargaining agreement and the Ohio Public Records Law, the Public Records Law prevails (*In re St. Clairsville-Richland City School District Board of Education*, Case No. 2004-ULP-12-0680).

What about employee addresses? Are they exempt?

Probably, yes. The Ohio Supreme Court has held that addresses of state employees are not public records when

they do not document functions, activities, policies or other procedures of a public office (*State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384). It is likely that this reasoning would apply to school employees' addresses. However, it is possible that employee addresses may constitute a public record in certain circumstances, such as a request for the school superintendent's address when his employment contract includes a residency requirement.

What if what is asked for is really just information? Do we have to create something responsive to the request?

No. Sometimes a requester asks for something that does not exist in the format sought by the requestee. A common example is a fiscal summary. The district has the underlying data that would be required to produce the comparison the person is asking for, but not in the format requested. The law is clear that a public office is not required to create a record where none exists. HB 9 does put the impetus back on the public office to explain to the requester how the records or information are kept and allow the requester to revise the request.

Are student records exempt?

Generally, yes. Student records are exempt from the public records law under both state and federal law. RC 3321.319 prohibits (with some exceptions) the release of personally identifiable information concerning a

student, other than directory information, without the consent of the student's parent or the student, if the student is over 18. Ohio law defines directory information to include the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, date of graduation and awards received.

The federal Family Educational Rights Privacy Act also prohibits disclosing personally identifiable student information, other than directory information (20 United States Code Section 1232g; 34 Code of Federal Regulations Part 99). The definition of directory information is broader under federal law, and includes both student e-mail addresses and photographs. It is recommended that the more restrictive Ohio law be followed as a limitation on the federal law.

Are e-mail messages public records?

It depends. The medium on which a record is stored is not the determinative factor as to whether a record is public. The focus should be on the content of the message. If the e-mail message meets the definition of a public record and is not otherwise exempt, it should be treated as a public record.

Are e-mail messages on personal accounts public records?

It depends. This issue recently gained attention as public officials have discussed using hand-held devices and nongovernment e-mail addresses to conduct public business. Again, the analysis should not focus on where the e-mail was written or the computer on which it originated. If the document contains information stored on a fixed medium, is created, received, stored or sent under the jurisdiction of a public office and documents the organization, functions, policies, decisions, procedures, operations or other activities of the office, and the document is not otherwise exempt, it is likely to be viewed by a court as a public record. Public officials should be aware of this and copy their official e-mail address when using their

Summary of the House Bill 9 changes

- Public officials or their designee must attend three hours of training per term of office.
- Public offices must adopt a public records policy that conforms to specific requirements.
- Public offices must create and post a poster describing the policy.
- Public offices may not require requests be in writing, the identity of requester, or the reason for the request.
- Public offices must notify the requester of redacted material.
- Public offices must notify the requester of the reason a request is denied.
- Public offices must provide statutory damages, court costs and attorneys' fees in certain circumstances.
- Public offices must make their records retention schedule available.

private e-mail account so that any records generated may be retained, searched upon request and disposed of appropriately.

What are the training requirements under HB 9? When will the training be offered? Who has to go?

HB 9 requires all public officials elected or appointed to an elective office to attend three hours of public records training developed by the attorney general for each term of office to which the

official is elected or appointed. The law allows the school board to designate a person to attend on behalf of the entire board. There is no limit on who this person may be; it can be the school's front office secretary, treasurer, superintendent or a board member.

It also is advisable that boards appoint a different designee each time so that as many people as possible can be trained. The attorney general has begun to provide the training. OSBA is hosting two

certified training sessions at the Capital Conference on Nov. 12, and may offer additional sessions in 2008. For more information see the attorney general's Web site or www.osba-ohio.org.

The above information is intended to be authoritative legal information but should not be viewed as legal advice. For the application of the law to a specific set of facts, boards and administrators should contact their board's legal counsel.

Updating hazing and bullying policies

by Greta Gardner
deputy director of policy services

All school districts want to provide an environment that is conducive to learning and safe for all members of the school community. Behaviors and actions by students and staff members that cause the environment to be uncomfortable or are detrimental to the learning process are not acceptable. Ohio law has joined administrators in such sentiments by enacting new laws requiring districts to have policies and procedures prohibiting harassment.

Although the language only differs slightly, the law requires policies on nondiscrimination *and* on the prohibition of hazing and bullying. Though the law has theoretically linked these three types of behaviors, the language remains distinct. In order to cover all types of threatening and offensive conduct, the three legal definitions in our hazing/bullying policy are listed below.

Nondiscrimination/harassment: intimidation by threats of or actual physical violence; the creation, by whatever means, including the use of electronic communications devices, of a climate of hostility or intimidation; or the use of language, conduct or symbols in such a manner as to be commonly understood to convey hatred, contempt or prejudice, or to have the effect of insulting or stigmatizing an individual.

Bullying: intentional written, verbal or physical act that a student has exhibited

toward another particular student more than once, the behavior both causes mental or physical harm to the other student and is sufficiently severe, persistent or pervasive that creates an intimidating, threatening or abusive educational environment for the other student (Ohio Revised Code (RC) Section 3313.666).

Hazing: any act or coercing of another, including the victim, to do any act of initiation into any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person (RC 2903.31).

In addition to the legal definitions of prohibited conduct, House Bill 276 set forth a number of other requirements related to school bullying and harassment that went into effect on March 30. RC 3301.22; 3313.666, 3313.667 and 3319.073 now outline new required procedures for school districts. Old statutes relating to hazing and discrimination still apply. For example, Ohio's hazing law (RC 2903.31) states that an administrator, employee or faculty member of any school that recklessly permits the hazing of any person is guilty of hazing, a misdemeanor of the fourth degree.

RC 3301.22 requires the State Board of Education to develop a model policy to prohibit harassment, intimidation or bullying in order to help school districts develop their own policies. The state model policy was released on July 10.

While OSBA strongly suggests that

districts review and become familiar with the state's model, we do not recommend that boards adopt the state model as their bullying policy. We are providing a sample policy online that complies with the law. The procedures in the state model policy are required, but do not need to be in the board policy. We also provide an online regulation to help administrators abide by the required procedures.

RC 3313.666 requires:

- a procedure for reporting prohibited incidents;
- that school personnel report prohibited incidents of which they are aware to the school principal/designee;
- that parents/guardians of any student involved in a prohibited incident be notified and, to the extent permitted by the federal Family Educational Rights Privacy Act (FERPA), have access to any written reports pertaining to the prohibited act;
- a strategy for protecting a victim from additional harassment, intimidation or bullying, which does not infringe on any student's rights under the First Amendment;
- that district administration semi-annually provide the president of the board a written summary of all reported incidents and, if the district has a Web site, post the summary on that site to the extent permitted by FERPA;
- that the board's policy on bullying appear in student handbooks and any publications that set forth the comprehensive rules, procedures and standards of conduct, including