

Key provisions of the new public records bill

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House Bill (HB) 9 is effective March 29, 2007.

Training

Each public official must attend a three-hour public records training program once for each term to which he or she elected or appointed. The training must be approved by the Ohio attorney general's office. The training obligation may be delegated to a designee of the board. Public funds may be used to pay the cost of any training. This part of the bill is effective on Sept. 29, 2007, *not* March 29, 2007.

Policy

The Ohio attorney general will develop a model public records policy for responding to public records requests and will provide it to public offices free of charge, and public offices must adopt a public records policy. The policy may not limit the number of copies it will provide to a single person, may not limit the number of public records it will make available in a fixed period of time and may not establish a fixed period before which it will respond to a request, unless the period is under eight hours.

If the public office has an employee manual or handbook, it must put the public records policy in the manual or handbook. If the public office has a Web site, it may put the policy on the Web site.

Public offices must post a copy of the public records policy in the main office and each building office. The policy must be distributed to the employee who is the records custodian, records manager or person who otherwise has custody of the records of that office. Employees must acknowledge receipt of the policy.

Public records requests and responses

Public offices must respond to a request "within a reasonable period of

time" with "... all public records responsive to the request." If part of a record must be redacted due to state or federal law exempting it from public record, the public office must make the redaction plainly visible *or* notify the requester of the redaction. Any redaction will be deemed a denial of the public records request, unless federal or state law authorizes the public office to redact the information.

Ambiguous, overly broad requests, or difficulty in making requests: The public office must now provide a requester an opportunity to revise such a request by informing the person of the manner in which the records are maintained by the public office and accessed in the ordinary course of business.

If a request is denied, the public office must provide an explanation, including legal authority, why the request was denied. If the original request was in writing, the explanation must be in writing.

Public records request forms, practices of public office asking for requests in writing, identity of requester: Public offices may *not* require public records requests to be in writing, may not require a person's identity, and may not require the reason for the request in writing. Such a requirement is a denial of the request. The public office *may* ask for the requester's identity, reason for request or for the request in writing, but may not *require* the same. If the public office does ask for the information, it *must* disclose that it is not mandatory that a requester provide identity, reason for request, or request in writing. The public office must tell the requester when provision of the information sought will enhance the public office's ability to respond to the request.

Cost of copies: Public offices may require payment in advance of the cost of copies of the public record, in the manner requested by the person (CD, DVD, paper, disk, cassette, VCR tape,

etc.). The public office does not have to allow the requester to make the copies.

Responding to mail or other methods of requesting records: Public offices must respond via mail or any other means of delivery or transmission (e-mail requests) within a reasonable period of time by which the public office determines it can reasonably be produced. A public offices may require payment in advance for postage if mailed or for other costs incurred in mailing, delivery or transmission, but *not* staff time. Public offices may adopt policy in terms of how it will respond to mail or other transmission requests, but if it does, it shall comply with that policy.

Student records

Notwithstanding public office prohibitions on requiring requester identity, intended use of records, etc., a public office may require, with regard to student directory information, a requester to disclose identity or intended use of the directory information for purposes of determining whether it is intended to be used in a profit-making plan or activity, as prohibited by Ohio Revised Code Section 3319.321.

Litigation, mandamus and damages

A requester aggrieved by failure of a public office to comply with a request or any other failure to comply with an obligation under the public records law may bring mandamus action. Court costs, reasonable attorney's fees, and statutory damages (\$100/day, up to a maximum of \$1,000) may be awarded.

Attorney's fees: Courts may award reasonable attorney's fees subject to reduction (see below), but must award attorney's fees when either of the following applies:

- The public office failed to respond, affirmatively or negatively to the request.
- The public office promised to respond within a certain time period and failed to do so.

Courts may reduce or deny attorney's fees if it determines both of the following:

- The public official would have reasonably believed, that given the state of statutory and case law at the time of the conduct did not constitute a failure to comply, and
- A well-informed public official would reasonably believe the conduct would serve the public policy underlying the authority cited as permitting the conduct.

Statutory damages: Awarded for each day a public office failed to comply, beginning on the day the requester files the mandamus action. These damages are available only if the requester submitted request by hand delivery or by certified mail. Courts may reduce an award or not award damages at all if the court determines *both* of the following:

- A well-informed public official would reasonably believe the conduct did not constitute a failure to comply with an obligation to provide public records under existing statutory and case law.
- A well-informed public official would reasonably believe the conduct would serve the public policy underlying the authority cited as permitting the conduct.

If the court issues a mandamus order compelling the public office to produce records or otherwise comply with the public records law, the court will award court costs and reasonable attorneys fees and statutory damages if applicable and subject to the balancing factors described above.

Records retention

The public office must have a copy of its records retention policy available

“... at a location readily available to the public.”

Local and JVS school districts are now specifically mentioned as having their own records commissions; prior law was unclear about the status, probably due to an oversight which has now been corrected.

A schedule of records retention and requests for disposal of obsolete records must be sent by school district records commissions to the Ohio Historical Society for review, which it shall do within 60 days, then forward to the auditor of state, which shall approve or disapprove the request not more than 60 days after receiving it.

A sample policy on the public's right to know is included in this issue of the *PDQ*.

Hazing, harassment, intimidation or bullying

by Greta Gardner
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The enactment of House Bill 276 brings about new requirements for schools. The bill, effective March 29, 2007, directs boards of education to adopt a policy prohibiting student harassment, intimidation or bullying. While the term bullying has been around for a while, the bill provides a definition and specific requirements.

The policy statement must prohibit the harassment, intimidation or bullying of any student on school property or at a school-sponsored activity. It also must define the term “harassment, intimidation or bullying” in a manner that includes the definition included in the bill. The bill defines bullying as an intentional written, verbal or physical act that a student has exhibited toward another particular student more than once, and the behavior both causes mental or physical harm to the other student and is sufficiently severe, persistent or pervasive that it creates an

intimidating, threatening or abusive educational environment for the other student.

Provisions of the bill:

- require boards to adopt a policy prohibiting harassment, intimidation or bullying of any student on school property or at a school-sponsored activity;
- require the State Board of Education to develop a model policy within six months after the bill's effective date;
- require the auditor of state, when conducting a district audit, to determine whether the district has adopted an anti-harassment policy and to include that determination in the audit report;
- provide school employees, students and volunteers with qualified civil immunity for damages arising from reporting an incident of student harassment, intimidation or bullying;
- authorize school districts to form bullying prevention initiatives and require them to provide training and education on student harassment, intimidation or bullying if funds are

appropriated for that purpose;

- require school districts to provide elementary school employees with training in violence and substance abuse prevention and positive youth development;
- require that the district administration semiannually provide the board president a written summary of all reported incidents and post the summary on its Web site, if the district has a Web site.

The bill requires boards of education to develop the policy in consultation with parents, school employees, school volunteers, students and community members.

OSBA has developed a policy, included in this issue of *PDQ*, which deals with hazing and bullying. This sample policy needs to be reviewed according to the provisions in the bill.

OSBA will be developing additional policy language and/or regulations to mirror the State Board of Education's model policy, as soon as it is available.