

Policy GBLB: REFERENCES

Status: DRAFT

Original Adopted Date: 06/21/2012 | Last Revised Date: 03/12/2020

EXPLANATION

MSBA has revised this policy to match changes made to policy JHG. Unfortunately, the term "sexual misconduct" is still not defined in state statute. MSBA has defined the term in this policy and JHG and has decided to add a reference to the crime of sexual contact with a student under § 566.086, RSMo.

Definitions

Employee – Any staff member, student teacher or intern of the district.

Former Employee – Any person who was previously employed by or was a student teacher or intern in the district or who is currently employed but will no longer be an employee, student teacher or intern in the district in the near future.

Potential Employer – Another school district, charter school, business or person seeking to hire a current or former employee or screening the current or former employee for a volunteer position, internship or other activity.

Reference – Information regarding the employment of, or services provided by, a current or former employee including, but not limited to, specific information regarding dates of employment or service, salary, job duties, performance or character.

Sexual Misconduct – Engaging in any conduct with a student, on or off district property, that constitutes the crime of sexual misconduct involving a child under § 566.083, RSMo.; sexual contact with a student under § 566.086, RSMo.; illegal sexual harassment as defined in policy AC, as determined by the district; or child abuse involving sexual behavior, as determined by the Children's Division (CD) of the Department of Social Services.

Obtaining References for Applicants to the District

The board directs the superintendent or designee to verify the background of all applicants for district employment, including requesting references from persons or entities that previously employed the applicant.

As required by law, before offering employment to any teacher who is or was employed by a Missouri school district or charter school, the superintendent or designee will contact the Department of Elementary and Secondary Education to determine the school districts or charter schools that previously employed the applicant. Minimally, the superintendent or designee shall request information about the applicant's previous job performance from the most recent school district or charter school.

District Response to a Request for a Reference

The district will maintain information about current and former employees as confidential within the limits of the law. Only the superintendent or the assistant superintendent of personnel and operations may respond on behalf of the district to a reference request for a current or former employee. District employees must direct reference requests to the superintendent or assistant superintendent of personnel and operations. Upon request, employees will assist the superintendent or assistant superintendent of personnel and operations with the preparation of accurate reference information.

Employees other than the superintendent or assistant superintendent of personnel and operations may provide personal references at the request of a current or former employee, but by doing so, they are acting in their individual capacities and not as employees of the district. Employees providing personal references may not use district letterhead or otherwise indicate that the reference is sponsored by the district, but they may identify the working relationship they have or had with the current or former employee. The district will not endorse any reference provided outside the directives of this policy and is not responsible for providing legal advice or protection for unauthorized employees who provide references. In accordance with federal law, district employees, contractors and agents are prohibited from writing personal references or otherwise providing assistance in obtaining a new job to any other school employee, contractor or agent who has been accused of sexual misconduct regarding a minor or student, as discussed later in this policy.

Content of Reference Disclosure

Information Provided as Required by Law

In accordance with law, the following information about employees or former employees will be provided to any entity or person upon request:

1. Names
2. Positions
3. Salaries
4. Length of service

In addition, information on allegations of sexual misconduct will be disclosed to public schools or charter schools as detailed below.

Information Provided with Consent from the Employee or Former Employee

Unless otherwise required under this policy or by law, before providing a reference for a current or former employee, the superintendent or assistant superintendent of personnel and operations will verify that the employee consents to the release of further information. The district may obtain a blanket consent from the employee when the employee leaves the district, contact the employee when a request is made or rely on written consent provided through the application process.

Even with consent, unless otherwise authorized by the board or the district's attorney or unless the disclosure is otherwise required by law, the superintendent or assistant superintendent of personnel and operations may provide only the following factual information when requested, without offering opinions or commentary on job performance:

1. A description of the employee's job duties when employed.
2. Additional district-sponsored committees, activities or duties the employee volunteered for or was designated to perform.
3. Honors and awards received by the employee.
4. Factual information on work performance.
5. Whether the employee resigned or was nonrenewed or terminated. Based on documentation in the personnel file, potential employers will be notified if the employment was ended due to the financial condition of the district, a decrease in enrollment or reorganization of the department, school or district.
6. When requested, a "yes" or "no" answer to a question about whether the district would re-employ the current or former employee if an appropriate position existed or whether the superintendent would recommend re-employment.
7. Allegations and findings of sexual misconduct with a student as required or allowed below.

Disclosing Allegations of Sexual Misconduct

In accordance with state law, when another school district or charter school requests a reference or information regarding a former employee of the district, the district must provide information regarding allegations of sexual misconduct with a student or child as detailed in numbers one through three of this section. The former employee is not required to consent to the release of information prior to the superintendent or designee releasing the information in numbers one through four of this section. The superintendent or designee is authorized to contact the district's attorney for advice on implementing this policy.

Information on allegations of sexual misconduct will be shared in the following situations:

1. *Allegations of Criminal Sexual Misconduct* – If a potential public or charter school employer requests a reference regarding a former employee whose job involved contact with children, the district will, in accordance with state law, notify the potential public or charter school employer if the employee was terminated, nonrenewed or allowed to resign in lieu of termination as a result of allegations of criminal sexual misconduct involving a child as defined by § 566.083, RSMo., or as a result of such allegations being substantiated by the State of Missouri's Child Abuse and Neglect Review Board. The district will provide due process to the former employee prior to disclosing the information when required by law.
2. *Allegations of Sexual Misconduct Substantiated by the Children's Division* – If a potential public or charter school employer contacts the district for a reference for any former employee about whom the CD has investigated allegations of sexual misconduct with a student and reached a finding of substantiated, the district will provide the results of the CD investigation to the potential public or charter school employer regardless of whether the employee's job involved contact with children.
3. *Violation of Board Policy Related to Sexual Misconduct* – If any public or charter school contacts the district about a former employee, the district will provide the public or charter school information about any violation of board policy if the violation related to sexual misconduct with a student where the board, after a contested case due process hearing, determined that the former employee actually violated the policy.
4. *Other Situations* – The superintendent or designee is required to consult the district's attorney when considering whether to release information regarding allegations of sexual misconduct against a former employee when the district is not required by law to do so.

Prohibition against Assisting Employees, Contractors or Agents Accused of Sexual Misconduct

In accordance with law, district employees, contractors and agents who know or have probable cause to believe that an individual who has served as a district employee, contractor or agent has engaged in sexual misconduct with a minor or student in violation of law are prohibited from writing personal references for or otherwise providing assistance to those individuals in obtaining a new job.

This prohibition does not apply to the routine transmission of administrative and personnel files when that is part of the current employee's, contractor's or agent's duties. In addition, this prohibition does not apply if the information was properly reported to law enforcement and other relevant state, federal and local authorities, and:

1. The investigation was officially closed without action; or
2. The prosecutor or law enforcement entity determined there was insufficient information to establish probable cause; or
3. The individual was charged and acquitted or otherwise exonerated of the alleged misconduct; or
4. The case or investigation remains open and no charges have been filed and no indictment has been issued within four years of the date on which the alleged misconduct was reported to law enforcement.

Recordkeeping

When the district is contacted for a reference for a current or former employee, the superintendent or assistant superintendent of personnel and operations will document the date, the name of the person and entity requesting the information, the person responding to the request, the method of disclosure, the information provided and, when applicable, the consent received.

In accordance with law, if the district responds to any requests in writing, the district will forward a copy of the written reference to the current or former employee at the employee's last known address.

Notice

The district will notify all current employees of this policy. The superintendent or assistant superintendent of personnel and operations will provide notification of the existence of this policy to all potential employers who contact the district for a reference. The notification must also include a statement that the district's responses are limited to the scope of this policy. The district will provide copies of the policy to former employees upon request.

Immunity

Any district employee who is permitted under this policy to respond to requests for references regarding former employees and who communicates only the information authorized by this policy in good faith and without malice is entitled to by law immunity against any civil action for damages brought by the former employee arising out of the communication of such information. District employees responding to requests for references in accordance with this policy may request the attorney general to defend them if sued.

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State References

	Description
§ 566.086, RSMo.	State Statute - https://simbli.eboardsolutions.com/SU/slshVClyWU73Tdpv4JZYxrPDw==
§162.068, RSMo.	State Statute - https://simbli.eboardsolutions.com/SU/slshVClyWU73Tdpv4JZYxrPDw==
§290.152, RSMo.	State Statute - https://simbli.eboardsolutions.com/SU/slshVClyWU73Tdpv4JZYxrPDw==
§566.083, RSMo.	State Statute - https://simbli.eboardsolutions.com/SU/slshVClyWU73Tdpv4JZYxrPDw==
§610.021, RSMo.	State Statute - https://simbli.eboardsolutions.com/SU/slshVClyWU73Tdpv4JZYxrPDw==
MO COURT	Jamison v. State Dept. of Soc. Serv., 218 S.W.3d 399 (Mo. 2007) - https://simbli.eboardsolutions.com/SU/UbQL1xGtQpuhwFoCYu2lOw==

Federal References

	Description
20 U.S.C. § 7926	Elementary and Secondary Education Act - https://simbli.eboardsolutions.com/SU/plusSLEkiEKYG9tr1Va3O8c8g==

Cross References

	Description
AC	PROHIBITION AGAINST ILLEGAL DISCRIMINATION, HARASSMENT AND RETALIATION - https://simbli.eboardsolutions.com/SU/zy3f4tp8uiHnFmR1ur2EbA==
ACA	SEXUAL HARASSMENT UNDER TITLE IX - https://simbli.eboardsolutions.com/SU/zslshuo6oy5xZq7gcV0bXTm5g==
BDC	CLOSED MEETINGS, RECORDS AND VOTES - https://simbli.eboardsolutions.com/SU/zuldA5Vm0Gu0CV9GisshKFxA==
BDDL	RELEASE OF INFORMATION - https://simbli.eboardsolutions.com/SU/vrkBGkaYeClp5Sdt9BXpluspA==
EHBC	DATA GOVERNANCE AND SECURITY - https://simbli.eboardsolutions.com/SU/b9GTUFQuoSPrMA3Fplus7Bxw==
EHBC-AP(1)	DATA GOVERNANCE AND SECURITY - Incident and Data Breach Response Plan - https://simbli.eboardsolutions.com/SU/dGmcdR1pplusiPY7aSwGr8V6w==
EHBC-AP(2)	DATA GOVERNANCE AND SECURITY - (Data Management) - https://simbli.eboardsolutions.com/SU/EZ2yPTjxrZuhovnzOy4ZXQ==
EHBC-AP(3)	DATA GOVERNANCE AND SECURITY - (Account Management) - https://simbli.eboardsolutions.com/SU/j2PXJKa19CL9zhszSGu3zQ==
JHG	REPORTING AND INVESTIGATING CHILD ABUSE AND NEGLECT - https://simbli.eboardsolutions.com/SU/cWk5HaeMslshn2Tnzxc4usLdA==