

Gregg Cruickshank

From: Gregg Cruickshank
Sent: Thursday, February 22, 2024 10:32 AM
To: Paul Tighe; Aaron Reis; tkirkholm24@gmail.com; Byron Hall; Kristina Nelsen; Ryan Harris
Cc: Amy Brand; Tom Coviello; Abbie Uhl; Gregg Cruickshank
Subject: GOOD STUFF FROM JUSTIN KNIGHT

This information will be included in my March report. However, I am passing it along early.

From: Gregg Cruickshank <greggcruickshank@homerknights.org>
Sent: Saturday, February 17, 2024 5:19 PM
To: Gregg Cruickshank <greggcruickshank@homerknights.org>
Subject: Fwd: Legal Update (02.17.2024)

Sent from my iPhone

Begin forwarded message:

From: Justin Knight <jknight@perrylawfirm.com>
Date: February 17, 2024 at 2:50:07 PM CST
To: Justin Knight <jknight@perrylawfirm.com>
Subject: Legal Update (02.17.2024)

I hope this email finds you well! As we are now more than halfway through February, it is a good time to "spring" ahead to a few legal updates and reminders:

1. Negotiations Deadline

Check this off the list!

Under Nebraska's teacher negotiations statute (48-818.01), negotiations are to end by February 8th unless both sides agree to continue negotiating in good faith. If your district has not yet settled for 2024-2025, you should confirm in writing (such as via email) with your association that both sides agree to continue negotiating in good faith. If you have concerns that your ongoing negotiations are not sufficiently progressing, you should begin at least considering what the "next steps" and timeframe in the CIR will look like if you cannot agree to settle, and the potential budgetary impact for next year.

2. Intent to Return Forms

Amy does this

During the ongoing teacher shortage, more and more school districts have or will implement "intent to return" forms or "renewal agreements" to allow teachers the opportunity to formally "accept employment for the next school year." At this point in the year, it is worth mentioning three points on renewal agreements: (1) these forms can be distributed at any time, but the Tenure Act lists **March 15 as the first date that the school can require these forms to be returned (79-829(3))**; (2) the form should list the specific terms and conditions for "accepting" employment (as opposed to a generic form that asks teachers to check "yes" or "no" if they want to be back next year); and (3) a school has no

obligation to issue a renewal agreement to a teacher they plan to non-renew or terminate at the end of the school year. Please let us know if you have any questions on these documents.

3. Option Enrollment Changes & Deadlines

The springtime is usually a common time for school districts to receive and evaluate option enrollment applications for next school year. As we get closer to the March 15th deadline (79-238(2)), there are a couple of timely option enrollment reminders this spring:

a. Under the new option enrollment laws, a school district must assess a special education student's application on a case-by-case basis to assess whether the district has the capacity to provide the services identified in that student's IEP, as long as the district otherwise has capacity in that student's grade or program. (79-238(1)(b)).

b. A school district has 45 days to accept or reject an incoming option application. (79-237(2)). If your district needs more time to evaluate capacity, you can take up to 45 days to see what happens with student enrollment and/or teaching staff.

c. Under Nebraska's current option enrollment laws, an option student cannot enroll on a part-time basis. Part-time enrollment is limited to "resident" students. (79-2,136).

Please let us know if you have any questions on option enrollment.

4. Update on Title IX Regulations

Recently, the U.S. Department of Education sent one of the new, proposed Title IX rules to the federal entity that reviews and assesses proposed rules. This review process can take up to 90 days. It is possible that, based on the entity's review, the Department could further revise the rule or, if no changes are requested, the Department could continue with the proposed rule as drafted. Nonetheless, any updates to the Title IX regulations are likely months away, with the possibility that November's presidential election could signal the end of any new regulations altogether.

5. 2024 Policy Updates

The Legislature is currently scheduled to adjourn on April 18th, though the body will likely adjourn earlier if they do not need or want to vote on any gubernatorial vetoes. Assuming this schedule holds, policy updates should be ready for consideration at your regular board meeting in May. We use NASB for our policy updates. The majority of policy updates will reflect requirements imposed by the Legislature last year, but may also include mandates passed from this short session.

In addition, some boards have reached out to ask about board policies in the absence of legislative activity, including transgender policies (particularly with respect to extracurricular activity eligibility), firearms on campus, library books and the proposed changes to NDE Rule 10, and parental involvement. These are sensitive topics that, in the absence of legislation, each board will likely need to assess on an individualized basis. We are working on different ways to approach these issues within the existing legal framework, understanding that different boards will take opposite approaches on the same issue. If you suspect your board will want to consider adopting one of these policies (or a different policy), feel free to reach out now to begin discussing what options may (or may not) exist. In the meantime, we will continue to work on policy updates for your May board meeting that reflect required legal updates.

6. Other Items to Monitor

a. April 15th is less than two months away. As a reminder, a certificated employee must be "notified in writing" of possible non-renewal or termination by April 15th. (79-831). If you are considering a non-renewal or termination, you should begin thinking about next steps and timing now to avoid any last minute/April 15th issues.

b. Tuesday, February 20th, marks the halfway point in this short session (Day 30 of 60). It seems unlikely (at this point) that every senator's priority bill will be fully debated due to the scheduling and timing constraints. This compressed timeline may lead to another round of "Christmas tree" bills at the end of the session, especially in an election year where several senators running for another term are focused on passing their legislation to bolster their re-election campaigns. **I agree with Justin that there will be a whole host of legislation lumped into one bill.**

c. Several schools have asked about condensing their student and teacher handbooks. We are working on streamlining handbooks to balance the (growing) list of legal requirements, while also recognizing that handbooks need to be manageable and user-friendly. We will keep you updated on these efforts for those wanting updated handbooks this summer.

d. Over the past year or so, schools with newer principals have asked about a summer training focused on day-to-day legal issues for building administrators. If you or your district has an interest in this opportunity, please let us know. If there is sufficient interest, we are happy to begin coordinating something but would need to start planning sooner rather than later.

As always, please let us know if you have any questions, concerns, or feedback, and have a great weekend!!

Justin

Justin Knight

Direct Line: (531) 249-5155 | Office Main: (402) 476-9200 ext. 136

Cell: (402) 570-9472

Perry, Guthery, Haase & Gessford, P.C., L.L.O.

233 South 13th Street, Suite 1400, Lincoln, NE 68508

jknight@perrylawfirm.com

Gregg Cruickshank

From: Gregg Cruickshank
Sent: Friday, March 8, 2024 12:03 PM
To: Gregg Cruickshank
Subject: FW: Legal Update (03.01.2024)

From: Justin Knight <jknight@perrylawfirm.com>
Sent: Friday, March 1, 2024 10:11 AM
To: Justin Knight <jknight@perrylawfirm.com>
Subject: Legal Update (03.01.2024)

Happy Friday!

It is hard to believe that we are already in March. As we get closer to the midway point of the second semester, and closer to the end of the Legislative session, there are a few legal points worth keeping in mind:

1. Option Enrollment, Special Education Students, and Parent Strategies

Our last legal update reminded schools about the new option enrollment law's requirements for special education option students ([79-238\(b\)](#)). But what about parents who (1) revoke special education services for their student and/or (2) indicate on the option application their intent to refuse special education services if they option into your district? In recent years, more and more parents have attempted this strategy to avoid (in their view) the school's ability to deny their student's option application based on special education capacity. Fortunately for schools, this strategy has been rejected by the Nebraska State Board of Education. In these [decisions](#), the State Board has recognized that, under the special education laws, a parent can revoke special education services before optioning into a different district, then demand their student be evaluated for special education services after they enroll as an option student. In other words, if a school has knowledge that a student would qualify for special education services (such as a revocation of services), the option school can treat the option student as a special education student in its capacity determination.

On a separate note, it is also worth mentioning that the burden to research and validate an option student's application is on the option district. Under [79-238\(d\)](#), "false or substantially misleading information" submitted by a parent may be grounds for rejection, but only "prior to the student's attendance as an option student." Thus, if the option district does not learn of the false information before the student enrolls, the school cannot subsequently cancel the option student's enrollment. Although there may be scenarios where a school could not feasibly know of a parent's false information, the Legislature has determined that a student's enrollment in an option district cannot be cancelled based on their parent's falsehoods. Therefore, it is important for an option district to exercise its due diligence before making an option determination.

2. Personnel Season & Probationary Teachers

Next, as we make our way into the spring weather, schools need to make difficult personnel decisions before April 15th. One common question every spring focuses on whether the formal second semester evaluation needs to be completed before a school gives notice of nonrenewal to a probationary teacher. On this point, if the administration knows they plan to move on from a probationary teacher, do they need to formally observe and evaluate the teacher in the second semester *before* issuing a formal notice of nonrenewal? To answer this, Nebraska's Tenure Act requires a probationary teacher to be [evaluated](#) and observed each semester during their probationary period. But the April 15th [statute](#) does not specifically reference any evaluations or observations that need to occur prior to April 15th. As such, under the Tenure Act, a probationary teacher does not lawfully need to be evaluated or observed in the spring semester before issuing a formal notice of nonrenewal. However, as a *practical* matter, probationary teachers still have a right to a [hearing](#) before the Board of Education. If the focus of a nonrenewal hearing will be on the teacher's evaluations and poor performance, the administration would be wise to conduct the teacher's formal evaluation and observation *before* issuing the nonrenewal notice to show the administration has given the teacher every opportunity to improve. Keep this in mind as you work with your staff (and any potential changes) this spring.

3. Legislative Update and Policy Revisions

As mentioned in our last legal update, the Legislature is considering a bill that would allow (but not require) each school board to allow firearms on school grounds by identified personnel. There is no guarantee this bill will pass and the bill would not require any school to permit additional firearms on campus. At this point, there is no sense anticipating what the Legislature *might* do in a bill that may **still** be further amended. Nonetheless, the preliminary debate over this bill revealed confusion over Nebraska's existing firearm laws. To be clear, and to avoid any further confusion, Nebraska's current firearm on school campus [law](#) does **not** allow an off-duty law enforcement officer to carry their firearm on their person while on school grounds. This point has been misunderstood (and misstated) by both proponents and opponents of this legislative measure. This is only a reminder of Nebraska's current law. We will continue to monitor legislative activity for relevant legal updates.

4. Documents Available at Board Meetings

Recently, some school boards have been caught off guard by patrons appearing at board meetings and demanding to review copies of the board's packets/documents to be considered at the board meeting. This is a reminder that, under Nebraska's [Open Meetings Act](#), "public bodies shall make available at the meeting . . . at least one copy of all reproducible written material to be discussed at an open meeting, either in paper or electronic form." As such, if your board meeting materials (other than materials for closed session) are not posted online, you should make sure that at least one copy of those documents are printed (or can be printed on short notice) for any member of the public who attends the board meeting and requests to review these documents during the meeting. **All of this information is posted on the website, and a copy is available at the meeting.**

5. Difficult Parents and Communication Strategies

Finally, if your district has struggled with a difficult parent who continues to hound and disrupt your staff, keep in mind that you are able to implement a "communication diet" with that parent. Although this strategy has different names in different jurisdictions, the basic concept is the same: the school imposes limits and restrictions on a difficult parent's communications. This could include limits on

communication methods (no text messages, no phone calls, only in-person meetings, only one administrator will communicate with the parent moving forward, etc.), time limits on communications (such as: the school will only spend 15 or 30 minutes per week responding to the parent), and the like. The courts have approved of this method to ensure that staff are able to communicate with and respond to all parents and students fairly, and not require all of their time be devoted to one parent. Granted, these strategies are typically limited to situations where a parent's communications and demands on staff time are unreasonable and unsustainable. Nevertheless, if your district continues to struggle with a parent, then you may want to consider this strategy to support your staff, especially towards the end of this semester if your staff's patience is wearing thin.

I hope you find these updates helpful. If you have any questions or concerns, or any other feedback, please let me know. Otherwise, have a great weekend!!

Justin

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