

# School Personnel Records Law

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by Robert P. Joyce

North Carolina's public records law<sup>1</sup> applies fully to the state's public school systems. The General Assembly has made this clear in the basic public school law—Chapter 115C of the North Carolina General Statutes (hereinafter G.S.).<sup>2</sup> The public records law, in general, requires that all documents made or received by public officials and public employees in the course of their duties be considered public records open to inspection by anyone, unless some statutory provision makes them confidential. Chapter 115C contains two separate provisions regarding personnel records, an all-employees statute and a teachers-only statute, that together provide for limited confidentiality and create a limited exception to the public records law for personnel records. These two provisions must be read in light of one another.

## The All-Employees Provisions

The all-employees statute<sup>3</sup> has the broader applicability, applying to all employees of boards of education (including teachers), former employees, and applicants for employment. For personnel files it calls for the reverse of what the public records law provides for other types of records: personnel records are confidential ex-

cept those falling under specific provisions that make parts of them public.<sup>4</sup>

## Public Information

Always open to the public is a record showing for each employee his or her name; age; date of original employment or appointment; current position; title; current salary; date and amount of most recent increase or decrease in salary; date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office or station to which the employee is currently assigned. Anyone wishing to see this information may do so at any time, subject only to rules adopted by the local board of education for the safekeeping of the records.

## Access to Confidential Information

Everything else in a personnel file is confidential and can be viewed only by the employee (or former employee or applicant for employment) himself or herself, the employee's authorized agent, the superintendent or other supervisory personnel, members of the board of education and the board's attorney, and a party by authority of a subpoena or proper court order.

## Contents of the File

A recurring question concerns the scope of the personnel file itself. Suppose a principal hand writes and puts in a drawer in her own desk a brief note reminding

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1. N.C. GEN. STAT. Ch. 132 (hereinafter G.S.).

2. Specifically, G.S. 115C-3.

3. G.S. 115C-119 through -321.

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4. And except for specific sections that list circumstances under which all or parts of a record can be made public, as discussed later in this article.

herself that this morning she spoke with the custodian for the third time about running out of paper towels in the teachers' restroom. Is that note a part of the custodian's personnel file? Probably yes. The statute broadly defines a personnel file as "any information in any form gathered by the local board of education . . . wherever located," so long as it relates to the individual's "application, selection or nonselection, promotion, demotion, transfer, leave, salary, suspension, performance evaluation, disciplinary action, or termination of employment."<sup>5</sup> One could try to argue that the principal's note is not part of the personnel file because it was not "gathered by the local board of education," but that argument almost certainly will fail because the principal is the agent of the board;<sup>6</sup> when she gathers information, it is the board's action. It would be possible to argue that the principal's note is not part of the personnel file because it does not relate to any of the elements of application, selection, and so forth, but it seems likely a court would rule that it does relate to "performance evaluation." The consequences are that any documentary material regarding an employee's job activities is part of that employee's personnel file, is confidential, and must, upon request, be shown to the employee.

### Releasing Confidential Information

A special statutory provision permits the opening of otherwise confidential portions of the personnel file of a public school employee in special circumstances.<sup>7</sup> For example, the board may want the public to know the reason that a popular coach was relieved of his coaching duties. First, the board of education must determine that release of information from the file, or permitting outsiders to inspect the file or any portion of it, "is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board." Second, the superintendent must prepare a memorandum setting forth the circumstances that he or she and the board have deemed to require the disclosure. (Note that this memorandum is itself a public record.) Third, the superintendent may inform anyone of the reasons for any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment, or nonemployment of any applicant, employee, or former employee, and may allow inspection of any part of that person's personnel file.

5. G.S. 115C-319 (emphasis added).

6. *Abell v. Nash County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984), cert. denied, 313 N.C. 506, 329 S.E.2d 389 (1985).

7. G.S. 115C-321.

After following these procedures, the board might authorize the superintendent to release to the public information concerning the reason a teacher was suspended without pay as a disciplinary action—for example, that the teacher was found to have a school television at his home without adequate explanation.

### Employee Waivers

Unlike the personnel records privacy statutes that apply to county employees<sup>8</sup> and city employees,<sup>9</sup> the school statute contains no provision for employees to authorize the release of confidential information. Nonetheless, because the statutory protection is for the benefit of the employee, and because it will occasionally be in the employee's interest to release otherwise confidential information (to a credit agency or prospective employer, for example), it seems appropriate, even in the absence of statutory authorization, for school systems to release information upon the written authorization of an employee. Without the authorization, school systems should release only public information.

### Access to Applicants' Files

In the early 1990s, the local newspaper wanted the names of all people being considered for the job of county manager in Yadkin County, North Carolina, and brought suit to obtain this list. The state supreme court held<sup>10</sup> that the name of each candidate was part of the personnel file of that candidate because each candidate could be considered an "applicant for employment" and because the personnel records law governing county employees<sup>11</sup> applied to applicants. But that statute went on to apply the portion authorizing public disclosure of name, salary, and so forth, only to "employees," defined to include "former employees of the county" but not applicants. Because the privacy parts of the statute covered applicants but the disclosure parts did not, the court held that no information at all could be released about candidates for the job of manager—or any other job.

Would the same reasoning apply to candidates for the job of superintendent of schools? Unfortunately, the law is unclear because the public school employee personnel records law is not structured the same way as the

8. G.S. 153A-98(c)(6).

9. G.S. 160A-168(c)(6).

10. *Elkin Tribune, Inc., v. Yadkin County Bd. of County Comm'rs*, 331 N.C. 735, 417 S.E.2d 465 (1992). See also *Durham Herald Co. v. County of Durham*, 334 N.C. 677, 435 S.E.2d 317 (1993).

11. G.S. 153A-98.

county employee law. It does extend the privacy provisions to applicants, like the county law, and it does extend the public access portion only to “employees,” like the county law. But it does not contain a definition of “employee” that includes or excludes former employees or applicants, so the exact reasoning of the court in the Yadkin County case cannot be applied. Nonetheless, it seems safest to assume, based upon the Yadkin case, that the names of candidates for employment (and all other information about applicants) are confidential and may not be disclosed.

### Access to Contracts of Employment

A question that the public records law does not directly answer—and that North Carolina’s appellate courts have not yet had occasion to decide—concerns the status of the employment contract of an individual employee. Is it a public record open to inspection, or is it a confidential part of the individual’s personnel file? It would seem that the contract meets the definitional requirements for personnel file information, described above. On the other hand, it seems likely that the courts would look to find a way to open contracts—especially the contracts of high-level administrators such as the superintendent—for inspection. When the issue was brought before a superior court judge in a case involving employment contracts of coaches at public universities, the superior court judge ruled that contracts are not “gathered by” the employer and are therefore not part of the personnel file. For that reason, they are open to public inspection. That issue was not appealed to the appellate courts, and so the decision by that one judge in that one case does not control other judges. Nonetheless, it is the clearest authority existing so far.

### Settlements

If a school system and a school employee agree to settle an employment lawsuit, administrative proceeding, or arbitration between them, they may not agree to keep the terms of the settlement confidential. By a provision of the public records law, all settlement documents in any suit, administrative proceeding, or arbitration instituted against a school board—by an employee or by anyone else—is a public record open to inspection, unless it is specifically ordered closed by a judge.<sup>12</sup> The provision covers all documents that reflect the settlement or that were made or utilized in connection with the terms and conditions upon which the claim

was settled, including the settlement agreements themselves, correspondence, consent orders, checks, and bank drafts. A judge or hearing officer may order the documents closed to public inspection upon specific written findings that an overriding interest in confidentiality justifies closing the documents.

## The Teachers-Only Provisions

In contrast with the all-employees statute, the teachers-only statute applies only to the personnel files of teachers,<sup>13</sup> as defined in the Teacher Tenure Act.<sup>14</sup>

The statute requires the superintendent to maintain in the superintendent’s office a file for each teacher containing any complaint, commendation, or suggestion for correction or improvement concerning the teacher’s professional conduct, so long as the complaint or other statement is signed by the person who makes it. Before the complaint is placed in the file, the teacher must be given five days’ notice, and any denial or explanation the teacher desires to make must be placed in the file with the complaint. The superintendent may decide not to put into the file any complaint that contains invalid, irrelevant, outdated, or false information or one that is not accompanied by documentation of an attempt to resolve the issue.

The file is open to inspection at all reasonable times by the teacher but is to be open to others only in accordance with rules established by the board of education. A teacher may petition the board of education to remove any information from the file that the teacher believes to be invalid, irrelevant, or outdated.

Any data gathered by the board of education before the teacher’s employment may be kept in a separate file and need not be made available to the teacher.

13. G.S. 115C-325(b).

14. “‘Teacher’ means a person who holds at least a current, not provisional, or expired, Class A certificate or a regular, not provisional or expired, vocational certificate issued by the Department of Public Instruction; whose major responsibility is to teach or directly supervise teaching or who is classified by the State Board of Education or is paid as a classroom teacher; and who is employed to fill a full-time, permanent position.” G.S. 115C-325(a)(6).

12. G.S. 132-1.3.

## Local Personnel Files Policies

As discussed above, two statutory provisions govern the maintenance and confidentiality of personnel files relating to public school employees. The two statutory provisions provide great specificity on a number of points related to personnel records: what composes the file, who may see what materials are within the file, the grounds upon which a teacher may object to the inclusion of materials within the file, and so on.

Nonetheless, the adoption of supplementary local policies is a good idea, for three reasons. First, the contents of personnel files may be vitally important to the career advancement of employees and, therefore, employees may be emotionally involved in their contents. A clear procedure for objecting to the inclusion of particular matters in the file may defuse some conflicts and facilitate the resolution of conflicts generally. Second, standard procedures will increase the likelihood that similarly situated employees are treated similarly, decreasing the likelihood of discrimination or the perception of discrimination. And third, the two statutory provisions do not fit nicely together, so a clear local policy is helpful in a uniform interpretation of the law.

Local board policy should be clear that there are four types of personnel file information that require different policies regarding maintenance and access. The four types are (1) public information; (2) information relating to complaints, commendations, or suggestions for teachers; (3) medical information; and (4) the remainder of personnel information maintained by the board.

### “Public Information” File

One of the statutory provisions requires each local board to “maintain a record of each of its employees” showing the employee’s name; age; date of original employment or appointment; current position; title; current salary; date and amount of most recent increase or decrease in salary; date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office or station to which the employee is currently assigned.<sup>15</sup> The local policy should require that the superintendent maintain this information in a separate file. That way, public access to information required to be made public is assured, and the confidentiality of other information

is protected because it is physically in a different folder or cabinet or computer document.

### “Complaint, Commendation, or Suggestion” File

Another of the statutory provisions requires the superintendent to “maintain in his office a personnel file for each *teacher* that contains any complaint, commendation, or suggestion for correction or improvement about the teacher’s professional conduct.”<sup>16</sup> As discussed above, this unique statutory provision applies *to teachers only*, and goes on to specify a number of requirements that apply to this type of personnel file information and not to any other type of personnel file information. For example, the superintendent may elect not to include in this file a letter of complaint that contains irrelevant, outdated, or false information or any document that is unsigned. The material may be placed in this file only after five days’ notice to the teacher and the teacher may supply, to be included with the material, any denial or explanation the teacher wishes to make. The teacher may petition the board for an order removing any irrelevant, outdated, or false information from this file. And while the teacher may have access to this file material, others may have access “only in accordance with such rules and regulations as the board adopts.”

Local board policy should require the superintendent to maintain this information in a separate file and should specify the procedure by which a teacher may request that the board order material removed. Local policy should also specify how others may have access to this material. On this last point, the best policy would be to provide for access to this material just as the statutory provisions permit access to personnel files generally.

### “Medical Information” File

Federal regulations adopted under the Americans with Disabilities Act<sup>17</sup> require that employers maintain medical information on employees in separate files apart from other personnel files, specifically designating which people are to have access to these separate files.<sup>18</sup> The regulations also specify that supervisors and managers may be informed about necessary restrictions on the work duties of an employee and necessary accommodations to a disability, and that first aid and safety personnel may be informed, when appropriate, if an

15. G.S. 115C-320.

16. G.S. 115C-325(b) (emphasis added).

17. 42 U.S.C §§ 12101 through 12213.

18. 29 C.F.R. § 1630.14.

employee's disability might require emergency treatment or if other specific procedures are required. Local board policy should require the superintendent to maintain this information in a separate file and should specify who is to have access to the information.

*Remainder of personnel information file.* Everything that does not fit under the "public," "complaint," and "medical" headings but that relates to the employee's employment is fully protected by the personnel records provisions and its confidentiality must be protected.

### Copying Fee

The contents of the "public information" file are public records, subject to the provisions of the public records law regarding fees for copying.<sup>19</sup> That statute says that the fee charged may not exceed "the actual cost" of making the copy, which is defined to mean "direct, chargeable costs related to the reproduction of a public record" and does not include costs that would have been incurred if the copying request had not been made—that is, the school system cannot figure in the salary of the office employee who must operate the copying machine, as he or she would have been there anyway. The lesson of this statutory provision is that the costs per page for copying must be low. It should be set by policy and not left to the individual discretion of the employee who happens to receive the request.

19. G.S. 132-6.2(b).

### Role of the Superintendent

Together, the two statutory provisions give the superintendent three distinct duties. The first is to maintain in his or her office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher's professional conduct.<sup>20</sup>

The second and related provision authorizes the superintendent to elect not to place in such file a letter of complaint that (1) contains invalid, irrelevant, outdated, or false information or (2) contains no documentation of an attempt to resolve the issue.<sup>21</sup> If the superintendent does elect to put the letter into the file, the teacher must be given five days' notice and an opportunity to submit a response.

The third duty of the superintendent concerns a decision to release otherwise confidential information from a personnel file. If the board determines that release of information from a file is "essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board,"<sup>22</sup> the superintendent is to prepare a memorandum setting out the circumstances justifying the release of information and specifying the information to be released. That memorandum is a public record. The superintendent may then release information from the file consistent with the memorandum. ■

20. G.S. 115C-325(b).

21. *Id.*

22. G.S. 115C-321.

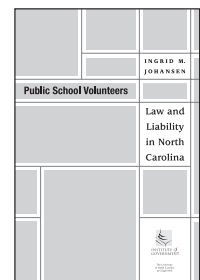
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