

REFERENCES - EMPLOYMENT REFERENCE GUIDELINES

Principals, administrators and other school personnel must follow these guidelines when giving an employment reference, if the reference in any way represents you as a District employee. You can give employment references that are complete, truthful and valuable to a prospective employer, without incurring liability. Follow these guidelines and the Ten Rules for References as outlined below.

If a school district or other employer contacts you for a reference about a person you have employed, you must at least provide them with a **verification of employment**. This includes dates of employment, positions held, duties and salary. You are not legally obligated to go beyond this by giving a reference or recommendation. However, you may have an ethical duty to make certain facts known to a prospective employer. When you follow the guidelines provided in this memo, you will be able to assist other employers by giving valuable employment references without exposing the district to liability.

What You Must Provide: Public Record Information

Under the California Public Records Act (CPRA), records routinely maintained by a public agency are open to public inspection. The information about employees that is found in the records of a school district will fall into three categories: public, exempt and subject to balancing. **A document that is disclosable as a public record is available to anyone, not just a prospective employer.**

A. Public Information

1. Examples of public record information about school employees that **must be provided** to anyone upon request are: employment contracts, credentials held, dates of service, positions held, duties, qualifications, salary, awards, litigation and criminal convictions. The Brown Act requires the governing board to publicly report, by title of the position, any action it takes to appoint, employ, non re-elect, release, dismiss, accept the resignation of or otherwise affect the employment status of a school employee. The minutes of such a report are also a public record.
2. If an employee resigns pursuant to a settlement agreement, the agreement is a public record and must be disclosed upon request. The agreement may specify what information about the ex-employee can be released to prospective employers, and by whom.

B. Exempt From Disclosure

Certain public records, including some items in personnel and medical files, need not be disclosed because their release would result in an **unwarranted invasion of personal privacy**.

1. Examples of information in a personnel file that **should not be disclosed** are: social security number, home address and phone number, date and place of birth, performance evaluations, disciplinary and termination letters, medical records, financial information, and intimate or embarrassing details unrelated to school employment.

C. Subject to Balancing

The law does not provide a blanket exemption for all personnel records. Rather it requires a **weighing or balancing process** in which an employee's personal right to privacy is balanced against the public interest to be served by the disclosure of negative or derogatory information about the employee. This "personnel exemption" is intended "to protect intimate details of personal and family life, not business judgments and relationships." A district may not withhold a personnel record if the public interest served by disclosing it outweighs the employee's privacy interest or the public interest that would be served by not disclosing it. For example, the public interest in disclosure is more compelling if the record reveals a history of child molestation than if it reveals a history of unsatisfactory work performance.

What You May Provide: Privileged References

A. Employers may fear that if they reveal negative or derogatory information about an employee to a prospective employer, the employee will sue them for defamation.

1. Defamation (libel or slander) is a communication that is **untrue and unprivileged**, and that defames the person's reputation.

B. The law provides a **qualified privilege** to share information about an employee if the communication:

1. concerns the job performance or qualifications of an applicant for employment,
2. is made by a current or former employer of the applicant,
3. is made upon the request of a prospective employer of the applicant,
4. is based upon credible evidence,
5. is made without malice, and
6. does not concern the applicant's speech or activities that are protected by the constitution or any other law, including speech or activities related to labor disputes.

C. If **all** the elements listed above are present, an employer **cannot be held liable** for defamation even if the employer gives **inaccurate or untrue** information about the current or former employee.

1. This "common interest" privilege is lost if:
 - a. the employer shares information that is based on mere rumors or unfounded gossip, rather than on credible evidence;
 - b. the employer purposely and maliciously gives the prospective employer information that is inaccurate or untrue.
2. This privilege also:
 - a. allows an employer to answer whether or not the employer would rehire the current or former employee;
 - b. applies whether or not the applicant has signed a release or waiver giving the employer permission to share information about him or her with prospective employers.

D. The common interest privilege means that **a school district can share both negative and positive information about an employee** with a prospective employer who requests it, and cannot be held liable to the employee for defamation so long as the communication is true OR is based on credible evidence and made without malice.

What You Must Not Provide: Half-Truths or Misrepresentation

A. Potential loss or discipline of credential

1. "A certificated person shall not write or sign any letter or memorandum which **intentionally omits significant facts**, or which states as facts matters which the writer does not know of his/her own knowledge to be true relating to the professional qualifications or personal fitness to perform certificated services of any person whom the writer knows will use the letter or memorandum to obtain professional employment nor shall he/she agree to provide a positive letter of recommendation which **misrepresents facts** as a condition of resignation or for withdrawing action against the employing agency."
2. This rule applies to any written statement not identified as the writer's personal opinion.
3. Willful violation of this rule may result in the revocation or suspension of the writer's credential or license, or private admonition.

B. Potential criminal and civil liability

1. Any employer who, after having discharged an employee from service or after an employee has voluntarily left such service, by any **misrepresentation** prevents or attempts to prevent the former employee from obtaining employment:
 - a. is guilty of a misdemeanor.
 - b. is liable to the former employee, in a civil action, for treble damages.
2. However, this does not prevent an employer or superintendent thereof, from furnishing, upon special request therefore, a **truthful statement concerning the reason** for the

discharge of an employee or why an employee voluntarily left the service of the employer.

C. Potential civil liability to a third party

1. Randi W. was sexually molested by a vice principal who had a history of child molestation. The districts that had previously employed him knew there had been complaints of sexual misconduct, but all of them gave him favorable recommendations anyway. The California Supreme Court found that by giving the vice principal unreserved and unconditional praise, the prior employers could be held liable to Randi for **fraud and negligent misrepresentation**, since their misleading half-truths caused her district to hire the molester. If the prior districts had not provided any recommendations at all, they could not have been sued for failing to mention the history of molestation. But because they undertook to provide *positive* information about the vice principal's qualifications and character, they could not withhold *negative* information that was material to his fitness for employment at a school.

TEN RULES FOR REFERENCES

1. Obtain a signed release from the employee if at all possible.
2. Never give an unsolicited reference. Only give a reference in response to a written request from a prospective employer.
3. Tell the truth.
4. Give only factual information, not opinions or impressions. If opinions are included, make it clear they are only opinions.
5. Be sure all information is supported by objective, credible evidence, preferably written. Do not repeat a rumor. Investigate to see if it is true, or do not include it.
6. Do not leave out material facts so that the resulting reference is misleading.
7. Do not exaggerate the negatives. Avoid inflammatory terms, name-calling and moral judgment.
8. Discuss only the employee's job performance and qualifications, not speech or conduct that is protected by law.
9. Share the information in good faith, without malice or ill will against the employee.
10. You may truthfully reveal whether or not you would rehire the employee.