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Mark A. Eberl
Executive Director of Support Services
Warren County School District
185 Hospital Drive
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RE: Warren County School District
Policy 7115

Dear Mark:

Last month you advised me that School Board member Roger Dunham had requested that you review Warren County School District Policy 7115. This Policy addresses the area of employment. I was asked to review the Policy from a legal perspective. As I understand the Personnel Committee is meeting on Tuesday, May 1, 2007. Please accept this as a response to your request (and the request of Mr. Dunham).

First, before I comment on the Policy, let me indicate that my focus was limited to a legal review of the document. I did note that there were some misspelled words and that I would have structured some sentences differently. With that disclaimer, let me share the following observations with you:

The Policy

1. Policy 7115 states: "The district will not restrict itself to selecting from within the school system alone." As you are aware, the labor agreements with the organizations representing some of the District's employees indicate that under some circumstances current employees should receive preferential treatment. While I note that the Policy recognizes that there are "contractual requirements," I wanted to remind you that under some circumstances vacancies are to be filled with due regard to the contractual obligations found in the labor agreements.

2. Policy 7115 states that applications shall be considered with "weight given to certification, educational preparation, experience and personal traits." Under some circumstances, the District's labor agreements already provide the criteria to be used in filling vacancies.

3. The Policy states that the District is an equal employment opportunity employer and selects qualified candidates without regard to race, color, family status, . . . or non-job related handicap or disability." In fact, as you are aware, a "job-related handicap or disability" may not necessarily exclude someone from consideration for employment. This is where the concept of "reasonable accommodation" comes into the picture. I therefore would suggest that Paragraph 4 of Policy 7115 be amended accordingly (i.e., delete "non-job related handicap").

Interview Protocol

4. The Interview Protocol - Professional Staff form notes that all candidates must have a valid PA certificate before they are interviewed. Does this exclude recent graduates from colleges? Do you ever interview someone for a position before they have received their PA certificate?

5. The forms (for Support Staff, too) note that the team should identify up to seven skills, qualifications or abilities. The evaluation form attached to the Protocol provides space for only four criteria. This would seem to be an inconsistency.

6. The Protocol indicates that the team recommendation will be made to the superintendent within three days. Will the team need more time than three days to make a recommendation? It also notes that inquiries from unsuccessful candidates may be directed to the team facilitator by the Human Resource Office. I do not believe that is prudent. Unsuccessful candidates who speak to the team facilitator could use information from that discussion as a basis for filing a claim of discrimination for not being hired. I think greater control should be kept over who speaks with unsuccessful candidates. I believe that contact with unsuccessful candidates should be limited to the Human Resource Office.

7. The Protocol form also provides that the Board will meet with all recommended candidates prior to their voting to hire the candidate. I am uncertain as to the reason for this requirement. Is this yet another step in the interview process? My concern here, of course, is that Board members are not always trained interviewers. A Board member might state something or ask a question that is illegal. Of course, I would expect that the team facilitator and the interview team that meets with applicants receive some training on areas of inquiries that are lawful/unlawful.

8. The telephone reference form contains the following question: "Is there any reason why this applicant should not be seriously considered for a position?" I think the word "seriously" can be deleted from this question. Likewise, I believe the question, "Given the opportunity, would you employ this person without any hesitation?" should be modified since the question is being asked of a past employer. It should be phrased: "Given the opportunity, would you *reemploy* this person without any hesitation?"

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9. I also have some concern as to the requirement that team members "should maintain notes on each candidate as to their information and to support a team decision." These notes "should be kept by team members for future reference." How long should these notes be maintained? As you are aware, because the District has dealt with threats of "refusal-to-hire" lawsuits, these notes could turn out to be pieces of evidence that are discoverable by a unhappy/unsuccessful candidate. I think greater control should be maintained. If notes are stored, they should be kept in a central location in the Human Resource Office. Individual team members should not be required or obligated to keep them in their own possession.

Should you have any questions or comments about my thoughts, as always, feel free to contact me. Also, I would ask that you forward this letter to Mr. Dunham since I do not have his email address. He may wish to review it prior to the meeting on Tuesday.

Thank you for the opportunity to review the employment policy.

Very truly yours,

KNOX McLAUGHLIN GORNALL &
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Mark T. Wassell

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