

Berkley Public Schools

LEGAL FRAMEWORK FOR EMPLOYEE RELATIONS

Policy #8000

The General Laws of Massachusetts establish the legal framework within which employee organizations may be recognized and bargain collectively with "public employees".¹ Because of the importance of these provisions of the law, they are included as succeeding sections of this policy series. In working within the provisions of the law, the Berkley School District fulfills its responsibilities and does not forego any of its prerogatives nor does it relinquish any of its powers as granted in state law and Policy #1130.²

- 8000.1 The School Committee will officially recognize duly constituted or elected bargaining units of the various employee groups in the school district.³
- 8000.2 The School Committee will, in good faith, bargain collectively with those units in matters related to "wages, hours, and conditions of employment".⁴
- 8000.3 The School Committee and the Administration of the school district will appropriately respond to and use the grievance procedures established within negotiated agreements and the provisions of state law in order to expedite the settling of conflicts and disputes.⁵
- 8000.4 The School Committee and the Administration of the school district will refrain from engaging in the "employer practices" specifically prohibited by state law.⁶
- 8000.5 No school employee or school employee organization shall engage in, condone, induce, or encourage any strike, work stoppage, slowdown, or withholding of services by school employees. Whenever a strike occurs or is about to occur, the School Committee shall petition the Massachusetts Labor Relations Commission to make an investigation and take appropriate action to stop the strike.⁷

Legal Reference: General Laws of MA & Code of MA Regulations (CMR)

¹ Chapter 150E

² Chapter 71, Section 37

³ Chapter 150#, Sections 2, 3, 4, 5; 456 CMR 11.04 (2)

⁴ Chapter 150E, Sections 2, 4, 5, 6, 7

⁵ Chapter 150E, Sections 8, 9

⁶ Chapter 150E, Sections 10, 11

⁷ Chapter 150E, Section 9A, 456 CMR 16.03

Adopted: May 8, 1973

Amended: April 12, 1993

Amended: Dec. 11, 2000

Reviewed: Oct. 7, 2008

Berkley Public Schools

C.O.R.I. REQUIREMENTS

Policy #8005

In accordance with state law, it shall be the policy of the Berkley Public Schools to obtain all available Criminal Offender Record Information (C.O.R.I.) from the Criminal History Systems Board (CHSB) of all employees, volunteers, prospective employee(s) or prospective volunteer(s) of the school department including any individual who regularly provides school related transportation to children, who may have direct and unmonitored contact with children, prior to hiring the employee(s) or to accepting any person as a volunteer. State law requires that school districts obtain C.O.R.I. data for employees of taxicab companies that have contracted with the schools to provide transportation to pupils.

The Superintendent, Principal, or their certified designees shall periodically, but not less than every three years, obtain all available Criminal Offender Record Information from the criminal history systems board on all employees, individuals who regularly provide school related transportation to children, including taxicab company employees, and volunteers who may have direct and unmonitored contact with children, during their term of employment or volunteer service.

The Superintendent shall ensure that on the application for employment, there shall be a statement that as a condition of employment the school district is required by law to obtain Criminal Offender Record Information on any employee, individual who regularly provides school related transportation, who may have direct and unmonitored contact with children. Prior to obtaining their Criminal Offender Record Information, all current employees, persons regularly providing school related transportation, and volunteers will complete and sign a C.O.R.I. Request Form. If requested, the applicant will be provided a copy of the C.O.R.I. policy

The Superintendent, Principal or their certified designees also may have access to Criminal Offender Record Information for any subcontractor or laborer who performs work on school grounds who may have direct and unmonitored contact with children, and shall notify them of this requirement and comply with the appropriate provisions of this policy.

Pursuant to a Department of Education C.O.R.I. Law Advisory dated February 17, 2003, "Direct and unmonitored contact with children means contact with a child when no other C.O.R.I. cleared employee of the school or district is present. A person having only the potential for incidental unsupervised contact with children in commonly used areas of the school grounds, such as hallways, shall not be considered to have the potential for direct and unmonitored contact with children. These excluded areas do not include bathrooms and other isolated areas (not commonly utilized and separated by sight or sound from other staff) that are accessible to students".

In the event that a current employee/volunteer has questions concerning the signing of the C.O.R.I. request form, he/she may meet with the Principal or Superintendent; however, failure to sign the C.O.R.I. request form may result in a referral to local counsel for appropriate action. The School Committee, Superintendent, Principals or their designees certified to obtain information under this policy shall prohibit the dissemination of information for any purpose other than to further the protection of school children.

C.O.R.I. is not subject to the public records law and must be kept in a secure location, separate from personnel files and may be retained for not more than three years. C.O.R.I. must be shared with the individual to whom it pertains, upon his or her request. Access to C.O.R.I. reports must be restricted to those individuals certified to receive such information. In the case of prospective employees or volunteers, a C.O.R.I. check is the last step in the screening process and will be obtained only when the Superintendent has determined that the applicant is qualified and is recommended for employment or volunteer duties.

The hiring authority, subject to applicable law, reserves the exclusive right concerning any employment decision made pursuant to Chapter 385 of the Acts of 2002. The employer may consider the following factors when reviewing C.O.R.I.: the type and nature of the offense, the date of the offense and whether the individual has been subsequently arrested, the number of offenses, pending charges, as well as any other factors the employer deems relevant.

If Berkley Public Schools is inclined to make an adverse decision based on the results of the C.O.R.I. check, the employee/applicant/volunteer will be notified immediately. They will be provided with a copy of the criminal record and the organization's C.O.R.I. policy, advised of the part(s) of the record that make the individual unsuitable for the position and given an opportunity to dispute the accuracy and relevance of the C.O.R.I. record.

Employees/applicants/volunteers challenging the accuracy of the C.O.R.I. check shall be provided with a copy of CHSB's "Information Concerning the Process in Correcting a Criminal Record". If the C.O.R.I. record provided does not exactly match the identification information provided by the applicant, Berkley Public Schools will make a determination based on a comparison of the C.O.R.I. record and documents provide by the applicant. Berkley Public Schools may contact CHSB and request a detailed search consistent with CHSB policy.

Berkley Public Schools Superintendent, Principal or their certified designee will provide a CHSB application package to any employee/applicant/volunteer who believes he/she has been a victim of identity theft.

Employment applications will include questions concerning criminal records (see attachment) which the Massachusetts Commission Against Discrimination has determined may be legally asked of prospective employees.

Records sealed pursuant to law shall not operate to disqualify a person in any examination, appointment or application for public service on behalf of the Commonwealth or any political subdivision thereof.

Contracts with special education schools and other providers will require a signed statement that the provider has met all the legal requirements of the state of Massachusetts relative to criminal background checks for employees and others having direct and unmonitored contact with children.

Legal ref: M.G.L. 71:38R, 151B, 276, §100A, St. 2002, c.385
MCAD Regulations & DOE Advisory on C.O.R.I. Law (2/17/03)

Approved: May 19, 2003
Amended: March 16, 2009

C.O.R.I. REQUIREMENTS

Employers may ask the following series of questions:

1. Have you been convicted of a felony? Yes or no?
2. Have you been convicted of a misdemeanor within the past five years (other than a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace)? Yes or no?
3. Have you completed a period of incarceration within the past five years for any misdemeanor (other than a first conviction for any of them following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace)? Yes or no?
4. If the answer to question number 3 above is "yes" please state whether you were convicted more than five years ago for any offense (other than a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace?) Yes or no?

Some employers are authorized to request, receive, view and/or hold criminal offender record information pursuant to state or federal law.

Any inquiry into the criminal record of any applicant must also contain language pursuant to M.G.L. c.276, §100A.

It is unlawful for an employer to make any inquiry of an applicant or employee regarding:

1. An arrest, detention or disposition regarding any violation of law in which no conviction resulted.
2. First convictions for the misdemeanors of drunkenness, simple assault, speeding, minor traffic violations, affrays or disturbance of the peace. For the purpose of 804 CMR 3.02 minor traffic violations include any moving traffic violation other than reckless driving, driving to endanger and motor vehicle homicide.
3. Any conviction of a misdemeanor where the date of the conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred five or more years prior to the date of such inquiry, unless such person has been convicted of any offense within five years immediately preceding the date of the inquiry.

No person shall be held under any provision of any law to be guilty of perjury or of otherwise giving false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold by 804 CMR 3.02. 4/03

Berkley Public Schools

DEFINITIONS RELATED TO COLLECTIVE BARGAINING

Policy #8100

When used in sections of state law concerned with collective bargaining, (1) the following words shall, unless the context requires otherwise, have the following meanings:

- 8100.1 Public employer: Any county, city, town, or district and any person designated by the public employer to act in its interest in dealing with public employees. In the case of school employees, the public employer shall be represented by the School Committee or its designated representative.²
- 8100.2 Employee: Any employee of a public employer, whether or not in the classified service of the public employer, except elected and appointed officials, board and commission members, the heads, directors and executive or administrative officers of any public employer and other managerial employees or confidential employees.³
- 8100.3 Employee organization: Any lawful association, organization, federation, or labor union, the membership of which includes public employees, which assists its members in obtaining improvement of wages, hours, and other conditions of employment.⁴
- 8100.4 Professional employee: Any employee engaged in work which is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, which involves the consistent exercise of discretion and judgment in its performance, of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period, and which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning, or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.⁵

Adopted - May 8, 1973

Amended - April 12, 1993

Reviewed – Jan. 26, 2009

General Laws of MA and Code of MA Regulations (CMR)

² Chapter 150E, Section 1

³ Chapter 150E, Section 1

⁴ Chapter 150E, Section 1

⁵ Chapter 150E, Section 1

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DETERMINATION OF BARGAINING AGENT

Policy #8200

- 8200.1 Employees shall have, and be protected in the exercise of, the right to self-organization, to form, join, or assist any employee organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, and other conditions of employment and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from actual interference, restraint or public employer or designated as the representative of the majority of the employees in an appropriate unit, shall be the exclusive bargaining agent for all employees of such unit, and shall act, negotiate agreements, and bargain collectively for all employees in the unit, and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.
- 8200.2 Whenever, in accordance with such regulations as may be prescribed by the state labor relations commission, a petition is filed with said commission by a public employer alleging:
- 8200.21 that one or more employee organizations have presented a claim to be recognized as the representative of a majority of employees in a specified unit,
 - 8200.22 or by an employee or group of employees or an employee organization alleging that a substantial number of employees wish to be represented for collective bargaining by an employee organization as exclusive representative,
 - 8200.23 or that the employee organization currently certified or recognized by the public employer as the bargaining representative does not currently represent a majority of the employees in the unit;
 - 8200.24 said commission shall investigate such petition, and, if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing upon due notice.
- 8200.3 If within ten days after the filing of such petition, said commission shall receive a request, signed by at least five percent of the employees in a specified unit, that the signatures on such petition be verified, the commission shall verify such signatures, and shall satisfy itself as to validity before ordering such hearing.
- 8200.4 If, after hearing, the commission finds that there is a controversy concerning the representation of employees, it shall direct an election by secret ballot or shall use any other suitable method to determine whether and by which ballot

or shall use any other suitable method to determine whether and by which employee organization the employees desire to be represented and shall certify the results thereof.

8200.41 Except for good cause, no election shall be directed in any bargaining unit or any subdivision thereof within which in the preceding twelve month period a valid election has been held.

8200.42 No election shall be directed during the term of a collective bargaining agreement; except that for good cause shown the commission may direct such an election.

8200.43 An employee organization which receives majority of votes cast in an election shall be designated by the commission as exclusive representative of the employees in the unit.

8200.44 In any election where none of the choices on the ballot receives a majority, a run off shall be conducted, the ballot provided for a selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

8200.5 The commission shall decide in each case whether the appropriate unit for purposes of collective bargaining shall be the public employer unit or any other unit thereof; provided, uniformed employees of the fire department shall be in a separate unit; and provided, further, that no unit shall include both professional and non-professional employees unless a majority of such professional employees vote for inclusion in such unit.

8200.6 Nothing in this section shall be construed to prohibit a stipulation, in accordance with regulations of the commission, by a public employer or its designated representative or representatives and an employee organization for the waiving of hearing and the conducting of a consent election by the commission for the purpose of determining controversy concerning the representation of employees.¹

Adopted: May 8 1973
Amended: April 12, 1993

General Laws of MA and Code of MA Regulations (CMR)

¹ Chapter 150E, Section 2-5

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AGENCY SERVICE FEE

Policy #8220

A public employer shall require, as a condition of employment, during the life of a collective bargaining agreement so providing, the payment on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later, of any agency service fee to the employee organization whichever, in accordance with the provisions of Policy #8200, is duly recognized by the employer or designated by the state labor relations commission as the exclusive bargaining agent for the unit in which such employee is employed:

- 8220.1 provided, however, that such agency service fee shall not be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed, pursuant to a vote of a majority of all employees in such bargaining unit present and voting.
- 8220.2 Such agency service fee shall be proportionately commensurate with the cost of collective bargaining and contract administration.¹

Not adopted, included for reference only.
1990-92 Agreement has an agency fee clause.

Reviewed: Oct. 7, 2008

¹ Chapter 150E, Sections 10-12; 456 CMR 17.03, 17.04

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PROCESS OF COLLECTIVE BARGAINING

Policy #8300

For all issues concerning Collective Bargaining, Resolution of Disputes, Fact-finding Procedures, Conciliation and Arbitration, Prohibited Practices by Employers, Prohibited Practices by Employees, Complaints to Labor Relations Commission, and Prohibition Against Strikes, it is the policy of the Berkley School Committee to be consistent with Massachusetts General Laws.

Adopted: May 8, 1973
Amended: April 12, 1993
Amended: April 9, 2001
Reviewed: Oct. 7, 2008

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FAMILY AND MEDICAL LEAVE POLICY

Policy #8700

- 8700.1 A family or medical leave of absence is an approved absence available to eligible employees for up to twelve weeks per year under the following circumstances:
1. the birth, adoption or placement for foster care of a child,
 2. to care for a child, spouse, or parent who has a serious health condition,
 3. when the employee has a serious health condition.

Leave under this policy is without pay except to the extent it is covered by available paid leave.

Employees who take leave for the birth, adoption or foster care of a child must substitute all accrued vacation and personal time for all or part of the twelve weeks. Employees who take leave because of their own serious illness, or to care for a spouse, parent or child must substitute all accrued vacation time, personal and sick time for all or part of the twelve weeks. Time off due to a job-related injury that has resulted in a serious health condition will also be applied toward as eligible employee's leave under this policy.

8700.2 Military Family Leave Entitlements

Employees may apply for and be granted a Military Family Leave in accordance with the United States Family and Medical Leave Act.

Employees are entitled to return to the same or a substantially equivalent job upon return from an approved leave under this policy.

8700.3 Eligibility

This policy applies to employees who have been employed for at least twelve months, and who have worked at least 1,250 hours during the twelve month period immediately preceding the commencement of the leave.

8700.4 Procedures

- A. When the need for leave is foreseeable, the employee must provide as much notice as possible, at least (30) days if possible, and make efforts to schedule leave so as not to disrupt operations. Request should be made in writing giving the reason for the request, length of the requested leave. Appropriate medical documentation should be included. Employees will provide additional appropriate information if requested by the supervisor or superintendent.

Employees should contact their immediate supervisor and the Business Administrator at least (4) weeks prior to their return to work date. Employees on leave because of their own serious health condition must submit a medical certification that they are able to resume work. Employees will not

be permitted to return to work until the appropriate medical certification is received.

- B. Medical certification is required to support a leave because of employee's own, or a family member's serious health condition and should be submitted at least 30 days in advance. Where the leave is not foreseeable, medical certification must be provided within 15 days of the commencement of leave. Failure to provide medical certification may delay commencement of leave or result in leave not being granted.
- C. If medically necessary, leave may be taken on an intermittent or reduced leave schedule. If leave is requested on this basis, however, the employee may be required to transfer temporarily to an alternative position which better accommodates recurring periods of absence or a part-time schedule, provided that the position has equivalent pay and benefits.
- D. Any employee who may need reasonable accommodation to perform his or her job should notify the supervisor as early as possible.
- E. The amount of leave available to an employee under this policy will be determined based upon a rolling twelve-month period. The amount of leave available to an employee will be 12 weeks, less the amount of family/medical leave taken during the 12 months preceding the proposed commencement of the requested period of leave.

8700.5 Status of Employee Benefits During Leave of Absence

- A. Any employee who is granted an approved leave of absence under this policy may provide for the retention of his or her group life and disability insurance coverage by arranging to pay the premium contributions during the period of unpaid absence.
- B. Group health benefits coverage will continue under the same conditions as if the employee was not on leave.
- C. Sick, personal and vacation time do not accrue while on unpaid leave.
- D. Employees are not eligible for holiday pay during unpaid leave.
- E. If an employee does not return to work upon completion of an approved leave of absence, the employee may be required to reimburse the Town of Berkley the cost of any payments made to maintain the employee's health coverage, unless the failure to return to work is for reasons beyond the employee's control.

Amended: January 11, 1999

Amended: May 18, 2009

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SICK LEAVE USAGE

Policy #8705

Any employee who is out of work due to illness for ten consecutive days or more will be requested to provide written documentation from a physician stating the expected length of time out of work and the expected return date.

Any employee returning from an illness that extends ten (10) or more consecutive days must furnish a statement from the attending physician stating that the employee is able to return to work.

Employees who are covered under a collective bargaining agreement should adhere to the wording of their respective collective bargaining agreement.

Employees not covered under above mentioned collective bargaining agreement, should adhere to Teacher Assistant Agreement, Page 5, Section E, which reads "Any time an employee uses sick leave for three or more consecutive work days, the Superintendent or his designee ("Superintendent") may require a physician's certificate documenting the medical necessity of the employee's absence and/or verifying the employee's fitness to return to work. The Superintendent may also require the employee to be examined by the Committee's physician, at the Committee's expense, for the purpose of obtaining an opinion from the Committee's physician on the same issues."

Approved: Oct. 17, 2005
Amended: Nov. 17, 2008

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STAFF ATTENDANCE

Policy #8710

The school district will use "People Track" or similar mechanism to monitor attendance of all personnel.

Administration will review attendance of all personnel on a yearly basis.

All staff will be given a Notice of Accumulated Sick Leave for the current year.

Approved: Dec. 18, 2006
Reviewed: Oct. 7, 2008