

Lane Education Service District Administrative Rule

Code: **GBA-AR(3)**
Adopted: 1/10/96
Readopted: 9/25/01, 3/17/09
Orig. Code(s): GBA-AR(3)

References

Board policy guarantees to all persons equal access to employment with Lane ESD and sets a standard for employees to be informed and knowledgeable. Checking references of candidates is basic in making good employment decisions. ESD managers should consult with human resources office staff or the superintendent when questions about reference writing or checking occur. Legal advice may be required.

Legal Framework

A “qualified privilege” exists for making remarks about a person that could be considered defamatory. This protects persons who are involved in giving or getting employment references. A two-part test applies:

1. The person giving the reference must be a representative of an employer who speaks or writes in good faith, and has a public or private duty, or a legal, oral or social obligation to do so; and
2. The person receiving the information must have a corresponding duty or interest in the information.

Satisfying both portions of the test allows the management staff making the reference check to enjoy the “qualified privilege” from defamation charges.

Giving References for Current or Former Employees

1. Human resources office staff and other ESD managers who rely on the contents of the personnel file in making employment decisions are similarly protected.
2. Lane ESD management staff are expected to review employee’s performance reviews in making reference comments.
3. When a person leaves ESD employment, human resources office staff will secure authorization from the person to release personnel file information to potential employers who ask for recommendations.
4. For former employees who have no reference authorization form on file, the human resources office will request a copy of the signed authorization to release information from the prospective employer. If there is no authorization, human resources office staff will contact the former employee and request such authorization in writing. Copy of the authorization will be retained in the personnel file.

5. No performance information shall be given in reference checking without contacting the human resources office. All contacts to ESD employees regarding reference checks for former or current ESD employees shall be referred to the human resources office.

Human resources office staff will then review the file of former employees to determine the authorization status given by the former employee.

6. Reference checks about former employees who do not authorize the sharing of personnel file information will be limited to dates of employment and job assignments.
7. Reference checks about former employees who do authorize sharing of personnel file information will be made either by human resources office staff or by ESD management staff.
8. Current ESD employees will be contacted by human resources office staff to obtain authorization to release personnel file information and references from current management staff. A copy of the release form will be completed and filed in the personnel file.

Checking References on Applicants

1. ESD management staff are expected to do a thorough check of references of prospective employees and keep a record of the people contacted and the information received from each contact. Information may be gathered from the references listed by the prospective employee or from others who may have information regarding the person's performance.
2. If a candidate should ask about the information given by a reference, the candidate should be directed to the reference source. The ESD manager should not attempt to paraphrase the reference giver's comments to the candidate.
3. Notes made on reference checking need to be included in the completed application file for each position.