STATE OF MAINE
DEPARTMENT OF EDUCATION
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TO: Members of the Right to Know Advisory Committee

FROM: Debra Plowman, Director of Policy, Department of Education

DATE: November 5, 2015

SUBJECT: (Ref # 43) 20-A MRSA §13004, sub-§2-A

Thank you for the opportunity to comment on the provisions contained in Title 20-A MRSA Section 13004(2-A).

Section 13004(2-A) has been confusing from the outset. As written it seems to prohibit exactly the actions that it was designed to allow. Legal Counsel for the Department and the Department of Education (DOE) employees both share frustrations in trying to sort this out.

The following contains comments from Assistant Attorney General (AAG) Sarah Forster and are submitted to the RTKAC by the Department:

"First, subpart A of this section declares the documents which support a potential certification action (complaints, responses, investigative materials) to be confidential. Then, in subpart B, it purports to make some of that information subject to limited disclosure for specific purposes, but maintains confidentiality for information designated confidential under Sections 6101 and 6103. Section 6103 is criminal history records information, and Section 6101 is essentially any information about a certificate holder other than directory information in the possession of a school administrative unit to which the Department is specifically allowed access in Section 6101(3). Simply put: these two exceptions obliterate the rule.

My understanding from Certification Legal Counsel is that without the ability to disclose that information, Sections (B)(2) and (B)(3) – the ability to share information nationally with other educator certification units in other states – are rendered meaningless. I recall from my brief involvement in the 2009 work on this change in the law that the Department was motivated by the desire to be able to participate fully in these interstate exchanges and was afraid that if Maine could not share this information, we would not be able to receive information from other states.

Also, subsection (B)(1) makes no sense, since both 6101 and 6103 are intended to make the information available to the Department to perform certification investigations – so that subsection is either redundant, or hopelessly circular.

I would advise you to ask the Committee to work with the Department to get this section straightened out so that it can either be used as intended, or eliminated. As written, I'm just not sure what it does."

Question 1:

Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

In partial response to Question 1: The Department has wrestled with this quite a bit this year as different parties attempt to FOAA information on the certification of an educator or educators, including the endorsements an educator may hold, and sometimes the date of the SBI report issued for certification or recertification purposes. Other requests have come from commercial sources with an eye towards reaching out to educators with a unique certification such as school psychologists. There has been a level of frustration expressed by community members that they cannot ascertain whether a local educator has an endorsement in the area they are teaching.

Question 2:

Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

Response: Returning to the comments above, the Department cannot urge the continuation of the policy as written.

Question 3:

Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

Response: See above comments from AAG Sarah Forster

Question 4:

Does your agency recommend changes to this exception?

Response: Yes. The statute needs not only clarification, but needs to be written to reflect the policy objective of fully participating in the sharing of certification information in interstate exchanges, creating the reciprocity necessary to participate.

Question 5:

Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Response: Stakeholders: Sarah Forster, AAG at Sarah.Forster@maine.gov, Suzan Beaudoin, DOE, Suzan.Beaudoin@maine.gov; Katherine.Hollicker@maine.gov, and Debra.Plowman@maine.gov.

Question 6:

Please provide any further information that you believe is relevant to the Advisory Committee's review.

Response: Please see above.

Thank you again for the opportunity to comment. The Department looks forward to working with you on this issue. If you have any questions, please contact me at 207-624-6614 or debra.plowman@maine.gov.

PROPOSED AMENDMENT

Maine Revised Statutes

Title 20-A: EDUCATION

Chapter 501: CERTIFICATION AND REGISTRATION OF TEACHERS

§13004. LIST OF PERSONS CERTIFIED; RECORDS CONFIDENTIAL

1. Records. The commissioner shall keep a list of certified teachers. This list shall be a public record. The commissioner shall send copies of the list to school boards and superintendents on their request.

[1981, c. 693, §§5, 8 (NEW) .]

2. Records confidential. Transcripts, recommendations and other documents submitted in support of an application for certification or collected by the department for verification of certification records and maintained in the office of the commissioner shall be confidential. They may only be made available to the following:

A. School boards and superintendents; [1981, c. 693, §§5, 8 (NEW).]

B. Authorized personnel of the department in fulfilling assigned duties; and [1981, c. 693, §§5, 8 (NEW).]

C. Individuals and their representatives who request to examine their own records. [1981, c. 693, §§5, 8 (NEW).]

[1983, c. 806, §92 (AMD) .]

2-A. Confidentiality. The provisions of this subsection govern confidentiality. For the purposes of this subsection, the term "certification" means certification, authorization or approval under this chapter and chapter 502.

A. Complaints and responses pursuant to section 13020 and any other information or materials that may result in an action to deny, revoke or suspend certification are confidential, except when submitted in court proceedings to revoke or suspend certification. [2009, c. 331, §1 (NEW).]

B. ~~Except for information designated confidential under section 6101 or section 6103, information~~ Information designated confidential under paragraph A may be released ~~or used by the department as necessary~~ to:

~~(1) Complete its own investigations;~~

~~(2)~~ (1) Provide information to a national association of state directors of teacher education and certification to which the State belongs;

~~(3)~~ (2) Assist other public authorities to investigate the same teacher's certification in another jurisdiction;

~~(4)~~ (3) Report or prevent criminal misconduct or assist law enforcement agencies in their investigations; or

~~(5)~~ (4) Report child abuse or neglect under Title 22, section 4011-A. [2009, c. 331, §1 (NEW).]

C. The department may publish and release as public information statistical summaries of complaints and dispositions as long as the release of such information does not jeopardize the confidentiality of individually identifiable information. [2009, c. 331, §1 (NEW).]

D. Notwithstanding paragraph A, the following information concerning final written decisions relating to disciplinary action taken by the commissioner against a person holding certification is a public record:

(1) The name of the person;

(2) The type of action taken, consisting of denial, revocation, suspension, surrender or reinstatement;

(3) The grounds for the action taken;

(4) The relevant dates of the action;

(5) The type of certification and endorsements held, including relevant dates;

(6) The schools where the person was or is employed; and

(7) The dates of employment. [2009, c. 567, §10 (NEW).]

[2009, c. 567, §10 (AMD) .]

2-B. Teacher addresses. Home addresses held by the department of teachers certified to teach in the State may be made available in response to the following:

A. Formal request from a commissioner or chief executive officer of other state agencies, including the judicial branch when access to that information may be necessary in carrying out an official function; and [1987, c. 395, Pt. A, §86 (NEW).]

B. Formal request by majority vote of any joint standing committee of the Legislature when access to that information may be necessary in carrying out an official function. [1987, c. 395, Pt. A, §86 (NEW).]

The use of these addresses by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished and by the law under which they may be furnished. It shall be unlawful for any person to solicit, disclose, receive, make use of or authorize, knowingly permit, participate in or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving assistance, directly or indirectly, derived from the records, papers, files or communications of the State or subdivisions or agencies, or acquired in the course of the performance of official duties. Any person violating this subsection shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both.

[1987, c. 395, Pt. A, §86 (NEW) .]

3. Duplication costs. Individuals requesting copies of their records shall bear the costs of copying them.

[1981, c. 693, §§5, 8 (NEW) .]

4. Rules. The state board may adopt rules to carry out this section.

[1981, c. 693, §§5, 8 (NEW) .]

SECTION HISTORY
1981, c. 693, §§5,8 (NEW). 1983, c. 470, §11 (AMD). 1983, c. 806, §92 (AMD). 1987, c. 395, §A86 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 666, §1 (AMD). 2009, c. 331, §1 (AMD). 2009, c. 567, §10 (AMD).

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