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STATE SUPERINTENDENT *of* PUBLIC INSTRUCTION
OKLAHOMA STATE DEPARTMENT *of* EDUCATION

MEMORANDUM

TO: Oklahoma School Districts

FROM: State Department of Education

SUBJECT: Senate Bill 711 Guidance

On July 1, 2015, a new bill will go into effect regarding school district communications with the State Board of Education when a teacher is terminated or resigns due to allegations of sexual misconduct. This memorandum provides the State Department of Education's initial guidance about how Senate Bill 711 affects school districts.

How does SB 711 change the law?

SB 711 (*see* Appendix A for the text of the bill) adds new provisions to 70 O.S. § 6-101.25, the statute that addresses superintendents' written recommendations for the termination or non-reemployment of teachers in their districts. The changes in the law provide that the State Board of Education must be informed when a school district superintendent makes a recommendation for the dismissal of a teacher that includes "grounds that could form the basis of criminal charges sufficient to result in the denial or revocation of a certificate" under 70 O.S. § 3-104 (*see* Appendix B for a list of the charges). As used throughout this memo, "dismissal" refers to termination or non-reemployment.

The language "grounds that could form the basis of criminal charges" means that a teacher recommended for dismissal does not actually need to be charged with one of the included crimes for the school district's reporting requirement to apply. **A school district must forward a copy of a superintendent's recommendation for teacher dismissal if it includes allegations that a teacher has engaged in conduct that would violate one of the included laws.**

Under what circumstances is it required for a school district to forward a recommendation for dismissal to the State Board of Education?

The law amended by SB 711 governs superintendent recommendations for teacher dismissal. A school district's obligation under the law to report to the State Board applies when a

superintendent has recommended a teacher's termination or non-reemployment, and the reason for the recommendation involves alleged conduct that would violate any of the included laws (*see* Appendix B).

School districts are not required to inform the State Board of Education every time a teacher is terminated or resigns. It is also not required that a district inform the State Board when a teacher is terminated or resigns on ground that could form the basis of *any* criminal charge—only those charges referred to in the statute.

A school district must submit a copy of a dismissal recommendation to the State Board when the district superintendent makes a written recommendation for a teacher's dismissal or non-reemployment that includes grounds that could form the basis of criminal charges sufficient to result in denial or revocation of certification under 70 O.S. § 3-104 (*see* Appendix B), **and** either:

1. The school district due process procedures listed in 70 O.S. § 6-101.26 are completed;
- or
2. The teacher resigns, after the recommendation is made but regardless of whether due process procedures have been completed.

Is it mandatory for a school district to forward a recommendation for dismissal to the State Board if the circumstances listed above occur?

The law now **requires** a school district to forward a copy of the superintendent's dismissal recommendation to the State Board of Education when the triggering events listed above occur.

SB 711 states that "If the recommendation includes grounds that could form the basis of criminal charges sufficient to result in the denial or revocation of a certificate for a reason set forth in...Section 3-104 of [Title 70], **a copy of the recommendation shall also be forwarded to the State Board of Education** after the completion of due process procedures pursuant to Section 6-101.26 of [Title 70] or after the teacher resigns" (*emphasis added*).

The phrase "**shall...be forwarded**" means that submitting qualifying dismissal recommendations to the State Board is an obligation rather than an option. When the word "shall" is used in a statute, it means that the Legislature intends an action to be mandatory.

SB 711 also provides that "[f]ailure to forward a copy of the recommendation to the State Board of Education shall not be the basis for an claim or action against a public school, its board of education, employees, agents or other representatives."

This language does not mean that forwarding a copy to the State Board is optional. It provides a school district protection from liability in a private tort claim in the event the district **fails its duty** to submit a qualifying recommendation to the State Board.

Please note that the statutory language that provides this protection from liability only applies to a school district's **failure to submit** a recommendation for dismissal to the State Board. The bill is silent regarding liability for any claims that may arise based on whether a district **requests** a

recommendation that has been received by the State Board regarding a current or prospective teacher.

Where does a school district send a recommendation for dismissal?

Recommendations for dismissal that are required to be forwarded to the State Board of Education must be enclosed in an envelope marked "CONFIDENTIAL" and sent via certified mail to:

Executive Secretary
State Board of Education
2500 N. Lincoln Blvd., Room 1-17
Oklahoma City, OK 73105

Where does a school district submit a request for dismissal recommendations that have been submitted regarding a current or potential teacher, and who may submit the request?

SB 711 provides that a school district may request a copy of any recommendations submitted to the State Board regarding a teacher who "is being considered for new employment" or who "is currently employed by the requesting school district."

A district may not request a list of all teachers for whom dismissal recommendations have been submitted, nor request a recommendation regarding any teacher who is not a current or prospective employee of the district. Only the district superintendent may submit a request on behalf of a school district for a copy of a recommendation for dismissal that has been received by the State Board.

Superintendents should submit such requests to the State Board of Education in writing, via certified mail, to the same address shown above for the submission of recommendations for dismissal. Requests made by telephone will not be accepted.

Appendix A:
SB 711

ENROLLED SENATE BILL NO. 711

By: Sparks, Loveless, Stanislawski,
Jech, and Sharp of the Senate

and

Denney, Kern, Jordan and Biggs
of the House

An Act relating to the Teacher Due Process Act of 1990; amending 70 O.S. 2011, Section 6-101.25, which relates to recommendations to dismiss or not reemploy a teacher; directing recommendations that meet certain criteria to be forwarded to the State Board of Education; providing for effect if the recommendation is not forwarded; requiring copies to also be forwarded to certain teacher; allowing certain teacher to provide supplementary information; allowing certain school districts to request copies of recommendations; requiring certain notice to a teacher upon certain request; requiring copies of documents to be provided to certain teacher; providing for confidentiality of certain records; exempting records from certain act; requiring notice to certain teacher upon receipt of subpoena; providing an effective date; and declaring an emergency.

SUBJECT: Teacher due process procedures

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 70 O.S. 2011, Section 6-101.25, is amended to read as follows:

Section 6-101.25. A. Whenever a superintendent decides to recommend that a teacher employed within the school district be dismissed or not reemployed, the superintendent shall state the recommendation in writing, setting forth the basis for the recommendation, and shall submit such recommendation to the board of education.

If the teacher subject to such recommendation is a career teacher, the recommendation shall specify the statutory grounds for which the recommendation is based.

If the teacher subject to such recommendation is a probationary teacher, the recommendation shall specify the cause for which the recommendation is based.

The superintendent shall also specify the underlying facts supporting the recommendation.

B. If the recommendation includes grounds that could form the basis of criminal charges sufficient to result in the denial or revocation of a certificate for a reason set forth in subparagraph a of paragraph 6 of Section 3-104 of this title, a copy of the recommendation shall also be forwarded to the State Board of Education after the completion of due process procedures pursuant to Section 6-101.26 of this title or after the teacher resigns. Failure to forward a copy of the recommendation to the State Board of Education shall not be the basis for any claim or action against a public school, its board of education, employees, agents or other representatives. If the school district forwards a copy of the recommendation to the State Board of Education, the school district shall contemporaneously forward a copy to the teacher subject to such recommendation. The teacher may provide supplementary information to the State Board of Education.

C. Only school districts may request a copy of the recommendation from the State Board of Education, and only if a teacher is being considered for new employment or a teacher is currently employed by the requesting school district. The State Board of Education shall notify the teacher subject to the recommendation if such a request is made and provide the identity of the school district that made such request. The State Board of Education shall provide the requesting school district documents related to the recommendation as well as any supplementary information provided by the teacher subject to the recommendation, and copies shall be contemporaneously forwarded to the teacher subject to the recommendation. Records provided to a requesting school district pursuant to this subsection shall be kept confidential.

D. Except as provided for in subsection C of this section, the State Board of Education shall keep recommendations submitted pursuant to subsection B of this section confidential. Records created pursuant to this section shall not be subject to disclosure under the Oklahoma Open Records Act.

E. If the State Board of Education or a school district that generated or received documents pursuant to subsection C of this section is served a subpoena requesting disclosure of the documents, the teacher subject to the recommendation shall immediately be notified and be provided the opportunity to object to the subpoena.

SECTION 2. This act shall become effective July 1, 2015.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Appendix B:
Crimes Included in SB 711

A school district must forward the State Board a copy of a superintendent's recommendation for dismissal of a teacher when the recommendation includes grounds that could form the basis of any of the following criminal charges:

- 21 O.S. § 741. Kidnapping**
- 21 O.S. §§ 865-870. Trafficking in Children**
- 21 O.S. § 885. Incest**
- 21 O.S. § 888. Forcible Sodomy**
- 21 O.S. § 891. Maliciously, Forcibly, or Fraudulently Taking or Enticing Away Children**
- 21 O.S. § 1021. Indecent Exposure – Indecent Exhibitions – Obscene or Indecent Writings, Pictures, Etc. – Solicitation of Minors**
- 21 O.S. § 1021.2. Minors – Obscene or Indecent Writings, Pictures, Etc.**
- 21 O.S. § 1021.3. Guardians – Parents – Custodians – Consent to Participation of Minors in Obscene Writings, Pictures, Etc.**
- 21 O.S. § 1040.13a. Soliciting Sexual Conduct or Communication with Minor by use of Technology**
- 21 O.S. § 1087. Offering or Transporting Child for Purpose of Prostitution**
- 21 O.S. § 1088. Child Prostitution**
- 21 O.S. § 1111.1. Rape by Instrumentation**
- 21 O.S. § 1114. Rape**
- 21 O.S. § 1123. Lewd or Indecent Proposals or Acts to Child Under 16**

In addition to the crimes listed above, for which any conviction results in denial or revocation of a teaching certificate, the following crimes result in denial or revocation of a certificate "if the offense involved sexual abuse or sexual exploitation" as defined in **10A O.S. § 1-1-105***:

- 21 O.S. § 843.5. Abuse, Neglect, Exploitation, or Sexual Abuse of Child**
- 21 O.S. § 843.1. Abuse, Neglect, or Financial Exploitation by Caretaker**

*Under **10A O.S. § 1-1-105**, "Sexual abuse" includes but is not limited to rape, incest, and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the health, safety, or welfare of the child. "Sexual exploitation" includes but is not limited to allowing, permitting, encouraging, or forcing a child to engage in prostitution, as defined by law, by any person eighteen (18) years of age or older or by a person responsible for the health, safety, or welfare of a child, or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic, as defined by law, photographing, filming, or depicting of a child in those acts by a person responsible for the health, safety, and welfare of the child.