

CSBA Sample Administrative Regulation

All Personnel

AR 4112.61(a)

4212.61

EMPLOYMENT REFERENCES

4312.61

Note: The following optional administrative regulation may be revised to reflect district practice.

The Superintendent or designee shall ~~process~~ **be responsible for processing** requests for employment references, letters of recommendation, or information about the reasons for separation regarding all district employees other than himself/herself. All letters of recommendation to be issued on behalf of the district for current or former employees shall be approved by the Superintendent or designee. At his/her discretion, the Superintendent or designee may refuse to give a recommendation.

~~Note: Pursuant to Civil Code 47, an employer cannot be sued for providing information about the job performance or qualifications of a current or former employee when such information is given to a prospective employer without malice and at the prospective employer's request. This protection does not apply, however, to information about any speech or activities that are constitutionally protected or otherwise protected by law, including those found in the Code of Civil Procedure 527.3 which upholds the right of employees to discuss labor disputes and to picket or assemble peacefully. Civil Code 47 authorizes an employer to communicate the job performance or qualifications of a current or former employee when such information is given to a prospective employer without malice and at the prospective employer's request. This authorization does not extend to information about speech or other activities that are constitutionally protected or otherwise protected by law, including those found in the Code of Civil Procedure 527.3 pertaining to the rights of workers to engage in concerted activities for the purpose of collective bargaining.~~

The district should consult with legal counsel in determining whether or not it is advisable to reveal negative information concerning an employee. In Randi W. v. Muroc Unified School District et al., the ~~Fifth Appellate District~~ **California Supreme Court** held that school authorities who recommend a former employee for hiring at another school could be held liable for physical harm to a student molested by the employee when their recommendations failed to disclose known or reasonably suspected acts of sexual misconduct previously committed by the employee.

The Superintendent or designee may communicate information about the job performance or qualifications of a current or former district employee when such information is based upon credible evidence and is given to a prospective employer without malice and at the prospective employer's request. (Civil Code 47)

Any reference, letter of recommendation, or information provided about the reasons for separation issued on behalf of the district ~~he/she gives~~ shall provide a careful, truthful, and ~~complete~~ **accurate** account of the employee's job performance and qualifications.

(cf. 4112.6/4212.6/4312.6 - Personnel Files)

(cf. 4117.5/4217.5/4317.5 - Termination Agreements)

Attachment I- AR 4112.61, 4212.61, 4312.61 Employment References
Use CSBA Sample with Suggested Revisions

Note: **5 CCR 80332 prohibits a certificated employee from intentionally omitting significant facts**

AR 4112.61(b)
4212.61
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EMPLOYMENT REFERENCES (continued)

regarding a person's qualifications or stating facts which he/she does not know to be true. In addition,
pPursuant to Labor Code 1050 **and** 1052, it is a misdemeanor, **punishable by a fine and/or imprisonment, for**
a person to make misrepresentations which prevent or attempt to prevent a former employee from obtaining
employment. ~~It is also a misdemeanor or~~ for an employer to cause or permit an employee to so misrepresent
facts or to fail to take reasonable steps to prevent such misrepresentations. ~~In addition to these criminal penalties,~~
Labor Code 1054 provides that the employer also may be liable for treble damages in a civil action for
misrepresentation.

No certificated employee shall write or sign any letter or memorandum which intentionally omits significant facts, or which states as facts matters which the writer does not know of his/her own knowledge to be true, relating to the professional qualifications or personal fitness to perform certificated services of any person who the writer knows will use the letter or memorandum to obtain professional employment. (5 CCR 80332)

No certificated employee shall agree to provide a positive letter of recommendation which misrepresents facts as a condition of another employee's resigning or withdrawing action against the district. (5 CCR 80332)

Legal Reference:

LABOR CODE

1050-1054 Reemployment privileges

CIVIL CODE

47 Privileged communication

CODE OF CIVIL PROCEDURE

527.3 Labor disputes

CODE OF REGULATIONS, TITLE 5

80332 Professional candor and honesty in letters or memoranda of employment recommendation

COURT DECISIONS

Randi W. v. Muroc Joint Unified School District et al., (1997) 14 Cal. 4th 1066

(9/89 10/96) 7/17

Attachment I- AR 4112.61, 4212.61, 4312.61 Employment References
Use CSBA Sample with Suggested Revisions

Policy Reference UPDATE Service

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