



Advisory Opinion 15-005

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2015). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On August 7, 2015, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Michael J. Waldspurger and John P. Edison, attorneys for Independent School District 535, Rochester. In their letter, Mr. Waldspurger and Mr. Edison asked the Commissioner to issue an advisory opinion regarding certain data that the District maintains. Mr. Waldspurger and Mr. Edison provided additional information on August 26 and September 22, 2015.

IPAD wrote to Brenda Cassellius, Commissioner of the Minnesota Department of Education (MDE), and Denise Specht, President of Education Minnesota, to offer them an opportunity to submit comments on the issues the Commissioner will address. IPAD received comments from Commissioner Cassellius on October 13 and from Lisa Needham, attorney for Education Minnesota, on October 12, 2015.

Mr. Waldspurger and Mr. Edison provided a summary of the facts as follows. The District terminated a teacher's employment. Subsequently, MDE issued a substantiated finding of maltreatment involving the former teacher based on conduct that occurred while the District employed the teacher.

A school in another state has asked the District for certain private personnel data related to the former teacher's employment at the District.

Issue:

Based on Mr. Waldspurger and Mr. Edison's opinion request, the Commissioner agreed to address the following issues:

1. Pursuant to Minnesota Statutes, Chapter 13, and Minnesota Statutes, section 122A.41, subdivision 6(c), is Independent School District 535, Rochester, obligated to share private personnel data with a requesting district?
2. If the answer to Issue one is yes, must the District share private personnel data in circumstances other than "[w]hen a teacher is discharged under paragraph (b) or when the

commissioner makes a final determination of child maltreatment involving a teacher under Minnesota Statutes, section 626.556, subdivision 11”?

Discussion:

Issue 1. Pursuant to Minnesota Statutes, Chapter 13, and Minnesota Statutes, section 122A.41, subdivision 6(c), is Independent School District 535, Rochester, obligated to share private personnel data with a requesting district?

Pursuant to Minnesota Statutes, section 13.03, subdivision 1, government data are public unless otherwise classified. Minnesota Statutes, section 13.43, classifies data on individuals who are current or former employees of a government entity. Subdivision 2 lists the types of personnel data that are public and subdivision 4 classifies most other types of personnel data as private.

Minnesota Statutes, section 122A.41, subdivision 6(c), in relevant part, provides that when a teacher is immediately discharged following license revocation, or when the Commissioner [of MDE] makes a final determination of child maltreatment involving a teacher ... then, “[u]nless restricted by federal or state data practices law or by the terms of a collective bargaining agreement, the responsible authority for a school district must disseminate to another school district private personnel data on a current or former teacher employee ... if the requesting school district seeks the information because the subject of the data has applied for employment with the requesting school district.” [Emphasis added.]

Mr. Waldspurgen and Mr. Edison explained the District’s position:

The District’s first question relates to the meaning of the phrase “unless restricted by federal or state data practices law” in the last sentence of Section 122A.41, subdivision 6(c). The District’s position is that a “state data practices law” includes the provisions of [Minnesota Statutes, Chapter 13] and that the District may not disclose “private personnel data” to another school district in which a current or former employee is seeking employment unless the disclosure would be permitted under [Chapter 13].

Under the canons of statutory construction, the “legislature intends the entire statute to be effective and certain.” Minn. Stat. § 645.17(2). Moreover, when Minnesota courts engage in statutory interpretation, the “touchstone” of statutory construction is a statute’s plain meaning. *See, e.g., Krueger v. Zeman Canst. Co.*, 758 N.W.2d 881,885 (Minn. App. 2008). Courts also “consider all words and phrases in the statutory language when possible so that none is deemed superfluous.” *Id.*

Turning to Section 122A.41, subdivision 6(c), the requirement that a school district provide “private personnel data” to another school district in which a current or former employee is seeking employment is prefaced by the following: “[u]nless restricted by federal or state data practices law or by the terms of a collective bargaining agreement.” The exception in the statutory language for a “state data practices law” would, as a practical matter, be superfluous for Minnesota school districts if Section 122A.41, subdivision 6(c) is to be read as an exception to any restrictions on the disclosure of data outlined in [Chapter 13].

In light of the absence of any indication that the MDGPA is not to be considered a “state data practices law” as the phrase is used in Section 122A.41, subdivision 6(c), the District’s position is that Section 122A.41, subdivision 6(c) does not create an exception to the provisions of [Chapter 13] and that the District may not disclose “private personnel data” to another school district under this statutory provision if the disclosure would not be permitted by [Chapter 13], particularly Minnesota Statutes section 13.43.

Mr. Waldspurger and Mr. Edison further asserted that Minnesota Statutes, section 13.43, subdivision 16, is not applicable because that subdivision requires a school district to release private personnel data in certain circumstances under which a teacher resigns. Here, because the district terminated the teacher’s employment, the Commissioner agrees this provision is not applicable.

Commissioner Cassellius commented:

While MDE is commonly asked to apply [Chapter 13] when processing data requests and managing its own data, MDE has little expertise applying the personnel data provisions of [Chapter 13] at the district level. Disputes over teacher personnel data are typically local matters in which MDE is not involved. Therefore, we believe Admin is in the best position to analyze the facts of this matter and apply the provisions of [Chapter 13] to them. We defer to the expertise of IPAD and Admin as to whether Rochester is required to provide data about the maltreatment incident to the requesting district under 121A.41 [sic], subd. 6.

Ms. Needham wrote that given the facts the District presented here (i.e., the Districted terminated the teacher’s employment), “Education Minnesota agrees that the District may not reveal private data about a teacher in response to an inquiry from an out-of-state district regarding an application for employment. Providing that data would be in violation of [Chapter 13].”

The Commissioner concurs with the District’s analysis. Under a plain language reading of section 122A.41, subdivision 6(c), the final sentence prohibits a school district from disseminating private personnel data on a current or former teacher to another school district, despite its apparent objective. The District cannot share private personnel data with a requesting district, because Chapter 13 is a “state data practices law” that restricts disclosure of private data. Thus, the answer to Issue 1 is “no”.

(However, the Commissioner notes that because the District terminated the teacher’s employment, it does maintain public personnel data on the former teacher, i.e., the specific reasons for and data that document the basis of the disciplinary action, per section 13.43, subdivision 2(a)(5).)

Issue 2. *If the answer to Issue one is yes, must the District share private personnel data in circumstances other than “[w]hen a teacher is discharged under paragraph (b) or when the commissioner makes a final determination of child maltreatment involving a teacher under section 626.556, subdivision 11”?*

See Issue 1.

Opinion:

Based on the facts and information provided, the Commissioner's opinion on the issues Mr. Waldspurger and Mr. Edison raised is as follows:

1. Pursuant to Minnesota Statutes, Chapter 13, and Minnesota Statutes, section 13.43, subdivision 4, Independent School District 535, Rochester, cannot share private personnel data with a requesting district.
2. See Issue 1.



Matthew Massman
Commissioner
November 5, 2015