

Attorney's Memo:

Policy GCRA – Classified Personnel Health Examination (Rescind)

Changes Proposed: Rescind; this policy was last revised in 2007.

Expressly Required by Law? No.

Impact of Charter System Status: None.

Legal Compliance and Suggestions:

This Policy involves a complex area of federal law, and there are a number of contexts in which an employer might want to require a medical exam (pre-employment, post-injury, post-accident, etc.). The FMLA and ADA, of course, provide limits on such exams. The content of this policy seems addressed mostly (but not entirely) to one specific context, that being an employee suspected of being a danger to himself or others. The ADA does permit such exams but only in the narrowly defined situation where the employee “poses a direct threat to his or her own safety or the safety of others.”

As written, the policy is somewhat of a muddle, and it could lead to application of improper standards in different contexts. The “savings clause” at the end implicitly recognizes this but doesn’t really render the policy useful either. I recommend either deleting the policy entirely or revising it to address specific types of exams accurately and thoroughly. I would further caution that in the specific context discussed above, the law is not well-developed and in practice, such situations must be thought through on a case-by-case basis.

Policy: GCRA

Descriptor Code: Classified Personnel Health Examinations

Fitness For Duty

~~It is the goal of the Clarke County Board of Education to provide quality educational services and to ensure a safe and secure environment for its students, employees, and the general public. Accordingly, it is essential that all employees be physically and psychologically capable of performing their duties in a manner consistent with the mission of the Clarke County School~~

~~District and its policies. No employee will be allowed to continue his or her job responsibilities when there are indications that the employee cannot safely perform his/her duties or is a direct or potential threat to students, other employees, him/herself, other persons, or property until the employee has been determined to be fit for duty.~~

~~In the event that an employee's fitness for duty is in question due to obvious physical or psychological impairment, the exhibition of irrational and/or inappropriate behavior (including acts or threats of violence), notification of an impairment, or other circumstances, he/she may be placed on administrative leave by the Superintendent or designee, pending an evaluation of his/her physical or psychological fitness for duty. Determination of fitness for duty shall be made by a licensed physician, psychiatrist, or psychologist. The Superintendent shall make a final determination on the employee's continued employment status based on the findings of the fitness for duty evaluation, his/her conduct, the circumstances giving rise to the evaluation, and other factors as deemed appropriate, and shall make an appropriate recommendation to the Board. An employee who refuses to submit to a fitness for duty examination shall be subject to disciplinary action, up to and including termination.~~

~~An employee shall notify his/her supervisor in writing of any condition, physical or mental, that could reasonably be expected to impair his/her ability to perform the essential duties of his/her current job classification. Such notification shall be made as soon as the employee becomes aware of the condition and prior to returning to work if the situation arises while off duty. The Superintendent shall determine whether a fitness for duty evaluation or continuation of work is appropriate.~~

~~The policy shall be interpreted, modified, and implemented consistent with the requirements of the Americans with Disabilities Act, the Family and Medical Leave Act, other applicable law, and Board policy.~~

Clarke County Schools Date Adopted: 1/11/2007

State Reference Description

O.C.G.A 20-02-0050 County school districts; county board for each county O.C.G.A

20-02-0059 LBOE and superintendent rule-making authority O.C.G.A 24-12-0021

Disclosure of AIDS confidential information

Rule 160-1-3-.03 Infectious Diseases

Rule 160-5-3-.08 School Bus Drivers

Federal Reference Description

29 CFR 1630.13 Prohibited medical examinations and inquiries

29 CFR 1630.14 Medical examinations and inquiries specifically permitted

29 CFR 825.312 Fitness for duty certification

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.