

Browning Public Schools
Board Agenda Request
Meeting To Be Held: 03/07/17



-
- Recognition:** Students Staff Parents
Information: Building Report Old Business Superintendent's Report
Action: Resignation Hiring Contract Service Agreements
 Travel Out-of-State Travel In State Approvals
 Termination Legal Matters Other:
This action request pertains to Elementary (only) High School/District Wide

Date: 02/10/17

To: **Board of Trustees**
 Browning Public Schools

From: John P. Rouse
Title: Superintendent

Subject: Jurisdiction Discussion

Description: Recently there was a Tribal restraining order issued against a school employee that restricted that person from having contact with a student in a school. Since the employee's job responsibilities included working at the various schools, the administration sought a legal opinion regarding the tribal restraining order. Based on the response from the attorney, the administration allowed the employee to continue to have access to school campuses with a written directive that the employee was not to have direct contact with the student.

Financial Impact: \$ N/A

Funding Source (Budget/grant, etc.): N/A

Attachment(s): E-mail response from attorney

Approval: Superintendent's Office/Finance/Personnel as applicable (Initial) _____

Comments: _____

Board Action: N/A (Info) Approved Denied Tabled to: _____

From: Tony Koenig <tkoenig@mtsba.org>
Date: Tue, Nov 29, 2016 at 10:12 AM
Subject: RE: Legal Question - Restraining Order
To: Jason Andreas <jasona@bps.k12.mt.us>
Cc: "johnr@bps.k12.mt.us" <johnr@bps.k12.mt.us>

Technically, the District is not bound by a restraining order at all unless the order specifically directs the District to take some specific action, or to refrain from taking some specific action. Even with that sort of language in a Tribal Court order, I would question the jurisdiction of the Tribal Court over a subdivision of the State of Montana.

Additionally, the District lacks the authority to actually enforce a restraining order, even one issued by a state court – that’s a function of law enforcement. Your typical restraining order restrains one person from being near or contacting another person. If the person being restrained violates the order, they are subject to being arrested and penalized by the court. That sort of order does not require the District to suspend an employee or a student, and the authority to do so would depend on the actual circumstances of the case.

For example, if the circumstances surrounding the issuance of a restraining order were such that the District is placed on notice that the person being restrained may be a threat to the students or employees of the District, it may be advisable to suspend the person being restrained from their employment (or suspension of a student, if it is a student being restrained), not because a restraining order has been issued, but because the person poses a safety risk to students or staff. If the District has no evidence that the person being restrained may be a safety risk, the restraining order itself would not necessarily justify the suspension.

So in a situation where a parent provides a copy of a restraining order stating that a District employee may not be within so many feet of a student, the District is not automatically required to suspend the employee unless the restraining order actually states that the District may not permit the employee to be at work, and, like I said, if it’s a Tribal Court order, I would question the jurisdiction of the Court to actually require the District to take any action at all. The employee might violate the restraining order by coming to work, in which case the student being protected or her parents could report the violation to law enforcement, whose job it is to actually enforce the order.

Either way, if there is no indication that the employee poses a threat to the safety of students or staff, you really don’t have a basis for requiring them to miss work.

Tony C. Koenig
Director of Legal and HR Services
Montana School Boards Association
[\(406\) 442-2180](tel:(406)442-2180)
tkoenig@mtsba.org