

HIRING AND CLASSIFICATION

I. Temporary Status is not the Automatic Default for New Teachers.

- A. Temporary classification is appropriate for those replacing a teacher on leave; teaching in a non-mandated categorical program; teaching in a migratory program less than 4 months; teaching temporary classes not to last more than 3 months; or teaching the first semester in a high school where mid-year graduations will reduce enrollment for second semester. Ed. Code Sec. 44919, 44919, 44921.
- B. *General rule: There should not be more temporary teachers than there are teachers on leave or in non-mandated categorical assignments.

II. Right to be Notified of your Status.

- A. You must be notified of your status as temporary at the time of hire, and thereafter in July. *Ed. Code Sec. 44916*. If you are not so notified in writing, you are presumed probationary.

III. Re-Hire Rights.

- A. Unless a temporary teacher has been released from her contract under Sec. 44954, she is entitled to re-employment the following year in any vacant position for which she is credentialed. *Ed. Code Sec. 44918(b)*.

IV. Credit for Temporary Service.

- A. *Ed. Code Sec. 44918(a)*: If you are made probationary after serving at least 75% of the school year as a temporary, one year of temporary service counts toward the required two years of probationary service.

V. Probationary Status -- The Default Classification for New Teachers.

- A. But, school districts may offer permanent status to an applicant who has obtained tenure in another district. Ed. Code Sec. 44929.28.
- B. *Welsh v. Oakland USD*: teachers serving as district interns must be classified as probationary.
- C. Probationary teachers may be dismissed for any or no reason any time prior to March 15 of the second year of service. Mid-year dismissals must be for good cause and there are minimal due process protections when this happens.

VI. Employment Contracts

- A. If the District asks in writing for a declaration of intent to remain for the next school year, you must respond by July 1. This is not the same thing as informal surveys stuck in teacher mailboxes. Failure to reply will be deemed a declining of employment. *Ed. Code Sec. 44842.* Deadline is June 1 in year-round schools.
- B. If a teacher fails without good cause to fulfill the terms of his contract, or leaves the services of the District without the consent of the superintendent, the CTC may take adverse action against the credential holder, but may not revoke or suspend for more than one year. *Ed. Code Sec. 44420.*

RIGHTS ON THE JOB

I. Academic Freedom

- A. Your grade is your own. *Ed. Code Sec. 49066*

“...the grade given to each pupil shall be the grade determined by the teacher of the course and the determination..., in the absence of clerical or mechanical mistake, fraud, bad faith, or incompetency, shall be final.”
- B. Even if administration believes there is a basis to change a grade, they may not change the grade unless the teacher is given an opportunity to explain the basis for it.

II. Control of your Classroom and Safety

- A. Safety Plans: Education Code §35294, et seq.—requires schools to establish a school safety plan that would:
 - 1. Assess the current status of school crime.
 - 2. Identify programs that would provide a high level of school safety, which would include procedures to notify teachers of dangerous pupils; a sexual harassment policy; disaster procedures; a dress code prohibiting wearing of gang “colors.”
 - 3. Establish a safe and orderly environment conducive to learning.
- B. Collective bargaining: safety conditions of employment are a negotiable subject under EERA.

C. Student discipline.

1. Teacher may suspend a student from their classroom for up to two days for acts enumerated in Sec. 48900, e.g. causing or threatening bodily harm, possessing weapons, drugs, alcohol, using tobacco, stealing or receiving stolen property, damaging or attempting to damage school property, robbery, extortion, “disruption of school activities or willfully defying valid authority.” *Ed. Code Sec. 48910.*
 - a. You must report the suspension to the principal immediately and send the student to the principal’s office.
 - b. You must ask the parent to attend a conference regarding the suspension and arrange for the school counselor/psychologist to be present if possible.
 - c. Principal can decide to keep the child on site, but “*The pupil shall not be returned to the class from which he or she was suspended, during the period of the suspension, without the concurrence of the teacher of the class and the principal.*” *Sec. 48910(a).*
 - d. The suspended pupil shall not be placed in another regular class during the suspension. *Sec. 48910(b).*
 - e. You may also recommend suspension from school.
2. Principal suspension.
 - a. Principal may suspend for up to 5 consecutive days for any of these reasons. There must be a conference between the principal, teacher who referred the student, and the student before suspension is effective. Student shall be given a chance to present evidence and his/her version of events.
 - b. Special ed students cannot be suspended for more than 10 consecutive days, absent special circumstances. *Ed Code §48911(h).*
 - c. Suspension from school is limited to 20 days in a school year. *Ed. Code §48903.*

3. Expulsion.

- a. Acts justifying expulsion: causing serious bodily injury, except in self-defense; possession of a firearm or knife; drug sales; robbery; or extortion. Lesser offenses, such as willful defiance, damaging school property, etc. can also justify expulsion if it shown that the pupil is incorrigible.
- b. Different rules for special education students--expulsion cannot be for misconduct that was caused by, or is a direct manifestation of, the student's identified disability. *Ed. Code Sec. 48915.5*. There must be an IEP team meeting to assess this issue. Parents may attend.

D. Teachers' right to be notified of new student who has been suspended.

1. *Ed. Code Sec. 49079*: District must inform a teacher of each pupil who has engaged in, or is reasonably suspected to have engaged in any of the conduct described in Sec. 48900. Penalty for knowingly withholding this information is up to six months in jail or \$1,500 fine, or both.
2. Information shall be from the previous three school years.
3. Teacher must keep the information in confidence for the limited purpose for which it was provided.
4. *Wel. & Inst. Code Sec. 827(b)(2)*: Requires courts to notify school superintendents when a student is found to have committed a felony or a misdemeanor involving curfew, gambling, drugs, assault, battery, vandalism, weapons or certain sex offenses. Superintendent shall transmit this information to counselors and teachers who are reporting on the behavior of the minor and whom the superintendent believes need the information to work with the student, "to avoid being needlessly vulnerable."

E. Dealing with parents and third parties.

1. Parent rights: *Ed. Code Sec. 49091.10* gives parents the right to inspect all instructional material used by the classroom teacher.

- a. Teachers must compile all textbooks, supplemental instructional material, films, tapes, software, and teacher's manuals and have it available in the classroom to be made available for prompt parental inspection.
 - b. Schools must compile and make available the curriculum of every course offered.
 - c. Parents have the right to observe instruction and other school activities that involve his/her child, but parent must request this in writing. This is subject to district procedures.
 - d. Students cannot be compelled to affirm or disavow any privately held world view, political or religious doctrine.
 - e. Students may not be tested for behavioral, mental, or emotional evaluation without the informed written consent of parent. This is in addition to IDEA requirements.
2. Parent-teacher meetings.
- a. If you believe there is potential for confrontation, ask that your union representative be present, especially if the purpose of the meeting concerns a complaint about you.
3. Liability of parents for student's misbehavior.
- a. A parent or guardian may be liable for up to \$10,000 for the willful misconduct of their minor when that misconduct results in injury or death to any employee or to employee's property. *Ed. Code Sec. 48904.*
 - b. The District may withhold grades and diplomas until the debt is paid, or if the family is unable to afford the debt, the student may be forced to work it off.
 - c. You may ask the District to sue the parents on your behalf. *Ed. Code Sec. 48905.*
4. Disruption of school activities by parents or students.
- a. *Ed. Code Sec. 44811:* Any parent or other person whose conduct materially disrupts classwork or extracurricular activities, or

involves substantial disorder, is guilty of a misdemeanor. This will include conduct at parent-teacher conferences.

- b. *Ed. Code Sec. 44810*: Any person over 16 years of age who comes onto school property and wilfully interferes with the discipline, good order, lawful conduct, or administration of any class or activity of the school is guilty of a misdemeanor.

III. Evaluation of Teachers. [New Ed. Code §44664]

- A. Permits evaluation to occur once every 5 years by mutual agreement, if the teacher is permanent, deemed Highly Qualified under ESEA, and whose previous evaluation meets or exceeds standards.

TEACHERS' DUTY TO PROVIDE A SAFE ENVIRONMENT

I. Physical Violence Between Students.

- A. Off-Campus: no liability for student conduct or safety off campus, unless the teacher has undertaken to transport the student or during a field trip. *Ed. Code §44808*.
- B. On-Campus: no criminal sanctions against a teacher for using the amount of physical force necessary to maintain order, protect property or the health and safety of other students and staff and to maintain conditions conducive to learning. *§44807*.
 - 1. But note: This section does not speak to civil liability. Gov't. Code Sec. 820.2 provides that a public employee is not liable for an injury resulting from his/her exercise of discretion vested in him or her. Use of judgement in determining whether to break up a fight or not or following the district's policies will probably immunize a teacher from liability.
- C. Weapons: You have a right to confiscate them, even if it means using some reasonable physical force. *Educ. Code §49001*.
 - 1. You have a right to search backpacks, clothing, lockers, provided you are not acting in an arbitrary, capricious or harassing way. *In RE: Randy G.* Cal. Supreme Court case.
 - 2. No strip searches or rearranging of student clothing to permit a visual inspection of underclothing or private parts of a student. *Ed. Code sec. 49050*.

3. Metal detectors are permitted.

II. Sexual Harassment and Hate Violence.

- A. Ed. Code §220 prohibits any person from being discriminated against on the basis of sex, ethnicity, race, religion, disability or sexual orientation in any program or activity conducted by public schools. This can be enforced by a civil action.
- B. School districts must have a written policy on sexual harassment that is disseminated to students and teachers. Students can be expelled or suspended for engaging in sexual harassment. §48900.2
- C. Title IX of the federal Civil Rights Act of 1964 gives students and parents a right to sue teachers and administrators for allowing student-on-student sexual harassment to occur. School districts will be liable if they knew about the harassment, and did nothing to stop it.
 1. *Oona S. v. McCaffrey* (1997) Federal case arising in the Santa Rosa USD held that teachers and administrators could be held individually liable for failing to stop student and teacher harassment of a 6th grade student.
- D. Harassment based on sexual orientation, actual or perceived.
 1. *Nobozny v. Podlesny* (1996) 92 F. 3d 446—it can be expensive. Nearly \$1 million settlement where the plaintiff suffered several years of student harassment because he was gay and the school did nothing about it. Court held that its failure to enforce its sexual harassment policy against gay harassers denied the student equal protection of the law and discriminated against him on the basis of gender and sexual orientation.

III. Hate Violence.

- A. Students can be suspended or expelled for participating in hate violence, which is defined as injuring, intimidating, threatening or oppressing anyone because of their race, religion, ancestry, national origin, disability, gender, or sexual orientation. Educ. Code §48900.3; Penal Code §422.6; Ed. Code §220.

IV. School Restrooms [New Ed. Code §35292.5]

- A. Requires school bathrooms to be maintained and cleaned regularly, fully operational, and stocked with soap and paper supplies.

- B. If district fails to correct reports of violation within 30 days, funds for deferred maintenance are withheld.

WHISTLE-BLOWER PROTECTIONS

I. Ed. Code §44110.

- A. Protects teachers who disclose evidence of improper governmental activity or who refuse to carry out an illegal order. School employers who retaliate against a teacher who has made a disclosure or refused an illegal order can be held criminally or civilly liable, including having punitive damages assessed against them.
- B. “Improper governmental activity” includes actions that violate state or federal law; corruption, bribery; fraud; misuse of government property; economically wasteful; gross misconduct, incompetency or inefficiency.

II. Whistle-blowing re Special Education Issues—Ed. Code §56046.

- A. No school employee who assists a parent of a pupil with exceptional needs to obtain services or accommodation for their child may be subject to reprisal or disciplinary action as a result of such assistance or advocacy.
- B. Enforcement is through a complaint with the State Dept. of Education, Uniform Complaint Procedures.

ADVICE

CHILD ABUSE: AN ANALYSIS OF THE REPORT PROCEDURES

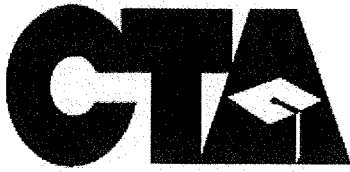
This summarizes the reporting responsibilities of school district personnel under the Child Abuse Neglect Report Act. CA. PENAL CODE §§ 11164 – 11174.3.

PENAL CODE section 11165.7 designed teachers (and virtually all other school district and county office of education employees) as “Mandated Reporters.” Their affirmative duty to report suspected child abuse or neglect is primarily established by section 11166 as follows:

1. Mandated Reporters shall report by:
 - a. Telephone, ***immediately*** upon learning or suspecting child abuse. PEN. CODE § 11166(a). “Immediately” means “*immediately*.” “Immediately” ***does not mean:*** First, notify an administrator; then, make the report.

and
 - b. Written report, prepared and sent within 36 hours. PEN. CODE § 11166(a). All Mandated Reporters shall submit the written reports required by Section 11166 on forms adopted by the Department of Justice. PEN. CODE § 11168.
2. Under PENAL CODE section 11166, the duty to submit a Mandated Report is:
 - a. “Individual.” PEN. CODE § 11166(i)(1).
 - b. This means that the duty ***can not be delegated*** to any other person, authority, or entity including but not limited to:
 - i. Counselors,
 - ii. Principals, or
 - iii. The District Superintendent or any other administrator.
 - c. However, when two or more people are required to report about the same incident of child abuse or neglect, PENAL CODE section 11166(h) permits the duty to submit a Mandatory Report to be shared. By agreement:
 - i. One person may immediately telephone the initial report.
 - ii. Both people may submit a single, written report signed by each person with knowledge of the suspected child abuse or neglect.

3. Under PENAL CODE section 11166, the duty to submit a Mandated Report is:
 - a. "Mandatory." PEN. CODE § 11166(i)(1).
 - b. This means that a Mandated Reporter *does not need anyone's permission* to report.
 - c. "Mandatory" also means that *no other person can authorize or direct* a Mandated Reporter not to report, including but not limited to:
 - i. Counselors,
 - ii. Principles, or
 - iii. District Superintendents or any other administrator.
 - d. "Mandatory" also means that *interference with the duty to report is prohibited by law*. No supervisor or administrator shall:
 - i. Impede or inhibit any Mandated Reporters' duty to report. PEN. CODE § 11166(i)(1).
 - ii. PENAL CODE section 11166.01(a) penalizes violations of the section 11166 or retaliating against any Mandated Reporters for making a report by incarceration in the county jail for no more than six (6) months, by a fine of no more than \$1,000, or both.
4. PENAL CODE section 11166 expressly identifies the agencies to which Mandated Reporters must report as follows:
 - a. PENAL CODE section 11165.9 requires that Mandated Reporters contact by telephone and submit written Mandated Reports to either their local:
 - i. Police Department,
 - ii. Sheriff's Department, or
 - iii. County Welfare Department (if designated by the county as a reporting agency).
 - b. PENAL CODE section 11165.9 establishes that Mandated Reporters' PENAL CODE section 11166 duty to report *shall not be met* by reporting to:
 - i. A school district's police.
 - ii. A security department.
 - c. PENAL CODE section 11166 expressly establishes that Mandated Reporters may not substitute reports to other agencies rather than to police or county welfare departments. Mandated Reporters' PENAL CODE section 11166 reporting duty is not met merely by informing "an employer, supervisor, school principal, school counselor, co-worker, or other person." PEN. CODE § 11166(i)(3).
5. Mandated Reporters failure to strictly comply PENAL CODE section 11166 reporting requirements is punishable by law.
 - a. PENAL CODE section 11166.01(b) penalizes violations of the section 11166 or retaliating against any Mandated Reporters for making a report by incarceration in the county jail for no more than one (1) year, by a fine of no more than \$5,000, or both.
 - b. Mandated Reporters who fail to strictly comply PENAL CODE section 11166 reporting requirements may risk potential:
 - i. Revocation of their professional licence or certification, or
 - ii. Discharge from their employment.



CALIFORNIA TEACHERS ASSOCIATION
DEPARTMENT OF LEGAL SERVICES

**LEGAL DEPARTMENT
ADVICE MEMORANDUM**

DATE: October 1, 2007

SUBJECT: **Administration of Medications by Unlicensed School Employees**

As the result of the recent settlement of a lawsuit brought by the American Diabetes Association, school employers are pressuring certificated and classified employees who are not licensed to provide nursing and related services to administer insulin to diabetic students and perform medically related duties. The purpose of this advisory is to briefly describe the law in this area and suggest strategies for CTA chapters to minimize the use of unlicensed school employees to provide services that School Nurses and other appropriately licensed personnel should be providing.

As set forth in a recent legal advisory from the California Department of Education ("CDE"), the following persons are authorized by State law to administer insulin pursuant to an Individualized Education Plan ("IEP") or Section 504 plan:

1. Students may self-administer if authorized by the student's health care provider and parent;
2. School nurse or school physician;
3. Appropriately licensed school employee such as RN or LVN;
4. A RN or LVN who is contracted by the school district;
5. A parent or guardian who chooses to do so;
6. A willing designee of the parent or guardian who is not a school employee;
7. During an epidemic or public disaster, unlicensed school employees with appropriate training.

CDE advises that when none of these authorized persons are available in order to comply with federal and state obligations to provide a free appropriate public education to diabetic students, a school district may use a voluntary school employee who has been adequately trained pursuant to the treating physician's orders as required by the IEP or Section 504 plan. The training must at a minimum meet the standards specified by the American Diabetes Association and the employee should be supervised at least quarterly by a school nurse or other licensed professional.

Though volunteers should be a last resort, many districts are seeking to avoid the expense of securing licensed personnel by using unlicensed employees, as well as directing employees to “volunteer.” Under California statutes and regulations, such unlicensed employees must meet the following requirements:

1. The employee must be “designated” by the district to assist the student.
2. The administration of medication cannot be “inconsistent or in conflict with” the designated employee’s other job duties.
3. The employee has consented to administer the medication or assist in doing so.
4. The employee is legally able to administer the medication.
5. The district obtains a written statement at least each year (or sooner if instructions change) from the student’s physician that details the medications and procedures.
6. A written statement from the student’s parent, foster-parent or guardian requesting that the medication be provided and giving consent for the service to be provided by the employee.

Bargaining Job Duties

The best way to minimize the use of unlicensed school employees in this area is for the chapter to demand to bargain these job duties, and to challenge unilateral actions by the district to impose these duties on unlicensed bargaining members. Negotiated contract provisions can state that such duties only be assigned to licensed members of the bargaining unit, set forth the type of training that any assigned employees will receive, call for additional salary when such duties are assigned, and/or provide a grievance process to enforce the contract provisions.

CDE Complaints

Chapters may also challenge districts that fail to utilize an available school nurse, RN or LVN and/or coerce unlicensed employees into “volunteering” for these duties, by filing a complaint with CDE. CDE will be auditing school district compliance in this area, as will disability rights advocates.

Obey Now, Grieve Later

Many school districts are compelling unlicensed employees to “volunteer” to administer insulin, or failing to provide such employees with adequate training or supervision. While chapters challenge improper assignments through bargaining, grievances, or CDE complaints, CTA legal recommends that the unlicensed school employee who is assigned take the following steps:

- Obtain representation from her or his Chapter
- Make a formal written protest to the district and possibly the IEP team
- Carry out the assignment unless by doing so the school employee believes he or she is endangering the health and safety of the student or the employee. Employees who refuse to obey a work directive run the risk of discipline and may need to convince an arbitrator, Commission on Professional Competence or the CTC that the refusal was justified or the directive unlawful.

Effective: January 1, 2009

West's Annotated California Codes Currentness

Education Code (Refs & Annos)

Title 2. Elementary and Secondary Education (Refs & Annos)

Division 4. Instruction and Services (Refs & Annos)

Part 27. Pupils (Refs & Annos)

▣ Chapter 9. Pupil and Personnel Health (Refs & Annos)

▣ Article 2. Employment of Medical Personnel (Refs & Annos)

→ § 49423.5. Specialized physical health care services

(a) Notwithstanding Section 49422, an individual with exceptional needs who requires specialized physical health care services, during the regular schoolday, may be assisted by any of the following individuals:

(1) Qualified persons who possess an appropriate credential issued pursuant to Section 44267 or 44267.5, or hold a valid certificate of public health nursing issued by the Board of Registered Nursing.

(2) Qualified designated school personnel trained in the administration of specialized physical health care if they perform those services under the supervision, as defined by Section 3051.12 of Title 5 of the California Code of Regulations, of a credentialed school nurse, public health nurse, or licensed physician and surgeon and the services are determined by the credentialed school nurse or licensed physician and surgeon, in consultation with the physician treating the pupil, to be all of the following:

(A) Routine for the pupil.

(B) Pose little potential harm for the pupil.

(C) Performed with predictable outcomes, as defined in the individualized education program of the pupil.

(D) Do not require a nursing assessment, interpretation, or decisionmaking by the designated school personnel.

(b) Specialized health care or other services that require medically related training shall be provided pursuant to the procedures prescribed by Section 49423.

(c) Persons providing specialized physical health care services shall also demonstrate competence in basic cardiopulmonary resuscitation and shall be knowledgeable of the emergency medical resources available in the com-

munity in which the services are performed.

(d) "Specialized physical health care services," as used in this section, includes catheterization, gastric tube feeding, suctioning, or other services that require medically related training.

(e) Regulations necessary to implement this section shall be developed jointly by the State Department of Education and the State Department of Health Care Services, and adopted by the state board.

(f) This section does not diminish or weaken any federal requirement for serving individuals with exceptional needs under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), and its implementing regulations, and under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and its implementing regulations.

(g) This section does not affect current state law or regulation regarding medication administration.

(h) It is the intent of the Legislature that this section not cause individuals with exceptional needs to be placed at schoolsites other than those they would attend but for their needs for specialized physical health care services.

CREDIT(S)

(Added by Stats.1978, c. 1220, p. 3943, § 2. Amended by Stats.2006, c. 414 (A.B.1667), § 1; Stats.2007, c. 12 (A.B.342), § 1; Stats.2008, c. 179 (S.B.1498), § 48.)

HISTORICAL AND STATUTORY NOTES

2009 Electronic Update

2008 Legislation

Stats.2008, c. 179 (S.B.1498), made nonsubstantive changes to maintain the code.

Subordination of legislation by Stats.2008, c. 179 (S.B.1498), to other 2008 legislation, see Historical and Statutory Notes under Business and Professions Code § 108.

CROSS REFERENCES

Department of Health Services, generally, see Health and Safety Code § 100100 et seq.
State Department of Education, generally, see Education Code § 33300 et seq.

CODE OF REGULATIONS REFERENCES

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

The Whole World (Wide Web) is Watching

Cautionary tales from the 'what-were-you-thinking' department.



Way back in 1974, California teacher and aspiring actor Lou Zivkovich famously was fired for posing nude in Playgirl magazine. His response, as reported by Newsweek, "I didn't murder anyone."

Nowadays, thanks to advances in technology, you don't even need a major publisher to get fired; just post your racy photos, sexually graphic writings, or wild party stories on a personal Web blog. You'll be amazed by how quickly tech-savvy students can disseminate your postings to their friends and your employer.

Here's a roundup of some of the recent horror stories:

In Virginia, high school art teacher Stephen Murmer was fired after posting photos of his "butt art" on the Web, which were viewed by scores of students. The budding artist applied paint to his posterior and genitalia, which he then pressed onto canvases. With the help of the ACLU, he sued the school district last fall claiming a violation of his First Amendment rights.

Band director Scott Davis from Broward County, Florida, was dismissed after school officials viewed his MySpace profile that included his musings about sex, drugs, and depression.

A Colorado English teacher lost her job after composing and posting sexually explicit poetry on her MySpace site. Police were even called in to investigate.

Nashville teacher Margaret Thompson was removed from teaching after posting "racy pictures" of herself, along with candid photos of her students, on her MySpace profile.

Florida middle school teacher John Bush was terminated because of "offensive" and "unacceptable" photos and information on his MySpace page.

Massachusetts teaching assistant and Massachusetts Teachers Association member Keath Driscoll was first suspended and then fired for his MySpace postings including "sexually suggestive" photographs, videos of drinking alcohol, and references to women as "whores." MTA took his case to arbitration and won almost a complete victory. In a decision dated March 24, 2008, the arbitrator ruled that Driscoll should not have been fired and ordered him reinstated with back pay, seniority, and benefits. The arbitrator did conclude, however, that Driscoll had engaged in misconduct that warranted some form of discipline, which he determined to be a three-day suspension.]

But the clueless award goes to Atlanta-area high school football coach Donald Shockley, who was forced to resign in early 2008 for storing on his school computer photos of his assistant principal dressed in lingerie and posing in sexually suggestive ways. The photos were discovered by a student whom Shockley had asked to work on his computer and who then posted the photos on the Internet and sent them to other students at the school.

In October 2007, reporters for The Columbus Dispatch conducted an investigation of MySpace profiles posted by Ohio teachers. The newspaper quoted one 25-year-old teacher bragging that she's "an aggressive freak in bed," "sexy," and "an outstanding kisser." Another teacher wrote on her page that she had recently "gotten drunk," "taken drugs," and "gone skinny-dipping."

In the wake of these reports, the Ohio Education Association urged all OEA members to remove any personal profiles they may have posted on MySpace or Facebook. The Association also warned members that such profiles "can be used as evidence in disciplinary proceedings," which could "affect not only a teacher's current job but his/her teaching license" as well.

But what about free speech? Don't school employees have the right, on their own time, to blog about their private lives without fear of losing their jobs? Probably not.

It's the general rule that school employees can be disciplined for off-duty conduct if the school district can show that the conduct had an adverse impact on the school or the teacher's ability to teach. And it wouldn't be too difficult to make that showing if the teacher's blog includes sexually explicit or other inappropriate content and is widely viewed by students.

As to a possible free speech claim, the U.S. Supreme Court ruled in 2004 that it was not a violation of the First Amendment for the City of San Diego to fire a police officer for posting a sexually explicit video of himself on the Internet. The unanimous Court said that such speech was "detrimental to the mission and functions of the employer."

And last year, a U.S. District Court ruled that a Connecticut school district's decision to fire a probationary teacher because of his postings to his MySpace page did not violate the teacher's First Amendments rights. The court called the online exchanges between the teacher and his students "inappropriate" and added that "such conduct could very well disrupt the learning atmosphere of the school."

There's an old lawyer's saw that goes something like this: Never put in writing anything that you wouldn't want read in open court or by your mother.

Maybe it's time for an updated adage: Never put in electronic form anything that you wouldn't want viewed by a million people, including your colleagues, students, and supervisors-and your mother.

Michael D. Simpson
NEA Office of General Counsel

Photo: Superstock

© Copyright 2002-2009 National Education Association