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## What every member should know about...

### PROTECTING YOURSELF

Educators need to be aware in their daily interaction with students of the potential risks for personal liability. Inappropriate or careless behavior, whether real, imagined or misunderstood, can lead to a quagmire of complaints, discipline, and possibly civil or criminal consequences. Protect yourself by taking common sense precautions for avoiding risky situations. Understand the law and your district policy regarding the use of physical force. Know your duty under the Child Protection Act. Know your contractual and statutory rights.

### Risky Situations

#### Touching

Educators must be wary of any physical contact with students. Even an avuncular hug to comfort a distressed child can be misunderstood. Respect others' personal space and boundaries. Handshakes and high fives are appropriate, but back pats may be too intrusive. Kissing is always inappropriate. If physical contact is necessary for purposes of the lesson, always ask permission first.

#### Being alone with a student

If you are in a room with a student or parent never close the door. Leave the door open and position yourself so that you can be seen from the hallway. Do not place yourself in situations outside of school where you could be alone with a student. This includes giving a student a ride in your car, taking a student home with you, or taking a student to a movie or camping. Anytime you are alone with a student, you are at greater risk than when you are with a group of students and/or in the presence of adults. If there is an allegation of misconduct between you and the student, and there are only two witnesses - you and the student- what really happened no longer becomes the issue. The issue becomes credibility - whose version of the incident is more believable.

#### Correspondence

Do not send personal notes, letters or emails to students. Stick to educational business in any correspondence. You might use lighthearted banter or jokes in the classroom, but don't use them in personal correspondence; they may be misunderstood as serious or flirtatious, or perceived as offensive.

#### Handling money

If you are responsible for student money, always keep it separate from your own. Keep documentary evidence of all transactions, give and request receipts. Follow district procedures. Do not leave your own personal belongings unattended. Lock your desk.

### Safety and Health

Be mindful of safety and health considerations in your environment, and in handling medical emergencies. Contact your union building representative if you have any questions or concerns. Take precautions to avoid any possible blood born pathogens contamination. Again, follow district procedures.

## Use of Physical Force

Corporal punishment, defined as the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline, is absolutely prohibited by statute. MCL 380.1312. Violation of the statute can be grounds for discipline and civil liability for damages. However, the statute also expressly permits the use of reasonable physical force upon a pupil as necessary to maintain order and control in a school or school-related setting for the purpose of providing an environment conducive to safety and learning. Circumstances in which reasonable physical force may be used if necessary are:

1. To restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school district functions within a school or at a school-related activity, if that pupil has refused to comply with a request to refrain from further disruptive acts.
2. For self-defense or the defense of another.
3. To prevent a pupil from inflicting harm on himself or herself.
4. To quell a disturbance that threatens physical injury to any person.
5. To obtain possession of a weapon or other dangerous object upon or within the control of a pupil.
6. To protect property.

Recognizing that it is sometimes difficult to judge the necessity for physical force or the reasonableness of the force used in the heat of the moment, the statute expressly provides that deference shall be given to an educator's reasonable good-faith judgment.

In addition to the statutory guidelines, many school districts have their own policies on the use of force, which may be more restrictive than the statute. Failure to follow district policies and procedures may result in discipline.

Of course, the fact that reasonable force may be permitted in certain circumstances does not mean that it is always the best course of action. The use of physical force should only occur as a last resort in a drastic situation. If possible, get assistance from administrators or back up from other school personnel before acting. If you must use physical force against a student to protect or restrain, make sure that there are witnesses to the sequence of events. Obtain names and written statements from student and adult witnesses immediately following the incident. Don't use more force than is necessary and never use force to punish a student. Report incidents as soon as possible.

## Child Abuse

The Child Protection Act imposes a duty on administrators, teachers, counselors and some other school personnel to report suspicion of child abuse to the Family Independence Agency. The duty arises if there is reasonable cause to suspect abuse or neglect. The suspected abuser may be a parent, care giver, or fellow teacher. An oral report must be made immediately, followed by a written report within 72 hours. The school office should have the telephone number of the local office and report forms. The report is confidential and no liability attaches to an unfounded report as long as it is made in good faith. However, there is civil liability and criminal penalties for failure to report suspected abuse. So, when in doubt, report.

## Student Information

The Family Educational Rights and Privacy Act protects school records and a very wide range of personal information including grades, awards, school activities, attendance and discipline records, health records, date of birth, addresses, identification numbers or photographs. Personal information about a student may not be disclosed to the public or to anyone other than fellow teachers, school officials, other educational organizations or professionals, and the student's parents. Information may be disclosed with a parent's consent or a court order. Both custodial and non-custodial parents have equal access to student information unless the school has notice of a court order revoking these rights.

FERPA permits school districts to designate certain information, typically name, address, telephone number, awards, extracurricular activities, and photographs as "directory information". The sort of information that might be put in a yearbook is usually designated as directory information. Parents then have to opt out if they do not want this directory information about their child to be available to the public. You need to know exactly what information your district has designated as directory information, and whether the parents of any of your students have opted out.

## Teacher Discipline

### **Disciplinary meeting**

If you are called to a meeting and believe some sort of discipline against you is being considered, you are entitled to have a Union representative go with you. You should ask if disciplinary action is contemplated. If the Employer refuses to allow or wait for Union representation, you can refuse to attend the meeting, but only if you are sure it is a disciplinary meeting. Refusal to attend a non-disciplinary meeting may be considered insubordination and itself cause for discipline. If you are attending a meeting, which began as a non-disciplinary meeting, but then becomes disciplinary in nature, you should ask for a Union representative and refuse to continue the meeting until the representative is present. If a Union representative is not immediately available, the meeting should be adjourned until the representative is available.

### **Filing a grievance**

Most contracts have very short time limits for filing a grievance. Make sure you notify the Union immediately you are subjected to discipline, or become aware of a contract violation, and that the grievance is filed within the time limits. If your grievance is untimely, you will lose.

### **Filing a Tenure Act Appeal. (See: "Your Tenure Act Rights")**

If you have tenure and are discharged, demoted or suspended without pay for more than 3 days, you have a Right of Appeal to the State Tenure Commission. You must file a Claim of Appeal within 20 days of receiving notification from the School Board. This time limit is very strict and your appeal will be dismissed if not received in time. If you appeal to the Tenure Commission you cannot be discharged unless and until the school board's decision is upheld. In the meantime, the board can suspend you with pay. There will be a hearing before an Administrative Law Judge. The school board has to prove on a balance of probabilities both that misconduct occurred and that the misconduct was just cause for the penalty imposed.

If you are a probationary teacher and you receive a notice of non-renewal from the school board, you have 20 days to file a Claim of Appeal with the Tenure Commission. The Tenure Commission's review is limited to the timeliness and adequacy of the notice; it cannot review the reasons for the non-renewal. You may, however, still be able to challenge the non-renewal by filing a grievance under the terms of the collective bargaining agreement.