

Trygstad, Schwab & Trygstad

a law corporation

1880 Century Park East • Suite 1104 • Los Angeles, California 90067-1600

Telephone (310) 552-0500 • Facsimile (310) 552-1306

www.tstlawoffice.com

FROM: Attorneys: Lawrence B. Trygstad, Richard J. Schwab, Shanon D. Trygstad, Daniel J. Kolodziej, Rosty Gore

TO: UTLA MEMBERS/CREDENTIALLED EMPLOYEES OF LAUSD/REPRESENTATIVES

RE: **WHAT PROFESSIONAL EDUCATORS NEED TO KNOW ABOUT THEIR RIGHTS AND RESPONSIBILITIES**

DATE: July 2019

The purpose of this memorandum is to heighten awareness and understanding of what you need to know. It serves as a practical aid for often-asked questions about subjects including: employment discipline/dismissal, criminal investigations, workplace harassment and discrimination, CalSTRS retirement and disability retirement, and privacy rights. This handout provides an overview of the laws, practices and procedures to inform you and your colleagues of many of the relevant statutes, case law and administrative regulations that affect members in and outside the workplace. We hope that you will find this handout helpful for your own needs and in serving your school or guiding colleagues.¹

I. WHAT TO DO WHEN A MEMBER IS THE SUBJECT OF ALLEGATIONS OF MISCONDUCT

First and foremost, if a member is the subject of – or a witness in -- an investigation or accusation of child abuse or neglect (or any similar criminal violation) you or the member (preferably the member) should immediately contact our office. In some cases, members under investigation for criminal, sexual or violent conduct will be temporarily reassigned (“housed”) from their regular employment assignment. Where there is a criminal investigation or accusation, there is a possibility of both criminal charges and professional disciplinary action (dismissal and/or credential suspension/revocation) and even civil lawsuits for damages. **The member should not discuss the allegations with any law enforcement officer (or any other person) without first obtaining legal counsel, and should never consent to and actually submit to a polygraph examination (lie detector).** There are two main reasons for this advice: first, our members are professionals and should be treated with dignity; the mere fact that a someone makes an allegation does not justify law enforcement prying into a member’s private matters, or forcing them to take a polygraph or “prove” their innocence (often to “prove a negative”); second, the consequences of making an inadvertent, albeit innocently-intended, statement could lead to criminal charges, loss of employment, and revocation of the teaching credential, among other consequences. Often times a reasonable reply to the charges through the assistance of counsel can diffuse a potentially dangerous threat of criminal prosecution, loss of career, damage to reputation and financial ruin. Early intervention is the key to a favorable outcome.

When threatened with child abuse or neglect allegations and/or to avoid such allegations, members should be aware of the following:

¹ Members and their families are also entitled annually to a free 30-minute consultation from TST regarding any legal matter such as: employment-related matters, CalSTRS disability retirement, defense of criminal charges and civil lawsuits, personal injuries (e.g., car accidents, slip/trip and fall, assault and battery, insurance bad faith, defamation and product liability), wills/estate planning, probate, real estate, contracts, restraining orders and intellectual property rights (copyright/trademark).

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1. Under Education Codes Sections 44807, 49001, and Penal Code Section 11165.4, a teacher is not subject to criminal prosecution for exercising the type of control over a student that a parent would have under similar circumstances.
2. If a student who is making the charge was about to be disciplined or has recently been disciplined for conduct at school, make sure that the paper work for the discipline against the student is completed and processed.
3. Never be alone with a student in a classroom. Always make sure others are present and the leave the classroom door open whenever possible.
4. Avoid using any physical force on a student. Physical force is generally a strategy of last resort, after words, confinement and/or isolation have been attempted first to control the student and calm him/her down. Physical force should only be used if it is necessary for the protection of the student, yourself and/or others. Reasonable restraint may be used to quell a disturbance, confiscate dangerous objects, or to prevent serious injury, but should generally be avoided and left to campus security or other trained personnel. Generally, reasonable restraint is no more than what a parent would use and/or the minimum force necessary to remove the threat, and it should never be applied in a manner that restricts the ability of a student to breathe or communicate.
5. If students seek help for personal problems, refer them to a counselor. If that is not possible, listen to the problem, but immediately report it to the school psychologist or administration, etc. If the problem raises a reasonable suspicion about child abuse or neglect, report it as well to a local law enforcement agency (but **not** LAUSD school police), pursuant to the Child Abuse and Neglect Reporting Act, sections 11164-11174.3 of the California Penal Code (see also Section III., below).
6. Do not meet with the accusing student or other person to discuss or attempt to get a retraction of any allegations. This can be interpreted as consciousness of guilt and/or an effort to interfere with an investigation.
7. Never refer to students informally, such as using nicknames, "pet names" or commonly-used terms of endearment (e.g., "darling," "sweetheart," "honey," "cutie," etc.)
8. Maintain reasonable physical space between you and students, and even colleagues, to avoid physical contact which could be unwanted or interpreted as offensive or inappropriate.
9. Avoid interacting with students over social media, personal email and/or a personal mobile device. If you use social media for any purpose, we recommend that your privacy settings be set to maximum and that, before you communicate anything through social media, you refrain from posting anything that you would be ashamed or afraid to show a judge, supervisor, parent, spouse, child or other relevant authority figure or loved one. Likewise, communications through school email and/or authorized mobile devices should follow a similar exercise of good judgment.
10. Use District-issued computers and other electronic devices only for school-related matters and communications. Do not commingle your personal data on such devices, including internet browsing for personal purposes (even wholly innocuous websites, like staples.com).

II. PERMANENT TEACHER DISMISSAL CASES

The teacher dismissal process is a fairly lengthy one. The first step is usually an administrative review "hearing," also known as a *Skelly* hearing. The member will receive a letter notifying him/her of the date and time for the hearing. Though the law intends that such a hearing afford the member due process – an opportunity to be heard and respond to the charged conduct – before being subjected to dismissal and suspension without pay, the District usually does not give the member much time to prepare for such hearing. However, the District will usually give the member additional "reasonable" time to prepare if requested, particularly where requested by counsel. Therefore, it is essential that the member contact the union promptly upon receipt of this notice, in order to obtain a referral to qualified counsel through the GLS program. Our office is also available for a free ½ hour consultation to help guide you initially.

The hearing will be conducted at District offices and a District administrator (often a Director of Instruction or similar) will decide the outcome as the "hearing officer." The hearing is fairly informal, with the member (or indirectly through counsel) presenting evidence and argument to refute or otherwise counter the charges. After the hearing, the hearing officer will decide what the District should do, and will make a recommendation and will notify the member in writing of the decision. More often than not, the District will decide to proceed with dismissal, but we have been successful in averting that on several occasions.

If the District proceeds with dismissal, the tenured member will receive a Notice of Dismissal (and Suspension) from the school district, together with an Accusation document. The member receiving this notice should immediately contact the union and/or counsel. Once a notice is given, a hearing must be demanded within thirty (30) days. If, as part of initiating the dismissal process, the District has also suspended the member without pay (based on Education Code § 44939/44939.1), a Motion for Immediate Reversal of Suspension (so-called "MIRS") must be filed within that same time period, if appropriate based on the alleged facts. Within 6 months of the request for hearing, a hearing is held at the Los Angeles Office of Administrative Hearings (OAH). Under most cases for dismissal, the hearing is held before a 3-member panel called the Commission on Professional Competence (CPC), comprised of an administrative law judge (ALJ) and two similarly-credentialed teachers (who were never or are no longer affiliated with LAUSD). However, if only "egregious misconduct" (conduct which could constitute certain serious crimes, including child abuse or neglect) is charged, the case will be heard within 60 days by a single Administrative Law Judge at the OAH. Prior to the hearing, the member (or "Respondent" in the dismissal case) will conduct "discovery", which is the exchange documents and other information with the District to prepare for the hearing. After the hearing, the CPC or ALJ hearing the case will render a written decision within the proscribed time period (100 days for most hearings, 30 days for egregious misconduct cases). The "losing" party – the member or the District – has the right to appeal the decision within 60 days of it being rendered, to the Superior Court by filing a "Petition for Writ of Mandate." An appeal to the California Court of Appeals is available after a decision on the Petition. A member is entitled to recover attorneys' fees and costs if successful in defending/defeating the dismissal. Such member will also recover back pay and health care/insurance costs. Incidentally, a member cannot be subject to repeated hearings if the school district fails to prove its case of dismissal. (*Ashford vs. Culver City USD*). Thus, if the member wins the dismissal case, those same charges cannot be brought again (similar to the "double jeopardy" rule in criminal cases).

As a member, you are entitled to a professional consultation by this office to review the charges and discuss defense strategies and the nuances of the law. At times, early intervention prior to dismissal being approved by the Board can resolve a problem without the necessity of going through the administrative hearing. (See Education Codes §44932, 44934, 44934.1 – 44944/44944.1) When there is a pattern of problems (poor employment evaluations, notices of unsatisfactory or Notices of unprofessional conduct), which indicate that a dismissal may be forthcoming, it is essential to begin preparation by maintaining

anecdotal notes, photographs of room environment (showing that the room is inviting, well-maintained and organized, etc.) and obtaining names, addresses and telephone numbers of potential witnesses (including, as applicable, students, parents, colleagues and administrators). Also, where appropriate, it is important to enroll and participate in relevant professional education, therapy/counseling or other treatment or assistance.

One option to a member prior to being subjected to a dismissal case, or even prior to hearing on a case, is settlement with the District. This usually involves the member's agreement to resign or retire as of a specific date, in exchange for monetary compensation in the form of a lump sum payment, back and/or forward salary and benefits or a combination of these. Settlements/Resignations (Education Code §44930) should be carefully thought through. Note that if a member retires prior to being dismissed, it is the same as a resignation and the member will forfeit the opportunity to defend the charges in court. Further, a resignation can be made (with or without a settlement) and accepted orally or in writing. Upon resignation, a permanent teacher loses tenure and seniority and may also lose other benefits (such as the right to lifetime health benefits, if otherwise earned). Typically, if a permanent teacher is reinstated within 39 months he or she will have tenure and other benefits restored, but not seniority, and breaks in service can disrupt entitlement to other benefits such as lifetime health benefits.

Settlement/resignation/retirement can impact prospective employment opportunities as well and will often trigger an inquiry and possible disciplinary action regarding a member's credentials (see below). As such, members are urged to consult with a lawyer prior to agreeing to any settlement or resignation, whether through our office, the union or other legal service.

UNEMPLOYMENT INSURANCE: If a member is suspended without pay pending the dismissal hearing, the member is likely eligible for unemployment compensation, through the Employment Development Department. We urge the members to seek legal counsel about how to apply for benefits. Such application can be made online at EDD.ca.gov and should be filed immediately upon notice of suspension, because benefits begin from the date of the application and not the date of suspension.

III. OTHER FORMS OF TERMINATION/SEPARATION/DISCIPLINE

A permanent teacher dismissal should be distinguished from a probationary non-reelection (Education Code § 44929.21), where no cause has to be established; a mid-year probationary dismissal (Education Code §§ 44948-44948.3, where there is unsatisfactory service, and a layoff (Education Code §§44949-44955), where there is a reduction in Average daily attendance or reduction in particular kinds of services because of economic reasons and is based upon seniority along with credentialing. Layoffs are primarily based upon your seniority date, but this is now being challenged in court (see *Reed v. LAUSD et al.* case). It is still essential that you verify your seniority for accuracy. Also seniority for lay off purposes can be earned even when on a provisional (emergency credential) or a failure to classify you temporary at the time of initial employment (Education Code sections 44915-44916)

Similarly, a permanent teacher dismissal is separate and apart from the procedure for separating a member from employment with the District based on mental or physical incapacity, as provided under Education Code §44942. Importantly, when a district chooses to suspend or transfer a certificated employee, due to concerns about mental illness, the procedure outlined by Section 44942 is mandatory before such action may be taken. That procedure involves the appointment of experts to evaluate the member and a panel determination as to the appropriate remedy or action. The member is entitled to have legal representation throughout that process and that is usually indispensable to a favorable outcome and preservation of the member's due process rights.

IV. WHISTLE-BLOWING

Public school employees who report "improper government activity," i.e., a violation of a state or federal law or regulation including such things as: corruption, theft, fraud, coercion, misuse of government property or willful omission to perform duty and are subjected to reprisal, personnel or disciplinary action or offer of benefit can file a complaint with the local law enforcement agency and then sue for damages. (Education Code § 44112(c)) Importantly, whistle-blowing protections can be asserted as a powerful defense to a dismissal action, shifting the burden to the district to prove, essentially, that it would have initiated dismissal even if whistle-blowing had not occurred. Education Code 44114(e).

V. RIGHTS OF MEMBERS WITH DISABILITIES

The federal Americans With Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA) are the principal statutes that prohibit discrimination against individuals with disabilities. Generally speaking, a disability is:

- i. A physical or mental impairment that substantially limits one or more of an individual's major life activities;
- ii. A record of such an impairment; or
- iii. Being regarded as having such an impairment.

In the past several years, members with disabilities have been placed on mandatory leave and forced to use their sick leave or be on unpaid leave. If wrongfully placed on leave or wrongfully denied their right to return from a disability leave because of disability discrimination, FEHA permits members to recover back pay, reinstatement of sick leave and other damages. Members have also been denied reasonable accommodation for their disability and/or the district has failed or refused to engage in discussions (the "interactive process") with the member. Any member who is directed to meet with a school district physician in connection with a disability, should contact the union and/or this office for a consultation. Similarly, any member who requests accommodations for a disability, formally or informally, but is denied, should contact the union and/or this office for a consultation.

Problems have also arisen when members signed general releases for all of their medical records. Such a broad release may be an invasion of the member's privacy rights. For example, if the medical issue involved is a physical problem, the District is not entitled to obtain records from a psychiatrist, psychologist or other therapists regarding mental health treatment a member may have received.

Members who have been discriminated against under the ADA and FEHA, or have been denied reasonable accommodations, may recover back salary, benefits, general damages, as well as a return to their position, including reasonable accommodations as needed.

VI. TEACHER CREDENTIAL CASES

When a member is charged with certain crimes (Education Code sections 44424, 44010 and 44011) is suspended for more than ten (10) days, or resigns with dismissal charges pending, a report is automatically made to the Commission on Teacher Credentialing (Title 5 § 80303 and 80304). Alleged violations of Penal Code §647.6 result in an automatic suspension of teaching credentials. In addition, school district officials often notify the Commission on Teacher Credentialing of any alleged conduct by a member

which would affect a member's fitness to retain his or her credential. Even conduct outside of the school setting can be a source for a credential review and disciplinary action. Accordingly, any member who receives a letter from the Commission on Teacher Credentialing concerning any criminal charges, criminal convictions, or allegations made by other school personnel or members of the public are encouraged to immediately contact our office. You and your colleagues are invited to take advantage of their professional consultation with this office to discuss their options and potential defenses.

VII. PROFESSIONAL INSURANCE COVERAGE AND GROUP LEGAL SERVICES

Members who are arrested or charged with crimes, should also immediately contact our office or their union for advice since every criminal case is a potential credential and/or dismissal case. Moreover, if the charge involves child abuse or other conduct with a student, there is a potential civil law suit against the member. Members have a \$1,000,000.00 liability policy to provide for their defense of civil suits arising out of educational employment activities. In addition, members can be reimbursed up to \$35,000.00 for attorney fees if charged with an employment related criminal proceeding. The only exception is that any criminal matter involving school personnel (colleagues, administrators, classified) is not covered under the policy.

VIII. DISABILITY RIGHTS – DISCRIMINATION, HARASSMENT AND REASONABLE ACCOMMODATION

Should you or a colleague be requested or directed to meet with a school district physician, they should be advised to contact legal counsel or their union for a consultation.

Nobody should meet with a school district physician or sign any general releases without obtaining advice about their rights.

Under California law, Education Code Section 44942 provides a specific procedure the District must follow if it has reasonable belief and claims that a teacher has a mental disability. A member with a mental disability can qualify for STRS Disability Benefits. ADA (American with Disability Act) and FEHA (Fair Employment and Housing Act) may provide additional rights and protections.

IX. LEAVES OF ABSENCE/FMLA

Every credentialed employee has 10 full days and either 90 days at one half pay (or in other Districts 90 differential days) for illness or injury. (Education Codes §44977 and §44978). Once an employee has exhausted full and differential illness days, a permanent employee is placed on an unpaid re-employment list for 39 months and a probationary employee for 24 months. If the employee does not return to active employment within 39 months, he or she is automatically separated from the School District without a due process hearing (Education Code §44978.1). Contact the Union if the District refuses to permit a return from a leave of absence.

Eligible employees may have rights to 12 weeks of unpaid job protected leave for specified family and medical reasons. Under the Federal Family and Medical Leave Act (FMLA) and California Family Right Act (CFRA) during the leave salary is not paid. However, the employee is entitled to health coverage.

Employees covered by State Disability Insurance (SDI) may receive up to 6 weeks of wages when taking time off. Most public educations do not pay into SDI. However, some employees may have made contributions to SDI before becoming an educator.

Employees may also have leave rights when injured at work. This would be handled by your Workers Compensation Attorney.

X. CALSTRS DISABILITY BENEFITS/RETIREMENT

What You Need to Know About Their Rights With Regard to Disability Benefits Under CalSTRS:

Many teachers are unaware of the benefits available to them under the California State Teachers Retirement System (often known as "CalSTRS" or "STRS") if they become disabled. Unlike workers' compensation, a disability need not be work-related in order to qualify for disability benefits under the State Teachers Retirement System. A teacher, for example, who fell at home and, as a result became disabled, would be eligible. The law provides that disability benefits are available to qualified members of STRS who have a medically determinable physical or mental impairment which prevents them from performing their usual duties and prevents them from performing duties of a comparable level for which they may become qualified in a reasonable period of time through a program of education, training and experience. This medically determinable physical or mental impairment must be expected to last continuously for at least twelve months.

In order to be eligible for a disability allowance, a teacher must have five (5) or more years of credited service with the STRS, unless during the course and scope of their employment they were the object of an act of violence. All teachers hired after October 15, 1992, are automatically enrolled in Plan "B". Several years ago, teachers were given their choice of selecting either Coverage A, which is entitled "Disability Allowance Program," or Coverage B, which is entitled "Disability Retirement Program." Set forth below is a brief description of each program. Members who qualify under the Collective Bargaining Agreement are also entitled to receive District Health Benefits for the rest of their lives.

Coverage A Disability Allowance Program

1. Death payment \$5,000.
2. Members receive 50% of their final compensation; unless over age 45 with less than 10 years of service credit, then they receive 5% of their final compensation for each year of service credit.
3. Must be below age 60 to apply.
4. Additional 10% of final compensation increment for eligible children. Payable to age 18 or 22, if a full time student.
5. The allowance, including the children's portion, is reduced by benefits paid or payable for the same impairment by other public systems, such as Social Security and Workers' Compensation.
6. No joint and survivor option available while on a Disability allowance.
7. Upon conversion to Service Retirement at age 60, member receives lesser of the Service Retirement or Disability allowance payment.
8. Those whose earnings while on disability allowance exceed 66 2/3% of indexed final compensation over a continuous six-month period are removed from the allowance role.

Coverage B Disability Retirement Program

1. Retired death payment \$5, 000.
2. Members receive 50% of their final compensation.
3. No age restriction for application.
4. Additional 10% of final compensation increment for eligible children, payable to age 21 (no full-time student requirement),
5. The member's portion of the allowance is reduced by benefits paid or payable for the same impairment by Workers' Compensation only.
6. Joint and survivor option available. This reduces the monthly allowance, but would provide a lifetime monthly allowance to the option beneficiary upon the member's death.
7. No conversion at age 60, payable for duration of disability.
8. No limit on earnings for those enrolled in an approved STRS rehabilitation plan. If not in a rehabilitation plan, a set amount currently approximately \$16,950.00 per year. If that amount is exceeded, excess earnings are recovered by the STRS.

In our experience, many members who apply for disability allowance often fail to understand the intricate procedures required and fail to present the best evidence of their disability at the time they apply. If unsatisfactory evidence is presented, the STRS will deny the application for disability allowance. Upon such denial, the teacher has a right to an administrative hearing before an administrative law judge who then renders a proposed decision to the Teachers' Retirement Board. This decision may be accepted or rejected by the Retirement Board. Accordingly, it is in the disabled teacher's best interest to present the strongest possible case at the outset, since an administrative hearing is stressful, costly and will delay any possible positive outcome.

Accordingly, we encourage any member considering applying for a disability allowance to call our office for an appointment before making an application.

XI. RECOGNIZING AND REMEDIES FOR HARASSMENT OR DISCRIMINATION

Sexual harassment is unwelcome sexual advances, requests for sexual favor, and other verbal or physical contact of a sexual nature. It can involve administrators, colleagues and students.

There are two (2) types of sexual harassment recognized both under federal and California Law:

- (a) Quid Pro Quo
- (b) Hostile work environment

All members especially need to be made aware of their obligation to supervise and take appropriate action to control any form of sexual harassment in the classroom.

In order for you or a colleague to avoid being accused of sexual harassment, it is best to limit or eliminate physical contact with students (unless absolutely necessary); maintain space or distance when dealing with students, and use good judgment when conversing with students, especially when sensitive topics arise.

When and if you or a colleague is accused or wishes to complain about sexual harassment by administrators or other school employees, the School District provides an administrative review procedure. Any member victimized by sexual harassment should immediately contact our office for a consultation. There are time limits for filing complaints that must be followed.

XII. CHILD ABUSE REPORTING REQUIREMENTS

The primary legal obligation set forth in Penal Code Section 11165, et seq., is a REPORTING duty. Teachers and other designated school personnel must:

1. Report, by telephone or writing, immediately to a child protective agency (DCFS) or law enforcement agency (but not LAUSD school police) any known or suspected incidents of child abuse and submit a written report within 36 hours of receiving the information on the incident [Pen. Code § 11166(a)]; and
2. If first employed after January 1, 1985, sign a form acknowledging the reporting requirements of Penal Code Section 11166 and that she/he will comply [Pen. Code § 11165.5].
3. A child protective or law enforcement agency does not include a school police department.

The reporting duty is a serious obligation. A teacher who fails to report a known or suspected incident of abuse of a child under the age of 18 to law enforcement or Child protective services will be subject to criminal penalties [Pen. Code § 11172(d)]. "Child abuse" includes physical injury, pain or neglect, sexual assault, and emotional abuse or neglect. If it is not a mutual altercation between students and the conduct is serious, it may be necessary to report child abuse even when between minors (e.g., assaults with deadly weapons or great bodily force, sexual assaults or batteries, hazing which puts minor at risk.) Pregnancy in itself may not be child abuse.

It is important to realize that the reporting responsibility is an individual duty. No one, including other school personnel, may impede or prohibit an individual from performing the legal obligation to report [Pen. Code § 11166(0)]. A teacher is not liable for reporting and it is confidential [Pen. Code § 11172]. There are emergency hotlines you can contact if unsure if the alleged conduct constitutes child abuse.

It should be emphasized that if a principal, central office administrator or any other person attempts to stop a teacher from reporting as required by law, this should be reported immediately to the district attorney or other appropriate law enforcement official [Pen. Code § 11166(f)]. Conversely, just because one of those other people tells you they will report the alleged abuse, that does **not** absolve you of your obligation to do so.

XIII. LIMITS ON PRIVACY AND PRIVATE CONDUCT, INCLUDING THROUGH ELECTRONICS AND ONLINE

With the growth of technology at the school, in classrooms and in the home the use and misuse of computer hardware, software, the Internet and E-Mail has been a recent fertile source of criminal and professional prosecution. This is also true of cell telephones. Please always remember there is no privacy on the computer or cell phone, although a recent US Supreme Court case may require a search warrant for a personal cell phone. Whenever an E-Mail is sent or an individual is on-line (and even when a text message is sent) both the employer and law enforcement may be monitoring or have access to the records. Thus never E-Mail, visit a site or text a message that you would not want to become public. Additionally, computer software which is pirated or not properly obtained can subject you, and the School District to criminal prosecution along with civil penalties (money damages). A United Supreme Court case affirms that employer owned computers or cell phones can be examined by said employer as a basis for discipline and there is no privacy. It is best to observe the following rules

Never visit Internet sites which contain pornography. There are State and Federal laws which prohibit and make crimes for viewing said sites. Often times these sites are monitored by law enforcement.

Never place personal or intimate information or photographs on social networking sites (i.e. Facebook, etc.) because it is accessible to the public and may prove to be embarrassing or could potentially jeopardize your employment, credential or license.

Never use School computers, at any time, for personal use or to visit adult sites. This includes E-Mails, (similar communication devices) or using the computer for non-pedagogical purposes. There is a growing number of cases involving teachers using school computers or lap tops for personal use. Also most school computers have location devices which can be traced if not returned.

Never use software that is not properly licensed. If you observe that a school computer is using "pirated" software then immediately report it to an administrator or other District Official both orally and in writing.

Never E-Mail or text your students for personal reasons. E-Mails or texts to students should always be for school related purposes. This has also been a major source of criminal investigations and discipline. Be aware that phone and computer records are easily accessible by authorities.

Be cautious about internet social networks (Face book or similar) concerning what you write, who you invite as friends (avoid students) and what you post. Recent discipline has been imposed based upon careless comments, photographs and communications.

The advancements in technology have been amazing. However with this growth, there is a measurable loss of privacy. Even in your home or at school during after hours, if you are using pirated software or visiting sites that are deemed pornographic you may be subject to criminal and professional sanctions. Remember: Use the computer and cell phone responsibly; "Big Brother" or your school district could be watching, listening and reading.

Along with responsibility in the classroom all members should be mindful that even private family matters can be the basis for disciplinary action including loss of job and credential. Under Education Code Sections 44424 and 44425, if a certificated employee is charged and convicted of certain misdemeanor or felony offenses it could result in an automatic loss of both. For example, a plea to certain types of nuisance

crimes could ban you from teaching. (See, for example, P.C. §§ 647 (a), 314, 647.6) Also, certain crimes relating to theft, assault or lewd acts may have permanent adverse consequences. This includes domestic violence, shoplifting, fighting and public indecency. As a professional all of your conduct in the classroom, at school or in your private life, can impact your career.

XIV. PROTECTING PRIVACY IN AND OUTSIDE THE WORKPLACE

In *Marken v. Santa Monica Unified School District* (2012) 202 Cal.App.4th 1250, a significant decision was rendered which provides protection to public employees from the requests of their personnel file under the California Public Records Act (CPRA). Typically, when a public agency receives a CPRA request, it determines whether the requested records are subject to disclosure, and in fact the agency cannot ask a court to make that determination on its behalf. In *Marken*, for the first time, the Court ruled that the employee now has the right to object to his or her personnel file or other private information from being disclosed and may do so in the courts. Thus, whenever there is a CPRA request, the employer must now provide notice to the employee to allow them the opportunity to assert their right to object to any disclosure of private information. This decision therefore prohibits the employing agency from controlling what can be disclosed in terms of private records under the CPRA.

XV. RIGHTS OF MEMBERS IF THREATENED OR HARASSED BY STUDENTS OR THE PUBLIC

Teachers and/or support service staff are sometimes victimized by their students, their parents or outside agitators. If this occurs, there are many laws that can be relied upon to protect our members. They include the following, some of which provide for jail time for offenders:

1. Education Section 44810: Any person over sixteen who is not a pupil who interferes with school activities is guilty of a misdemeanor.
2. Education Code Section 44811: Parents, guardians or other persons whose conduct materially disrupts class work or extracurricular teaching activities is guilty of a misdemeanor.
3. Penal Code Section 626.2: Any student returning to campus without authorization after suspension or expulsion may be guilty of a misdemeanor.
4. Penal Code Section 626.6: Persons not a student, officer or employee who interfere with peaceful conduct of campus activities who, after being asked to leave, refuse or reenter the campus are guilty of a misdemeanor.
5. Penal Code Section 627.2: Any outsider who enters or remains on school grounds during school hours without registering with the principal is guilty of a misdemeanor.
6. Penal Code Section 626.8 and Education Code Section 32211 - Any person who comes on to school premises without lawful business or who interferes in school activities or fails to leave the premises is guilty of a misdemeanor.
7. Penal Code Section 653(g): Any person who loiters about a school campus after being asked to leave is guilty of a misdemeanor.
8. Education Code Section 32210: Any person who willfully disturbs any public school is guilty of a misdemeanor.

9. Penal Code Section 415.5 - Any person, except a registered student, who fights, disturbs or uses offensive language, is guilty of a misdemeanor.
10. Penal Code Section 626.10: Any person who brings or possesses a lethal weapon on a school campus is guilty of a misdemeanor.
11. Penal Code Sections 240, 241.2, 242, and 243.2: Any person who commits an assault and/or battery against another is guilty of a misdemeanor.
12. Education Code Section 48905: Any certificated employee whose person or property is injured or damaged by the willful misconduct of a pupil while on campus or during a school activity can request the school district to pursue legal action on a pupil who caused injury or damage.
13. Education Code Section 48900 and 48910: Expulsion or suspension of students who among other grounds attempt or cause physical injury, damage to property or are habitually disruptive.
14. Education Section 48904: Parent liability up to \$10,000 each for the willful and intentional injury by a minor pupil on school campus to any pupil or school employee or to property.
15. Education Code Section 51512: Prohibition against secret surveillance or recordings in the classroom without consent. However in some circumstances the recording could be used in an administrative or judicial proceeding.
16. Education Code Section 49079: Right to know about dangerous students (students with prior actual or suspected incidents of certain violent criminal conduct) enrolled in your class.
17. Civil Code Section 1714.1 parent or guardian liability up to \$25,000.00 for willful misconduct of a minor.
18. A District, under Education Code Section 48915.5, can discipline and/or remove a student with special needs who violates a code of student conduct, pursuant to federal statutes, 20 U.S.C. §1415 (k).

As can be seen from the above, there are many protections for teachers and service support staff. However, obtaining the prompt cooperation and action of the school administration and/or law enforcement to actually enforce these laws can be challenging. Often, you or impacted colleagues may need to seek a civil harassment restraining order or other civil action without district involvement to obtain any interim or permanent remedy, and sometimes the district may have to be persuaded to take immediate action on your behalf. Members are encouraged to contact our office for advice and guidance.

XVI. WHAT TO DO IF THE DISTRICT DOES NOT TIMELY PAY YOUR SALARY

The enactment of Education Code sections 45048 and 45049 now mandate that when a member who has filed proper documentation for a salary increase is not paid within three (3) pay periods or three (3) months, he/she is entitled to daily interest calculated from the date the increase was owed. Additionally, these enactments have been the underpinnings for possible legal action if the school district does not make

your salary needs a priority. This is one of many successful legislative accomplishments by your union. In the event of overpayment by a school district, an employer cannot automatically deduct salary without a court judgment or consent by the employee.

XVII. WHAT TO DO IF THE DISTRICT OVERPAYS / UNDERPAYS YOUR SALARY

Whenever a school district overpays or underpays an employee, the statute of limitations is governed by Section 338(d) of the California Code of Civil Procedure. Under that Section, a cause of action does not accrue until discovery and must be acted upon by no later than three years. In some districts, a claim must be filed within one year to recover salary. A failure to file a legal action within the time period set forth in Section 338(d) may bar your recovery if you have been underpaid; and may stop the district from claiming any overpayment beyond that time period.

Also, it should be noted that a school district may not, even if you have been overpaid, automatically deduct your salary. (*CSEA v. State of California* (1988) 198 Cal.App.3d 374) The only time that a school district may deduct salary is when there has been (1) an agreement to deduct, (2) a judgment ordering garnishment, or (3) a negotiated settlement. It is always important that you carefully review your salary to ensure accuracy.

XVIII. HANDLING CHARTER CO-LOCATIONS

Since the passage of Proposition 39, commonly referred to as the "Smaller Schools, Safer Schools and Financial Accountability Act," and its implementation in the Education Code, your school may be subject to the co-location of a charter school on your campus. Under Education Code §47614 it specifically requires public schools to "make available, to each charter school operating in the school district, the facilities sufficient for the charter school to accommodate all of the charter schools in-district students in conditions reasonably equivalent to those which the students would be accommodated if they were attending other public schools of the district." What is significant about this, and what you can do as a chapter chair, is when your school is the potential target for the co-location of a charter school it is important at that time to examine whether the co-location of a charter school will pose an interference to your academic program, pose a threat to safety and result in limiting or denying access to necessary campus space, rooms or materials. Some factors to be considered are as follows:

1. The public school will be required to bus non-charter pupils to another campus;
2. The school would be converted to a multi-track, year-round calendar;
3. Teachers at the site would be required to travel;
4. The charter grade levels or programs are fundamentally inconsistent with the District-operated school on that site;
5. The District-operated site and charter function cannot be separated physically, operationally and programmatically;
6. There will be interference with the School District's short or long term pedagogical, programmatic, logistical or financial priorities or plans for the school;
7. The school will not be able to make plan, calendar or configuration changes.

Thus, while there is no general opposition to the "co-location" of charter schools, it is equally important your school site not be compromised, the students attending the school provided less or there poses a potential danger or harm because of the co-location. Therefore, if there is going to be a charter placed on your public school campus and there are any potential issues as discussed above, they should be raised early to the appropriate school authority and your local CTA office.

Under Education Code §47605 there are two types of Charters (1) established by a majority of parents and (2) conversions by a majority of the permanent teachers. There are also a number of reform programs which your Association has developed and can be an alternative to Charters. While Charters can have advantages, they can also be used to eviscerate due process rights. For example, many Charter Schools are "at will" which allows the dismissal of a certificated employee without cause.

XIX. FIRST AMENDMENT AND OTHER CONSTITUTIONAL RIGHTS

Recent events have created an atmosphere where mere words made even in jest or angry rants can potentially lead to criminal charges being filed. . Penal code section 422, commonly referred to as the "Terrorist Threat Provision" has been invoked when teachers upset by student behavior in their class or on campus have made comments about "killing", "harming" or "doing violence." For example "If you do not stop talking I am going to Kill you." Such language may show poor judgment, but it also has become criminal. Moreover, words to colleagues or administrators which are determined to be "threatening" referring to "death or great bodily harm" can lead to serious criminal implications. Also, comments which are sexual or have sexual innuendo can lead to criminal charges of misdemeanor child molestation under Penal Code § 647.6. Thus, it is very important when selecting ways to express yourself, whether with humor or anger, or conversational, please choose your words carefully.

XX. CONCLUSION

All professional educators at some time in their career may need legal assistance and guidance. Accordingly, there may be many questions to which you will need to respond. When in doubt, contact our office or your union.

We wish the best to you for a successful and meaningful school year.

Your Attorneys
Law Office of TRYGSTAD, SCHWAB & TRYGSTAD
(310) 552-0500
tstlawoffice.com