

# The Board Report

## ARE YOU DOING WHAT YOU CAN TO KEEP YOUR DISTRICT OFF THE 11 O'CLOCK NEWS?

We've all cringed when we hear the sound bite for the evening news which promises to give all the juicy details of the most recent scandal involving a local school district. You hold your breath, waiting to hear the details and whether it's your district. You exhale deeply whenever you learn that it is somebody else's problem and somebody else's turn to reply "no comment" to the media inquiries. But are there steps your district can take to reduce the chance that next time around it isn't your turn? Whether there's an actual rise in incidents or merely an increase in the reporting of these incidents is unknown, but it seems that every month or so there is a new story of a school staff member engaged in something inappropriate. Some of those stories end up in court, like the two incidents mentioned earlier in this newsletter. Other incidents are merely tried by the media in the court of public opinion. The question that always remains is whether your district can do more to minimize the possibility that the incidents ever occur at all?

The following suggestions are offered as extra precautions your district can take, both pre- and post-hiring, to attempt to head off issues of inappropriate behavior by staff members. At the outset, keep in mind that these suggestions are offered without regard to what your district's Collective Bargaining Agreement with a particular employee group may require. To that end, some of these suggestions may need to be modified or discarded if implementing them would give rise to a grievance by an employee group.

### PRE-HIRING PRECAUTIONS

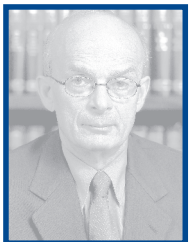
One of the easiest ways you can avoid trouble spots is to scrutinize your district's pre-hiring screening process. No pre-hiring process is fool-proof, of course, and some problems may not develop until after a person has been employed for some period of time, but there are steps your district can take to try to identify and minimize issues.

1. Conduct better interviews. One of the best precautions you can take is to examine your interview process to see whether it contains questions to identify whether potential staff members lack the necessary maturity to conduct themselves properly with students. Some positions always require interviews, while other positions of lesser importance sometimes never include an interview process. It may be the better practice to conduct even brief interviews for any position where there is a potential for student contact. Your interview team should ask at least a few questions to applicants for positions which involve student contact to inquire whether potential staff members can meaningfully articulate the standards of conduct which you expect of them. Consider the following kinds of questions as a means to gauge an individual's maturity level:

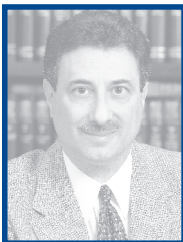
- What is your approach to reprimanding or disciplining students?
- What would you do if a student attempted to curry favor with you or otherwise befriend you in an attempt to receive preferential treatment?

## MAIELLO BRUNGO & MAIELLO, LLP EDUCATION LAW TEAM

As an ongoing service to School Districts in Western Pennsylvania, the Education Law Practice Group of Maiello Brungo & Maiello, LLP is available to respond to your questions, comments or concerns. You may contact any member of our Education Law Team at 412.242.4400 or at the below e-mail addresses.



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- What forms of communication boundaries do you believe are appropriate with students?
  - Do you think school staff members have to maintain a distance between themselves and students?
2. Make sure clearances are complete. Act 34 and 151 require school employees to obtain clearances to ensure that their criminal backgrounds are checked and that no allegations of child abuse have been lodged against them. It is state law that your district obtains these clearances for school employees. You should conduct an internal audit to ensure that clearances are being requested, received and filed in a timely and thorough manner. Further, while the law sets a minimum for compliance, consider whether you may want to impose a more rigorous standard and have clearances updated on some periodic basis during an individual's employment.

## POST-HIRING PRECAUTIONS

There are several steps your district can take with its employee workforce to target improper staff behavior. Implementing these precautions as part of your standard practice can prevent instances of inappropriate acts, and in situations where the acts cannot be prevented, such routine practices can demonstrate to a court, if need be, that your district is serious in preventing and investigating allegations of impropriety.

1. Mentor new staff members. Consider establishing a program whereby all of your new incoming staff members are assigned to a veteran employee who can meet with them and provide guidance to them concerning their obligations as employees. A mentoring program can provide reinforcement of expectations of conduct and ensure that staff members have an outlet for discussing matters in a nonthreatening context. Any mentoring program should include training for the mentors so that the district can be clear about what its expectations are for the program.
2. Establish clear guidelines for student-staff communications. Is it clear to all of your staff members what sorts of communications they may have with students? Is it set forth in Board policy or other written guidance? Are staff members permitted to call or text-message students for any reason? What about e-mail from district and non-district accounts? What about online interactions such as chat rooms and social networking sites? Which communications must be made only through parents? There are a litany of different ways for students and staff members to communicate and, sadly, to facilitate improper relationships. Your district should have internal discussions about proper and improper communications and reduce the results of those discussions to writing, preferably in a Board policy. Periodically remind your staff of the expectations your district has put in place, and take action in the event those expectations are not met. Having a history of ignoring warning signs or not enforcing your own policies is not the place to be.
3. Conduct regular in-service discussions about these issues. Your district should have written policies concerning sexual harassment and abuse and a complaint procedure to address complaints regarding these matters. When was the last time you in-serviced your staff on their obligations under these policies? You should do so at least annually, and document the in-service by retaining a copy of the distributed materials and having employees sign in to indicate attendance. Have you had instances where complaints are lodged? If so, you should review the procedures that were in place and the investigation that was completed to determine whether it was done efficiently and promptly.

The preceding are a few of the measures your district can implement to try to head off problems before they happen. There are some situations that are impossible to foresee, but it is best for your district to feel, at the least, that you've done everything within your power to prevent an appearance on the 11 o'clock news.

## COMMONWEALTH COURT WEIGHS IN ON NEW RTKL

After over 1,000 final determinations by the State Office of Open Records, the first appeal has worked its way through the court system and been decided by the Pennsylvania Commonwealth Court. The case of *Bowling v. Office of Open Records*, 936 C.D. 2009, was decided by the Commonwealth Court on February 5, 2010, and although not directly dealing with an issue normally confronting school districts, the decision is both intriguing and alarming for the answers which it provides to issues related to judicial review of appeals under the new Right to Know Law and redaction of non-public information. For a detailed analysis of this precedent-setting decision, please visit our website at [www.mbm-law.net](http://www.mbm-law.net) for a more detailed analysis.