



Washoe County School District
Every Child, By Name And Face, To GraduationSM

Office of the General Counsel Newsletter

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Use of Copyrighted Material in Schools

The Federal Copyright Act governs the use of copyrighted materials such as movies, literary works, and artwork and the limitations of such use without proper licensing and payment. Generally, the law prohibits the commercial and general use of copyrighted material, but copyright law has carved out an exception for educational use. To qualify for this exemption, educators must: 1) be in a classroom ("or similar place devoted to instruction"); 2) be there in person, engaged in face-to-face teaching activities; 3) be at a nonprofit educational institution; and 4) the work must be used as an essential part of the core, current curriculum being taught. Note that this exemption does not apply to copying materials, online classes, or for general entertainment like after-school movie nights. Thus, if you are aware your staff or parent/teacher groups will be using school facilities to show movies or other copyrighted works for general entertainment purposes, such use is prohibited without a paid license, which can range from \$200-\$500 per movie. Most of the movie licensing is done by Swank. [Click here](#) for information from Swank and contact information to inquire into the specific fees. (Remember to put the license agreement through the District's document review process if school funds, including student activity funds, are being used.)

For online courses or copying of materials, the educational use exception does not apply. Instead, educators are limited to use only portions of the copyrighted materials under the fair use doctrine. The limitations of such use depend on the medium being used. For example, for illustrations or photographs, single works may be used in their entirety, but no more than five images by a single artist or photographer may be used. From a collection, not more than 15 images or 10 percent (whichever is less) may be used.

To avoid a copyright infringement, some works have been deemed part of the public domain and are available for unlimited use. It is advisable that teachers use works from the public domain rather than attempt to meet the fair use exception. For example, [Wikimedia Commons](#) is one of many websites that offers thousands of searchable images that are within the public domain.

Bullying When the Alleged Offender has an IEP

When the alleged offender is a student receiving special education services and has an IEP, there are some additional considerations when conducting the bullying investigation. The law says that if the conduct at issue in the allegation of bullying is conduct addressed in the alleged offender's IEP, then the bullying law does not apply. What does that mean?

The underlying rationale for this section of the law is to avoid labeling a student or a student's conduct as bullying when it is a manifestation of the student's disability. Making this determination does not require the IEP Team to be reconvened. The school administrator makes the determination by reviewing the IEP to see if the conduct is part of a behavior plan or otherwise part of the IEP.

The law still requires us to protect the alleged victim. It can be difficult to balance the needs of both the alleged victim and the alleged offender on an IEP. One difficulty is the inability to discuss with the alleged victim's parent about why the bullying law does not apply. The school should focus on steps they can take to keep

Quick Tips/Links

- Office of the General Counsel webpage
- Civil Rights Compliance Forms
- New Administrative Regulation 5702 – Staff on Student Complaint and Appeal Procedures – Bullying, Harassment, and Discrimination
- Revised Administrative Regulation, 5701, Student Complaint and Appeal Procedures – Bullying, Harassment, and Discrimination
- Staff Resources – Student Bullying Complaints, Investigation and Resolution Process
- Administrative Investigation Procedure (subject to change and possible conversion to Administrative Regulation after six month pilot period)
- Confidential Request for Investigation Form

Topics for Future Newsletters

- Do you have a topic you would like covered in a future OGC Newsletter? Email your ideas or areas of interest/questions/concerns to Breanne at breanne@washoeschools.net.

Upcoming Staff Training Dates

- **Office of the General Counsel**
 - Nevada Association of School Administrators 15th Annual Law Conference
 - Monday, December 10, 2018
 - Sparks Nugget
- **Labor Relations**
 - ✓ **Conducted in the West Conference Room from 4:00 to 6:00**
 - ✓ **Open to all administrators and supervisors**
 - ✓ **Register thru MyPGS**
 - Tuesday, December 4, 2018
 - ESP Due Process and Discipline
 - Wednesday, February 6, 2019
 - Navigating the Certified Contract
 - Thursday, March 7, 2019
 - Navigating the ESP Contract
 - Thursday, April 11, 2019
 - Discipline & Due Process for Certified Staff
 - Thursday, May 9, 2019
 - Discipline & Due Process for ESP Staff

the alleged victim safe. It may also be necessary to reconvene the alleged offender's IEP Team if it appears the behavior plan is not effectively addressing the conduct. If you have questions, contact Gina Session at gsession@washoeschools.net.

The Investigation Plan

An investigation plan is a useful document you can prepare before you launch an investigation. An investigation plan will help keep you focused and create a record of how you approached the incident.

Start with a blank sheet of paper or word document. List the name of the complainant, the respondent and the allegations raised. Next, identify what sources of information you need to look into the allegations and add those items to your plan.

Do you need documentary evidence? List what you think you need and where you think you'll find it. Were there witnesses? Make a list of potential witnesses and their relationship to the parties.

If you would like to see an investigation plan or have questions about creating your own investigation plan, contact Amanda Gormley, Administrative Investigator, at amanda.gormley@washoeschools.net.

Family Medical Leave Act: The Administrator's Role

The Family Medical Leave Act (FMLA) is a federal law that permits employees (those who have been employed for at least 12 months **and** have worked a minimum of 1,250 hours in the previous 12 months) to request up to 12 weeks of unpaid leave for the birth/adoption of a child, to care for a child, spouse or parent with a "serious health condition", or to take care of their own serious health condition. District [Administrative Regulation 4150.1](#) provides that an employee may use whatever paid leave they have on the books concurrently with FMLA leave and once exhausted, the FMLA leave converts to leave without pay. In addition, the District will continue to pay the employee's health insurance premium during FMLA leave (the employee is still responsible for their spouse/dependent coverage payments), and will guarantee placement of the employee back into their previous position (or a substantially similar one) once their leave ends.

FMLA leave may be taken either in whole weeks, or as "intermittent" leave. An employee may use "intermittent" FMLA leave for the purposes of treating a serious health condition (such as for chemotherapy treatments) or caring for a child, spouse or parent with a serious health condition. If intermittent leave is requested, the Office of Human Resources (HR) will work with Administrators to determine the leave covered under FMLA. Any leave taken by the employee exceeding the amount stated in intermittent leave paperwork is treated as regular leave.

It is very important to note that, similar to leaves of absence, site-level Administrators **do not** have the authority to approve or deny FMLA leave. Paperwork for FMLA leave is submitted through HR and HR determines eligibility for FMLA leave. Administrators only sign acknowledging they have been made aware of the request. The Administrator then coordinates with HR to ensure that the employee's right to return is preserved.

If an employee does not qualify for FMLA, they may qualify for a different type of medical leave that is governed by the Negotiated Agreements between the District and the various employee groups. These leaves are further described in the Negotiated Agreements – please refer to them or contact Labor Relations for assistance.