



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

Office of the General Counsel Newsletter

February 2020

Volume 2, Issue 3

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What an Administrator Can Do Regarding Employee Sick Leave Abuse or Excessive Use

First, be clear, employees are entitled to all rights and privileges contained in law and collective bargaining agreements. That being said, “sick leave is to be used only if the employee is unable to perform his/her duties.” (See WEA CBA section 20.1.6 and WESP CBA section 9.1.1.2) If an administrator has good reason to believe that an employee is abusing leave privileges, the administrator can ask the employee to verify the need for the leave. (That is the easy one.)

Can an employee’s use of accrued sick leave be excessive? Don’t they have a right to use all their sick leave? These are the difficult situations. An employee constantly using up sick leave privileges, even for legitimate reasons, may still be cautioned, counseled, and yes, even disciplined for excessive use of leave privileges. However, **DO NOT JUMP THE GUN**. Call the Department of Labor Relations (DoLR) or the Office of the General Counsel (OGC) to talk through the situations.

An employee must have fair notice that the administrator is concerned about all the time the employee is missing from work duties and the impact it is having on the school or department before thoughts of possible discipline can be entertained.

Arbitrators have upheld employers’ rights to discipline employees for excessive use, but it must be well documented and truly excessive over a period. Some arbitrators put the threshold at 20% missed time. Depending on the facts of a particular case, a slightly lower percentage might be sufficient cause for discipline. In other cases, perhaps a higher percentage is needed. The best way to approach excessive employee absence situations is to not to let it get that far!

We suggest that administrators adopt a threshold number of absences, which lets the administrator know that an employee’s leave is becoming a concern. When reaching the threshold number, the administrator should send a letter of concern to the employee stating something to the effect that ‘in our first thirty school days you have been absent eight days and I am concerned about you. I would like to meet with you in order to discuss this matter to see if there is anything I can help you with.’ This type of letter serves two purposes. One, if the employee is truly going through difficulty, the administrator can assist that person sooner rather than later. Or, two, if the employee is abusing the leave privilege because he/she thought no one was watching, that employee may think twice before taking the next day off because someone is watching.

Again, these are dicey issues. Contact the DoLR or the OGC to discuss excessive absence concerns.

Quick Tips/Links

- Office of the General Counsel webpage
- Civil Rights Compliance Forms
- Staff Resources – Student Bullying Complaints, Investigation and Resolution Process
- OGC FAQs, Civil Rights Compliance FAQs, Labor Relations FAQs, Administrative Investigations FAQs

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 bread@washoeschools.net for consideration of coverage in a future issue.

Upcoming Staff Training Dates

CIVIL RIGHTS COMPLIANCE

Mandatory Coaches Training

- Tuesday, May 4th 5-6:15 pm
 - Location TBD
- Tuesday, May 11th 5-6:15 pm
 - Location TBD
- Tuesday, May 19th 4-5 pm
 - Galena High School
- Tuesday, May 26th 4-5 pm
 - Sparks High School

LABOR RELATIONS

- ✓ Conducted in the West Conference Room from 4-6 pm
- ✓ Open to all administrators and supervisors
- ✓ Register thru MyPGS
 - Tuesday, February 18th
 - Navigating the Certified Contract
 - Tuesday, March 3rd
 - Navigating the ESP Contract
 - Tuesday, April 7th
 - Discipline & Due Process - Certified Staff
 - Tuesday, May 5th
 - Discipline & Due Process - ESP Staff

Investigating Anonymous Complaints

Complaints are brought forward in a variety of ways and the anonymous complaint can prove to be one of the more difficult types of investigations to conduct.

Many anonymous complainants will give some specifics – an offender's name, a rule violation and/or identify a victim or a witness. These are referred to as factually specific anonymous complaints, meaning that the author has provided some level of information with which you may be able to start your investigation.

The other type of anonymous complaint is the vague anonymous complaint. These are more difficult to handle because the narrative may not contain enough specificity to open an investigation file.

Anonymous complaints should always be seriously considered. Review the information, create an investigation plan and then determine if you have enough information to move forward. Never close an anonymous complaint without memorializing what you received, when you received it and why you are closing it.

It is also recommended that you scan and save any anonymous letters you receive, especially if you are not going to initiate an investigation because chances are, the same issues will surface at a later date. If you are not sure what to do with an anonymous complaint, please give our Office a call.

Videos with Multiple Students and FERPA

Under the Family Education Rights and Privacy Act (FERPA), a school district is prohibited from disclosing student education records or the personally identifiable information (PII) contained therein, without prior, written consent from the parent or eligible student, unless the disclosure meets an exception to FERPA's general consent requirement. FERPA additionally requires schools to provide a requesting parent or eligible student with the opportunity to inspect and review his or her child's, or his or her, education records; however, it does not require schools to provide parents or eligible students with copies of education records unless circumstances effectively prevent a parent or eligible student from exercising his or her right to inspect and review the education records. FERPA provides that when education records contain information on more than one student, the parent may inspect and review or "be informed of" only the specific information about his or her own child unless the information about the other student or students cannot be segregated and redacted without destroying its meaning.

If a parent is asking to review video surveillance of their student, and that video directly relates to their student (i.e. a school fight, a bullying incident caught on video, videos used as evidence to discipline a student, etc.), a school district must provide the parent of the student with the opportunity to inspect and review the video, even if there are other students on the video. Please note there is no requirement that the school provide a copy of the video, and this Office advises against providing copies of videos, particularly when other students are on the video. If the school district can reasonably redact or segregate out the portions of the video directly related to other students, without destroying the meaning of the record (i.e. using blur technology), then the school district is required to do so prior to providing the parent or eligible student with access. On the other hand, if redaction or segregation of the video cannot reasonably be accomplished, or if doing so would destroy the meaning of the record, then the parents of each student to whom the video directly relates would have a right under FERPA to access the video even though it also directly relates to other students.

If you have questions regarding FERPA, please call the Office of the General Counsel.