School Laws Guide

MSTA's Code of Professional Ethics

Student

- We believe our first obligation is to the students entrusted to our care.
- We believe the purpose of education is to develop each individual for his or her fullest participation in the American democratic society, to pursue truth and to seek excellence. We will accept the responsibility of taking the initiative to eliminate all barriers that prevent full access to this unique education for all.

Profession

- We believe academic freedom is inherent in, and essential to, the teaching profession.
- We believe that for students to learn, teachers must be free to teach.
- We believe every educator should have a broad general education, a depth of preparation in special areas and a mastery of knowledge and skills.
- We believe an educator should be endowed with a thorough understanding of professional ethics, should possess a zeal for continuous self-improvement and should be imbued with a sense of moral and professional responsibility.

Community

- We believe every educator has a right and a responsibility to be an informed and active citizen.
- We believe that if school is to relate to the students, teachers must understand the community and the home environment of all students.
- We believe free public education is an integral part of the community it serves, and we shall encourage the development of educational opportunities for all.
- We believe the continuation of our free nation and its strength and well-being are dependent on free public education.

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What to do if you think you have a legal problem

1. Document all pertinent facts.
2. Don't sign anything before you have read it.
3. If permitted, take a witness with you to meetings.
4. Don't resign your position until you have consulted with MSTA.
5. Contact your MSTA field service coordinator or MSTA Legal Services at 866-343-6186.

MSTA

P.O. Box 458,
407 S. Sixth St.
Columbia, MO 65205
General 800-392-0532
Legal toll-free: 866-343-6186
Email: legalservices@msta.org
www.msta.org

Practical tips to protect yourself

1. Missouri law generally does not require an employer to give an employee access to his or her employment records. If district policy allows it, it is a good idea to review your personnel file in the district's central office from time to time. It may be necessary to make an appointment to do so. Make a list of all items in your file and make copies of important documents. Leave one copy of the "inventory" list signed and dated by you (and your witness, if allowed by policy) in the personnel folder. Retain your file inventory list and copies for your private records.
2. Always take notes at or soon after the time of meetings with any supervisor during the year. Include witnesses' reports and date all materials. (Do not overlook brief visits or observations.)
3. Keep copies of all documentation you give to your evaluator/principal.
4. Keep copies of all documentation given to you by your evaluator during the evaluation cycle.
5. As you receive formative evaluations, memos, professional development plans or summative evaluations, remember to ask for time to review them and to prepare a written response later if you need to. When you attach statements or comments on a separate sheet (the space provided on the form is usually small), write on the original, "See attached teacher comments." Always keep copies of what you attach. When you do sign the forms, include the date. If an earlier date has been filled in by the evaluator, ask that it be changed to reflect the correct current date or put the current date next to your signature. Your signature on a professional improvement plan or evaluation indicates only that you have received and read the document, not that you agree with it. Don't risk making a delicate situation worse by refusing to sign.
6. Request permission to bring along a witness for any meeting that might deal with your job security, but understand there is no legal requirement that you be permitted to do so. Phrase your request professionally. Explain that your witness will not participate in the meeting, but is there only to listen and take notes during the conference. If you are not allowed to have a witness, make notes during the meeting or immediately after and sign and date them.
7. Keep any notes concerning student or parent conferences in a file where you easily can find and retrieve them, yet in a location that is not accessible to others. Remember that significant privacy rights are extended to many types of student and health records.
8. Ask for copies of any parent or student complaint lodged against you, including the names, dates and specifics of the complaint. Districts are not required to provide copies of these complaints, however.
9. Ask your administrators for copies of any records about you they may have in their files. (You may be refused or have difficulty getting these, but ask anyway. Ask for both positive and negative items.)
10. In conversations or meetings, always maintain a calm and professional demeanor. Try not to react defensively or in anger, no matter how justified you may feel. You will not communicate or advocate effectively on your own behalf if you are agitated. If nec-

essary, request a moment to prepare yourself, or make an appointment to come back at a later time when you can better proceed with the meeting.

11. If you are asked by an administrator to resign, NEVER do so before contacting MSTA. Regardless of attempts to pressure or persuade you to resign immediately or by the end of the day, you cannot be required to do so if you have an employment contract with the district. You are entitled to due process, so don't let implications, suggestions, or threats influence your decision.

FAQs about the Teacher Tenure Act

A number of the more commonly asked questions about the Missouri Teacher Tenure Act, which is found in Chapter 168 of the Revised Statutes of Missouri, are listed below and on the following pages. If you have other questions related to the provisions of this law or any other legal matter related to your employment in Missouri's public schools, don't hesitate to contact MSTA at our toll-free number, 866-343-6186.

Permanent or tenured teachers

How and when does a teacher acquire tenure?

Most commonly teachers acquire tenure when they have been employed full time as teachers in the same school district for five successive years and are offered a contract for the sixth year. Tenure commences when they report to work at the beginning of their sixth successive year. The local school district has no discretion in whether to award or withhold tenure once these conditions are met.

Does it always take five years to acquire tenure in a district, or do I receive credit if I've taught elsewhere?

If you were employed full time as a teacher in another school system for at least two successive years, your current school district must waive one year of the five-year probationary teaching requirement. You will acquire tenure after four successive years of full-time employment as a teacher in the latter district.

When do part-time teachers acquire tenure?

Part-time teachers accrue credit toward tenure on a prorated basis. This can result in a teacher reaching permanent status in the middle of a school year. For example, a teacher who performs instructional duties four-sevenths time in a district with a 180-day contract period will earn approximately 103 days of credit toward tenure for each school year he or she is employed on the same schedule. Thus, the teacher would acquire tenure in the district on the 132nd day of his or her ninth successive contract with the district.

Do tenured teachers need to sign a new contract each year?

It is not required to maintain tenure, although many school districts issue new contracts to all teachers each year for recordkeeping purposes. Once you have acquired tenure in a school district, you have an indefinite contract with the district, which continues in effect until it is modified or terminated in accordance with the statutes.

The board unilaterally may modify the contract prior to May 15 of each year regarding the beginning date and length of the next school year, and the amount of compensation provided by the salary

schedule adopted by the board and applicable to all teachers. The district must provide you with written notice of those changes within 30 days after they are adopted by the school board. Any other modifications of the contract must be made by mutual consent of the teacher and the school board.

If a tenured teacher signs a contract in April or May, may he or she terminate employment for the next year without the board's permission?

A tenured teacher who wishes to terminate a contract at the end of a school term must give written notice to the district of his or her intention to do so on or before June 1 of that year. MSTA's Legal Services Department and several respected law firms representing Missouri school districts take the position that even if a tenured teacher has signed a contract earlier in the spring, he or she still may terminate the contract for the next year without board permission or penalty by giving written notice on or before June 1. No Missouri court cases have addressed this question definitively.

Under what circumstances can a tenured teacher's employment be terminated involuntarily?

The statutory grounds for termination of an indefinite contract are limited to the following:

- A physical or mental condition that renders him or her unfit to instruct or associate with children;
- Immoral conduct;
- Incompetency, inefficiency or insubordination in the line of duty;
- Willful or persistent violation of or failure to obey Missouri's school laws or the local school district's published policies or regulations;
- Excessive or unreasonable absences; or
- Conviction of a felony or a crime involving moral turpitude.

Must a school district always give a tenured teacher 30 days to improve before beginning termination proceedings?

Not always. When a notice of charges for a tenured teacher is based on incompetency, inefficiency or insubordination, the school board or the superintendent first must give the teacher written warning of the causes that may result in charges. The written warning must state the specific causes which, if not removed, may result in termination charges, and it must be given at least 30 days before service of the notice of charges. (This written warning commonly is known as a "30-day letter.") After delivery of the warning, the superintendent or a designated representative must meet and confer with the teacher in an effort to resolve the matter.

Under all other statutory grounds for termination, the school board is not required to provide an improvement period of 30 days, and it can proceed immediately with a notice of charges and termination proceedings.

What due process is available for tenured teachers before their employment can be terminated involuntarily?

A school board cannot terminate a teacher's indefinite contract until after it has served the teacher with written notice of the right to a public hearing and a copy of the charges specifying the grounds it believes exist for termination. A teacher who wants a hearing must request it within 10 days of receiving the notice and charges. If no request for a hearing is

made within 10 days, the board may, by majority vote, terminate the contract or conduct a hearing. If either party requests a hearing, it must take place not less than 20 nor more than 30 days after the notice of hearing has been served on the teacher. The school board may suspend a teacher while termination proceedings are pending, but it must continue to pay the teacher's salary during that suspension.

At a termination hearing, the teacher has the right to be represented by legal counsel, to cross-examine witnesses called by the board against the teacher, and to subpoena witnesses to appear and testify on the teacher's behalf. By statute, termination hearings are open to the public. The school board must pay all costs of the hearing, including the employment of a stenographer to make a full record of the proceedings, although the board is not required to pay for the cost of counsel for the teacher. The stenographer must provide a full written record of the proceedings to the parties within 10 days after the conclusion of the hearing. The board has seven days after it receives the hearing transcript to render its decision by majority vote of the board. It must provide a written decision to the teacher within three days after the vote.

Can a teacher acquire tenure with respect to extra duties such as being a club sponsor or coach?

No. Missouri courts have held that a school board unilaterally may modify or terminate extra- or extended-duty contracts and that the protections of the Teacher Tenure Act do not apply. There is no due-process property interest in continued employment under an extra- or extended-duty contract.

Probationary teachers

Are probationary teachers entitled to due process before their contracts can be terminated?

Yes. Missouri law requires procedural due process before a probationary teacher's contract can be terminated involuntarily during the term of the contract. A probationary teacher in the midst of a contract term has a property interest in completing the contract term. It is that interest that entitles the teacher to due process before he or she can be terminated.

A probationary teacher who is deemed to be doing "unsatisfactory work," must receive a written statement definitely setting forth the problem area(s) in order to give the teacher a chance to "correct his fault and overcome his incompetency." After 90 days, if the teacher does not make satisfactory improvement, the board can vote to terminate the contract for cause immediately or at the end of the school year without a hearing. The board also may terminate a probationary contract during its term if there are other grounds for cause. The statute does not specify the notice and hearing requirements to be followed to terminate a probationary teacher's employment during the term of the contract, but in practice, most school districts follow a procedure similar to that afforded tenured teachers.

There are important legal and procedural distinctions between the termination for cause of a probationary teacher's contract during its term and the nonrenewal of a probationary teacher's contract for the succeeding year. Unlike permanent teachers who have indefinite contracts, probationary teachers are employed under a one-year employment contract.

The board may decide not to renew a teacher's contract for the next year for any reason as long as it is not an unlawful reason. Unlawful reasons would include discrimination based on a protected class (race, gender, religion, etc), retaliation for filing a charge of discrimination or a number of other protected categories of workers. The teacher is entitled to request written reason(s) for the nonrenewal, and to receive a concise statement thereof.

If the reason for nonrenewal is due to declining enrollment, school district reorganization or the financial condition of the district, the district automatically must include a statement of the finance-based reason(s) in the written notice of nonrenewal. In this way, the Teacher Tenure Act makes a qualitative distinction between nonrenewals for finance-based reasons and nonrenewals for all other reasons.

There is no entitlement to a due process hearing for any teacher who has been nonrenewed regardless of the reason.

Is a school district required to notify a probationary teacher if it does not intend to renew his or her contract for the succeeding school year?

Yes. A school district must notify a probationary teacher in writing on or before April 15 in each school year if the teacher's contract will not be renewed for the next year. Any teacher who is not notified by the school district of nonrenewal is deemed to be rehired for the next year. Keep in mind that the board has the final authority to offer a contract or to decide not to renew it, although the board also must act within the statutory timeframes. Principals and superintendents make recommendations, but they do not have the final authority.

When must probationary teaching contracts be issued and returned?

Statute requires school boards to issue contracts to probationary teachers who are being rehired by May 15. A probationary teacher has 15 days to sign and return the contract. Failure to do so constitutes a rejection of the board's offer. The teacher's 15-day window to sign and return the contract begins when the district provides a copy of the contract to the teacher. For instance, if the district offers a probationary teacher a contract for the succeeding year on April 1, the teacher has 15 calendar days from April 1 to sign and return the contract.

Provisions applicable to all teachers

Can a teacher be demoted without due process?

The Teacher Tenure Act defines demotion as any reduction in salary or transfer to a lower-salaried position unless requested by the teacher or unless the salary reduction is applicable to all teachers or all teachers in a classification.

Case law interpreting this part of the Teacher Tenure Act has deemed it a demotion if a teacher is retained at the same salary while other teachers in the same classification are awarded raises. A school district may not take such action unless it first provides the teacher with notice of the action it intends to take, its reasons for proposing the action and an opportunity to be heard by the school board.

What limitations are there on a school district's ability to discontinue programs or reduce staff for economic reasons?

Missouri law permits a school district to place teachers on unrequested unpaid

leave of absence because of decreased pupil enrollment, district reorganization or the district's financial condition. Budget cuts and payment withholdings from the state have triggered wide usage of this authority by Missouri school districts in the past. There are few guidelines in the law governing this area. Both probationary and tenured teachers may be placed on leave, subject to certain limitations:

(1) A tenured teacher shall not be placed on leave if there are probationary teachers in positions for which the tenured teacher is qualified;
(2) In determining which tenured teachers to retain, performance-based evaluations and seniority within the field of specialization must be considered, but seniority cannot be controlling;
(3) Tenured teachers must be reinstated to the positions which they left, or if not available, to positions requiring like training and experience, or to other positions in the school system for which they are qualified by training and experience;
(4) No new teachers may be hired to fill existing vacancies while qualified teachers remain available on leave;
(5) Teachers placed on leave may secure interim employment elsewhere without losing the right to reinstatement;
(6) A tenured teacher's status is not impaired by being placed on leave; and
(7) The unrequested leave of absence shall continue for not more than three years, unless extended by the board.

Besides the Teacher Tenure Act, what other limits are there on a local school board's authority?

As it now exists, Missouri law grants local school boards and board members broad powers and discretion in the management of school affairs, including such issues as hiring, firing, and fixing employee compensation and salary schedules. There is a strong presumption of validity in favor of school-board decisions, and courts are reluctant to interfere unless there is clear and convincing evidence the board acted in an arbitrary, capricious or unreasonable manner or abused its discretion. Of course, the board must comply with Missouri's Sunshine Law in the conduct of all board business, meetings and recordkeeping, and the board is obligated to follow its own published policies. Failure by a school board to follow its own policies can serve as the basis for the filing of a grievance.

Principal and supervisor contracts

Can principals or other supervisors acquire tenure or permanent status?

No. Principals or other persons in non-teaching supervisory positions cannot acquire tenure in those positions. However, a person who has achieved permanent-teacher status in the district before being promoted to principal or assistant principal retains tenure as a teacher. In addition, any person who was a permanent teacher in another district shall have permanent-teacher status in their current district if employed in that system for two or more years as a principal or assistant principal.

What rights, if any, do principals and supervisory employees have in continued employment with a school district?

The rights of a principal or other supervisory employee are similar to those of probationary teachers. They must be notified in writing on or before April 15 if the school board does not intend to reemploy them in the same position for the coming school year. Failure to provide the notice constitutes reemployment on the same

terms for the next year. The school board must issue contracts to those principals and supervisors whom it intends to reemploy on or before May 15, and the contracts must be signed and returned within 15 days after receipt, or the offer of employment is deemed to be rejected.

Do long-time principals have any right to a statement of reasons or a hearing if they are notified that their contract will not be renewed?

Yes. If principals or other supervisors have been re-employed in the same position five times and then are notified that they will not be re-employed in the same position in the coming year, they may, within 10 days after receiving the notice of nonrenewal, request written reasons from the board for the nonrenewal. Within 10 days after receiving the written reasons, they may request a hearing before the board for the purpose of persuading the board to reconsider its decision.

Noncertified employees: At-will and contract employment

What rights or protections do noncertified school-district employees have?

Certified employees of school districts are required by statute to have contracts of employment. Most noncertified district employees do not have contracts, have contracts that do not contain a definite term of employment, or have contracts with a term of employment that also state they may be terminated "at will." These employees all are referred to as "at-will" employees.

At-will employees may be terminated at any time unless there is an agreement requiring a specific notice of termination period such as two weeks. They may be terminated without cause and without being given a hearing. Conversely, at-will employees may quit at any time, subject to any applicable notice period in an agreement, because they are not obligated to fulfill a specific term of employment.

If a district does enter into a contract for a specified term with a noncertified employee who is not at-will — either by formal agreement, board policy or other binding arrangement — the employee is entitled to a hearing before he or she can be discharged during the term of the contract. Under these circumstances, the district must have cause to terminate the employee. Also, under this example, the employee would be obligated to complete the agreed-to duration of employment. As with probationary teachers, there are ordinarily no due-process requirements if the district declines to rehire a noncertified employee for the next school term.

Working conditions

Breaks and lunch periods:

There are no state or federal laws regarding breaks or lunch periods. These issues might be addressed by company policy, or could be covered by union contract. *http://www.labor.mo.gov/DLS/ General/faqs2.asp*

This applies to hourly as well as salaried employees. Make sure you are in compliance with board policy. If your policy does not allow lunches or breaks, it may be a discussion topic for your staff welfare committee or bargaining representative.

Transfers and reassignments:

One of the most common questions posed to the MSTA Legal Department is "Can the district move me to a different class room/ building/grade level without my consent?"

The question may come in different forms, but the answer is always based on the same logic. The district can transfer and reassign teachers at its pleasure in accordance with board policy, unless a teaching assignment is a part of the teaching contract. Unfortunately, teaching assignments are rarely, if ever, included in the teaching contract. Missouri statute spells out the basic requirements of a teaching contract to include items such as the beginning of the school year, the length of the school year and annual compensation. School districts can, and often do, add items to their general teaching contract, so it's possible your district has made your teaching assignment part of your contract. Be sure to check the language of your contract and, if you have any questions, call the MSTA Legal Services Department for assistance.

One other document may affect a district's ability to transfer or reassign a teacher without the teacher's prior consent: a collective-bargaining agreement. Transfer/reassignment clauses are fairly common in collective-bargaining agreements, though they vary in scope and effectiveness. If your district has a collective-bargaining agreement, be sure to check if that document deals with transfers or reassignments.

Class size:

No state or federal statute regulates appropriate or maximum class sizes. In Missouri, the Missouri School Improvement Program (MSIP) sets guidelines for class size based on grade level. MSIP standards have both a minimum standard and a desirable standard. A district must at least meet the minimum standard to receive points towards MSIP accreditation.

The MSIP class-size standards are as follows:

GRADES	MINIMUM STANDARD	DESIRABLE STANDARD
K-2	25	17
3-4	27	20
5-6	30	22
7-12	33	25

For full-time elementary art, music, physical education and computer teaching specialists, MSIP requires them to teach no more than 750 students per week.

MSIP standards can be increased if the classroom has a full-time or half-time teaching assistant. Full-time assistants allow an additional 10 students per classroom while half-time assistants allow five additional students. Aides provided with Title I or special education funds cannot be used to increase class enrollment.

There are also some special rules for particular classes:

- High school classes that combine beginning and advanced levels of the same subject are limited to 15 students.
- High school classes that combine advanced levels of the same subject are limited to 20 students.
- Performing arts classes may exceed the regular class size as long as adequate supervision and space are available.
- High school physical education classes may enroll up to 45 students.

As with all MSIP requirements, the class-size guidelines are not as enforceable as a state or federal statute. A district must earn a certain number of points throughout the review process to earn accreditation. A district can decide to

meet some MSIP standards while failing to meet others. A district must simply meet enough standards to earn accreditation. Therefore, a district could choose to disregard the class-size guidelines without serious repercussion.

Plan time:
No state or federal law requires school districts to provide teachers with a set amount of planning time during the school week. In Missouri, the Missouri School Improvement Program (MSIP) sets guidelines for fulltime classroom teachers, including kindergarten teachers, and calls for a minimum of 250 minutes of scheduled planning time each school week. The guidelines also suggest providing 50 minutes of planning time each day.

Further, MSIP calculates planning time between the official start and end of the school day, and does not include travel time, lunch time or time outside of the official day.

As with all MSIP requirements, the planning-time guidelines are not as enforceable as a state or federal statute. A district must earn a certain number of points through the MSIP review process to earn accreditation. A district can decide to meet some MSIP standards while failing to meet others. A district must simply meet enough standards to earn accreditation. Therefore, a district could choose to disregard the planning-time guidelines without serious repercussion.

Due process

Due process is a legal term often used in society, but its meaning and practical implications can be unclear. Probationary and tenured teachers have due process rights, so it's important to know not only what those rights are but when they are triggered.

There are two types of due process, substantive and procedural. We are mainly concerned with procedural due process rights. Boiled down to one sentence, "procedural due process rights" ensure that before being deprived of your property interest, you will be given an opportunity to tell your side of the story.

Both probationary and tenured teachers have contracts with school districts. These contracts provide teachers a salary and various other benefits. Once both parties have signed the contract, it is a legally binding document that gives each party involved obligations and benefits. Since both parties have signed that contract, the benefits listed, such as salary, become a property interest. In other words, since the school has agreed to pay the employee a set amount, the employee has a legal right to that salary, making it a protected property interest. Before that property interest can be taken away, because it is something you now rightfully own, certain procedural steps, referred to as due process, must be taken. It's important to note that while the employee does have a right to their salary and other benefits listed in the contract, it can still be revoked. The law simply gives an individual the opportunity to be heard before that property is taken away from them.

If a school district wishes to terminate the indefinite contract of a tenured teacher or the contract of a probationary teacher during the school year, they must issue you a notice of charges. The school must give tenured teachers 30 days, and probationary teachers 90 days, to show performance improvement before issuing charges for incompetency, inefficiency or insubordi-

nation. Once charges have been filed the teacher can then decide if he or she wants to proceed with a school board hearing, or take an alternative route to resolve the dispute. An alternative would be to waive your right to a termination hearing, resign your position, and work out a settlement agreement with the school district. If a teacher does go to a hearing, both the school and teacher are given a chance to present evidence and tell their side of the story. At this open public hearing the teacher may be represented by legal counsel. The school board needs a simple majority vote to terminate the teacher.

It's important to keep in mind that while this due process may not seem like much protection, it's much more than an at-will employee receives. Most Americans, including most non-certified school employees, are at-will employees. This means that they can be terminated at any time, without notice, for any reason, as long as they are not being discriminated against. Having a contract with the school district prevents these "on the spot firings", and requires the school take certain steps to terminate a teacher's contract.

Reference requests

The prudent school district employer usually will provide prospective employers with a name, rank and serial number-type of reference for an employee or former employee — in other words, it will confirm the fact of employment and the dates of employment, and identify the position(s) held. There potentially are legal risks to the school in providing inaccurate or misleading statements.

Pursuant to state law, however, school districts are required to share certain information about former employees that have been accused of sexual misconduct involving a student. Regardless of the outcome of the district's investigation, if the employee is terminated or resigns his/her position based on the allegations the district must share that information with any potential school district employer that asks for a reference. If a district fails to share this information, the district will be held liable for damages caused by a subsequent sexual misconduct case. School districts typically interpret this statute broadly so as it ward off any potential liability in the future.

Technology policies

Most Missouri school districts provide Internet access and email services for their employees' use at work. These tools have become invaluable and can enhance work performance regardless of your position in the district. Technology provides quick and efficient access to incredible amounts of information and creates opportunities for collaboration by students and staff across all geographic boundaries. But these tools can be misused, and the consequences of careless or deliberate misuse can be serious. School districts are subject to untold costs in compromised system security and corrupted data and equipment. Offending employees are subject to sanctions ranging from reprimand to termination to, in some cases, criminal culpability.

To protect against these risks, most local school boards have adopted policies or guidelines governing the use of district technology resources. Some districts require employees to sign technology agreements. Regardless of the form such policies take in your district, it is your responsibility to read, understand and abide by the rules. Even if your district has no written policy, don't be lulled into

thinking there are no restrictions on your use of these tools. As is the case with other equipment and supplies provided to support your work, the hardware, software and cyberspace provided to you for use at work belong to your employer and should be used only for school district and employment-related approved business.

Although you retain some rights to privacy in the workplace, a public employer may be able to justify access to private information if it has a legitimate need for control and supervision. Employers may monitor employee communications and, so long as you have been notified that it will occur, there is no requirement that your employer get your consent to do so. Electronic communications can be monitored, stored, retrieved, viewed or listened to by your administrators — even those messages you delete or never send. This includes voice mail, text messages, faxes and your access to Internet sites.

In addition to following required rules and procedures, some simple but effective safeguards can further minimize your risk of violating technology policies. Log off your computer when you're not using it and whenever you leave the room. Don't share your password and, if feasible, arrange to change it periodically. If you receive inappropriate communications or discover other inappropriate uses of district technology, report it to your supervisor or building administrator immediately. If something would be inappropriate to say or share in person, it is probably inappropriate to send via email or another medium. Monitor student use of the Internet or email closely. If students access or send inappropriate information at school, you may be held accountable.

Cell phones are a handy alternative in some districts where classrooms are not equipped with speakers or telephones, but they, too, can be abused. Take deliberate measures to manage your cell phone use at work to ensure that the ready access does not put you at risk. To prevent theft or unauthorized use of your phone, keep it with you or safely stored at all times. When you have students in your classroom, your paramount responsibilities are to provide appropriate supervision and instruction. A ringing phone begs to be answered. Even when you resist the urge to answer it, it creates an unnecessary and preventable disruption to you and your students. During those periods, keep your phone turned off or in silent mode. Caller I.D. and voice mail ensure that you won't miss important calls. If there is a true emergency, office or administration staff will let you know. During non-instructional periods, it is still wise to use caller I. D. or voice-mail functions to screen incoming calls. Unless you are expecting a specific and important call, avoid answering incoming calls during school hours.

The electronic workplace poses challenges and risks., but the potential benefits for students, staff and the community are huge. School-district employees who use common sense and good judgment should not be unduly burdened by maintaining the security and integrity of electronic communications.

Staff-student relations

In conjunction with your district's technology policies, you must establish yourself as the professional adult in any situation involving students. Set the appropriate boundary lines, and make sure that neither you nor your students cross them. Do not become involved inappropriately with your students in

chat rooms, locker rooms or classrooms. Social networking also has valuable uses, but do not network in or outside of school as "friends" with your students. Know and adhere to your district's staff/student relations policy alone and in conjunction with the technology policies.

Mandatory reporting of child abuse and neglect

Key definitions from Missouri's child abuse/neglect law

Child — Any person, regardless of physical or mental condition, under 18 years of age.

Abuse — Any physical injury, sexual abuse or emotional abuse inflicted on a child other than by accidental means by those responsible for the child's care, custody and control, except that discipline including spanking, administered in a reasonable manner, shall not be construed to be abuse.

Neglect — Failure to provide, by those responsible for the care, custody and control of the child, the proper or necessary support, education as required by law, nutrition or medical, surgical or any other care necessary for the child's well-being.

Mandatory reporters

Missouri law requires people in certain occupations, if they have reasonable cause to suspect that a child has been the victim of abuse or neglect as defined above, to report the situation to the Children's Division (CD) of the Department of Social Services (there is no longer a DFS, or Division of Family Services.) Teachers, principals, administrators, counselors and others with responsibility for the care of children are included among those who are required to report their reasonable suspicions. They frequently are called "mandatory reporters." Almost all school-district employees fall within this definition if they have responsibility for students during a part of the school day.

The mandatory reporter requirement in Missouri was recently amended to require mandatory reporters to personally make the call to the CD as opposed to reporting the suspected abuse to the designated person in the district. This personal responsibility to notify the CD also comes with guaranteed protections that prohibit the school district from preventing the report from occurring.

Any school employee that believes he/she is required to make a report of suspected abuse or neglect should first make sure school board policy does not require the employee to also report the abuse or neglect to the school district so the district can determine if it is required to make a report as well.

Mandatory reporters may request to receive information concerning the general disposition of their reports.

Immunity from civil or criminal liability

Any person who makes a report in compliance with the law or cooperates with CD, law enforcement or others in the investigation or adjudication of a report is immune from any civil or criminal liability for his or her actions, so long as the reporter acts in good faith, even if the allegations are ultimately determined to be false. Any reporter who intentionally files a false report, or acts

in bad faith, will not have immunity from liability.

Child abuse and neglect investigations and review procedures

After a report alleging child abuse or neglect is made, it is forwarded by the CD to the appropriate local office for co-investigation with local law enforcement. Investigations generally are initiated within 24 hours of the report.

Caseworkers ordinarily have 30 days to complete their investigations but may, for good cause, request an extension. Within 90 days after receipt of a report, the investigator must issue a final determination and notify the alleged perpetrator and the child's parents of the determination. Most claims culminate in one of two determinations: there is a preponderance of the evidence that abuse or neglect exists, or there is insufficient evidence to support the allegations and the allegations are unsubstantiated.

An alleged perpetrator who disagrees with a finding of abuse or neglect may request an administrative review of the decision and a hearing before the Child Abuse and Neglect Review Board. The board is an independent review body appointed by the governor to review CD's investigations and findings of preponderance of the evidence. The board's review is very narrow; it is limited to looking at the investigator's determination and seeing if it goes against the weight of the evidence. If the board upholds the division's finding of abuse or neglect, the alleged perpetrator may request de novo review in the circuit court. De novo review is broader. The court effectively starts over, reviewing all the evidence that the investigator(s) had and reaching its own conclusion of whether or not there is a preponderance of the evidence to support a finding that abuse or neglect exists. An unfavorable decision at the circuit-court level may be appealed through the state's appellate court system.

What to do if you are reported

If you receive notice from a school administrator, a person in law enforcement, an investigator assigned to the CD or any other person that you are the subject of an investigation, call MSTA's Legal Services Department immediately. Be polite and cooperative with the administrator or official who contacts you, but inform that person that you will need to consult with your legal counsel before you arrange for an interview or give a statement. (This includes your principal or superintendent.) Obtain the person's name, title and telephone number, and state that you or your attorney will be in contact with them as soon as possible. Generally, you cannot be forced to give a statement, so do not let anyone intimidate you or lull you into believing everything will go away if you will talk to them right now.

Retention of information by CD

CD retains identifying information related to reports and final determinations in a central registry. Identifying information related to unsubstantiated reports received from persons required to report suspected abuse is retained for five years. Identifying information related to unsubstantiated reports received for all other reports is retained for two years.

At the end of these respective periods, the identifying information is removed from the records and destroyed. Where insufficient evidence is found, and the division determines the allegation was made maliciously — for harassment or in retaliation because a mandatory reporter filed a report — the identifying information is expunged within 45 days. Informa-

tion related to a finding of child abuse or neglect is retained in the central registry for the duration of time required by law.

School violence hotline

The Missouri School Violence Hotline receives reports of school violence from students, school personnel, concerned parents and anonymous callers. To report any acts of school violence, threats, bullying or other concerns, call toll-free 866-748-7047 or visit the website at *www.schoolviolencehotline.com*.

Student discipline and the Missouri Safe Schools Act

Missouri's Safe Schools Act was adopted in 1996 in response to increasing incidents of school violence in Missouri and around the country. The act addresses school district discipline codes, mandates the adoption of specific policies and minimum standards, and requires certain types of reporting and information sharing by teachers, principals, superintendents and county juvenile officers. Since its initial passage, some of the statutes have been amended and other statutes have been added.

The law:

- requires administrators to report acts of school violence to all teachers at the attendance center and also to all other school district employees with a need to know.
- requires a suspended student to stay 1,000 feet away from any school property in the school district or any activity of that district, regardless of whether or not the activity takes place on school property.
- requires authorization by the superintendent or the superintendent's designee before the student and the custodial adult can access school property
- allows discipline of students for off-campus conduct that negatively affects the educational environment.

Current law provides that spanking administered by certificated personnel in a reasonable manner is not abuse under the state child abuse statutes but must be done in the presence of a witness. It also recognizes that it is not abuse if the use of reasonable force is used to protect persons or property when administered by school personnel in a reasonable manner in accordance with the written discipline policy. Both of these provisions are in effect as long as no allegation of sexual misconduct arises from them.

Bullying/Cyberbullying

Since Sept. 1, 2007, school districts have been required to adopt anti-bullying policies. Missouri Revised Statutes Section 160.775.2 states: "'Bullying' means intimidation or harassment that causes a reasonable student to fear for his or her physical safety or property. Bullying may consist of physical actions, including gestures, or oral, cyberbullying, electronic, or written communication, and any threat of retaliation from reporting of such acts."

Missouri Revised Statutes Sections 565.090 and 565.901 make cyberbullying a criminal act under the state's criminal definition of harassment.

Family and Medical Leave Act

As school district employees, you are covered by several federal employment laws designed to protect you from undue loss of employment or discrimination on a variety of bases. One of the federal leave laws designed to assist working families is the Family and Medical Leave Act (FMLA).

Among Congress's stated purposes in adopting the FMLA were: "to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity; . . . [and to accomplish these purposes] in a manner that accommodates the legitimate interests of employers."

The FMLA permits qualified employees to take up to 12 weeks of unpaid leave during a 12-month period for one or a combination of the following reasons:

- For the birth of a child and care of a newborn child of the employee;
- For placement with the employee of a child for adoption or foster care;
- To care for a spouse, son, daughter, or parent with a serious health condition;
- When the employee is unable to work due to the employee's own serious health condition; or
- For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is deployed or has been notified of an impending deployment to a foreign country, or
- For the care of a covered servicemember or veteran that is injured or seriously ill.

In order to be eligible for leave under the FMLA, an employee:

- must have been employed for at least 12 months by the employer of whom the leave request is made; and
- must have worked at least 1,250 hours for that employer during the previous 12-month period; and
- work at a location where the employer has 50 or more employees within 75 miles.

Leave for the birth and care of a child or for the placement of an adopted or foster child must be used within 12 months after the child's birth date or an adopted or foster child's placement date. Spouses who work for the same employer are limited to a combined total of 12 weeks during the 12-month period to use leave related to the birth and care or placement of a child. School districts cannot force a qualified employee to use less than 12 weeks unless both parents work for the same employer and are "sharing" the 12-week allotment.

During a 12-month period, an eligible employee under the two servicemember applications is entitled to a combined total of 26 workweeks.

Under FMLA, upon your return from a qualified period of leave, your employer must return you to the same position you held before taking the leave or to an "equivalent position" as it relates to pay, benefits and other terms of employment. In addition, for employees who have group health-insurance coverage, employers must continue to maintain the coverage on the same terms while an employee is on qualified FMLA leave. However, if at the end of a period of qualified leave, the employee chooses not to return to work, even though he or she is able, the employer is entitled to be repaid

for insurance premiums it has paid for the entire leave period.

The Act gives employers some flexibility in how they administer FMLA leave. For instance, although FMLA leave is unpaid leave, an employer may, by published policy, permit or require employees to use or apply any applicable paid leave as part of the 12-week period. In addition, employers may elect one of several methods for determining the 12-month period within which leave may be taken, but that election must be published in the employer's policy or provided in written form to employees.

If not properly published, employees may use the method that is most favorable to them in calculating the amount of leave they may take. Thus, our standard mantra rings true: Check your local school board policy to see how your district's FMLA policy is administered.

For more detailed information regarding the Family and Medical Leave Act, check the U.S. Department of Labor information at *www.dol.gov/dol/topic/benefits-leave/fmla.htm*. If you have a specific situation with which you need assistance, please contact MSTA at 866-343-6186.

Special education

Special education compliance is technical and complex. The U.S. Department of Education has excellent online resources concerning the IDEA 2004 and its implementing regulations. The website at *http://idea.ed.gov* calls itself a "one-stop shop" for resources, and it appears to live up to its billing. There are links to the statutes and regulations, topical information such as discipline and early intervention, pedagogical materials including power points, video clips, dialogue guides and so forth.

On a more basic level, here are some key points to remember. If you are a special education teacher or administrator, you absolutely have to be organized and stay up to date with your documentation and compliance records.

If you are asked to sign any paperwork, make sure that you understand what you are signing, that its contents are accurate, and that the date is correct. For example, do not sign a form stating you attended an IEP team meeting in March if the meeting occurred in May. Do not sign it at all if you did not attend the meeting.

If you sign a routing form, it means you have seen the student's IEP, know its contents, and are responsible for implementing that knowledge when appropriate. This one signature carries a lot of responsibility.

Discipline of a student with disabilities should be addressed through the IEP process. However, it is important for school employees to be informed that they can use reasonable means to protect other students, staff or themselves from being harmed.

Sexual harassment

State law

In Missouri, the main statutes proscribing sexual harassment in the workplace are located in the chapter on Human Rights at RSMo §§ 213.010 et seq. The Missouri Human Rights Act makes it unlawful for an employer to discriminate against an

employee because of race, color, religion, national origin, gender, ancestry, age or disability.

Three categories of sexual harassment involve explicit sexual behavior. Unwelcome sexual advances, requests for sexual favors, and verbal or physical behavior of a sexual nature are sexual harassment when:

1) submission to such behavior is explicitly or implicitly made a term or condition of your employment;
2) submission to or rejection of such behavior is used as the basis of employment decisions that affect you; or
3) the behavior has the purpose or effect of substantially interfering with your work performance or creating an intimidating, hostile or offensive work environment.

Another type of sexual harassment does not involve sexually explicit conduct but may include negative stereotyping of men or women and the use of epithets and other abusive language. This is gender-based harassment, and if it is severe or pervasive, it may violate the law.

Sexual harassment is discrimination when you are treated worse than others under similar circumstances or when you are denied the same rights and privileges given to others based on your gender. It is not a Human Rights Act violation for a boss to criticize or yell at you, or treat you differently than other employees if it is based on your status as a protected class.

The Missouri Commission on Human Rights enforces these anti-discrimination laws. If you believe you have been discriminated against at work for any of the reasons identified above, you must file a complaint with the commission within 180 days of the last act of discrimination. For more detailed information about the Missouri Human Rights Act, frequently asked questions and fact sheets, and instructions on how to file a charge of discrimination, go to the Missouri Department of Labor and Industrial Relations website at *labor.mo.gov/mohumanrights*.

Federal law

Sexual harassment is a form of gender discrimination that also may violate Title VII of the Civil Rights Act of 1964. It is enforced by the Equal Employment Opportunity Commission. For further information on the law in this area and "How to File a Charge of Employment Discrimination," check the EEOC website at *eeoc.gov/laws/types/sexual_harassment.cfm* .

Defamation: Libel and Slander

Dan told Ted some unflattering things about their colleague, Paul, in an email. When Paul found out, he claimed he intended to sue Dan for slander. Is Dan in trouble? Is Paul about to waste money on a lawyer? Is this even slander? Understanding defamation can be tricky. In legal terms, defamation is defined as "any intentional or false communication, either written or spoken, that harms a person's reputation; decreases the respect, regard, or confidence in which a person is held; or induces disparaging, hostile, or disagreeable opinions or feelings against a person."

Defamation is not as easy as "X said something bad about Y to Z". All slander is defamation, but not all defamation is

slander (spoken defamation). In fact, the most harmful type of defamation is often libel (written defamation) because of its relative permanence. Regardless of the type, defamation is easy to allege but difficult to prove. In order to prove defamation in court, you must meet all six elements of defamation in Missouri – if even one is missing you have no case. Defamation does not include things said or written to you in private (spoken directly to you away from others, sent in an email, etc.) even if such statements, if made publicly, would be considered defamation. If you tell others what was said to you and you suffer one of the harms that come from defamation, the speaker does not suddenly become liable for his or her comments that were intended to stay in private.

The Internet provides another hurdle. Even if you can point to clear defamation and show definitive damage to your reputation, you still might be left with no legal recourse. The anonymity of the Internet has definite benefits but for your claim it will likely prove an insurmountable roadblock. Service providers are usually under no compulsion to release the real-world identities of its users. Suing the provider or even a specific website won't do you much good, especially when the defamation is in the form of a user comment. Oftentimes the best you can do is ask the provider to take the defamatory material down and hope he or she complies.

Even if you are successful in proving defamation, do not expect a massive windfall – your victory may result in as little as a public apology or retraction.

Six elements of defamation in Missouri:

1. Publication
2. Of a defamatory statement
3. That identifies you
4. That is false
5. That is published at least negligently
6. That damages your reputation

Slander: Verbal defamation heard by a third party. Slander can also include hand gestures. If the defamation is recorded, it will likely be considered libel; however, just because something could be recorded doesn't automatically make it libel. Slander can be difficult to prove in court – such an issue can often become a "he said/she said" argument. Here's a tip – he said the slanderous statement.

Libel: Written defamation seen or heard by a third party. "Written" has a broad meaning here. It can be an actual writing (newspaper/internet posting, etc.), audio or video (TV/radio/ YouTube posting, etc.) or some other physical manifestation (a drawing/an effigy/ altered photographs, etc.). Libel can be easier to prove in court because the defamation is in a physical form, but by no means does this mean you will automatically win. Here's a tip – libel has little literary value.

A legal action involving defamation can be costly and difficult to win. Before going the legal route, think about a few things: Is the statement about you? Even if you are not specifically named, it must be obvious the statement is about you. A general statement, which may or may not apply to you, will not be good enough. Remember, it does not matter how libelous or slanderous the statement is – if the statement could reasonably be seen as non-defamatory, courts will usually consider it so.

Is the statement substantially true? Truth isn't an absolute defense, but it can be

difficult or even impossible to overcome. Why only substantially? Even a statement with some errors or exaggerations can still be considered generally true. For example, someone tells a colleague you were arrested over the weekend for drunk driving after crashing your car. However, there was no accident; you were stopped and arrested at a checkpoint. This detail will likely have little bearing on any potential defamation lawsuit.

Is the statement an opinion? An opinion might be harsh and it may be cruel, but it is difficult to prove as defamation. If the statement started with something that could indicate it is an opinion ("In my opinion", "it is my belief", etc.), Missouri courts tend to read the statement as an opinion rather than a statement of fact (which could be defamation). If the statement is an opinion, it will rarely matter how harsh or hyperbolic the language is.

Have you suffered any substantial damages? Can you point to a specific person or people who have a lower opinion of you because of the statement? Are you in danger of losing your job or other income because of the statement? You might be embarrassed, shocked or mad about the statement, but if you can't prove any actual damage, you have no case. Even if the statement seems like one that would potentially cause you damage, you can't bring a case based on an inference.

Teachers are public figures in their communities and, as such, can find themselves the targets of public scorn. We receive calls from members every year complaining about unflattering, mean and offensive things said about them online. The harsh reality is the vast majority of these incidents will never result in punishment for the speaker.

Copyright

Starting point

Any person reviewing a creative work for possible use should assume that the work is covered by copyright law. If the work does fall in a category protected by copyright law, the work belongs to the person who created it and you need permission to use it. Terms like "fair use" and "educational purposes" are often thrown around too liberally. The copyright rules and regulations were designed to protect the original creator and/or the copyright holder, and to prevent others from appropriating the protected material for their own use without permission and/or payment. Individuals presuppose that copyright law does not apply to them and they believe they don't have to worry about that "legal stuff." If you are using pictures from Google in a PowerPoint, copyright law applies. If you are using music for a presentation or project, copyright law applies. If you are showing a YouTube video, there are copyright rules you must consider. Copyright law is very broad and covers a great number of works and activities that people often overlook.

Outlined below are some of the general legal considerations of which you should be aware.

How people perceive copyright law:

1. All teachers qualify for the "educational use exception" and do not need to worry about copyright laws when teaching in the classroom.
2. Even if I am breaking copyright laws it does not matter because everybody does it and few people get caught.
3. If I tried to follow all the copyright laws I would not have anything to use

for presentations or other activities in the classroom or work related projects.

4. Even if I am breaking copyright law, the penalty will be a slap on the wrist because I am doing it on such a small scale.
5. The only person I am hurting or putting at risk if I break copyright law is myself.

How copyright law really works:

1. Not everything a teacher does to further the education of students meets the educational use exception. In reality, copyright law does not give teachers as much protection as many think. There is not a specific number of copies that a teacher can make before breaking copyright law. There is no specific percentage cutoff and no other set standard that teachers can use as a formula before getting in trouble. There is a complex four-part legal test to determine if the educational use exception applies, and it does not give teachers a good guideline to figure it out in advance. Because the test is complicated and the application is unclear, the quick and easy way to avoid legal trouble is to get permission from the owner to use the work.
2. People are caught, arrested, and prosecuted for copyright law violations on a daily basis. As the world becomes more reliant on the Internet and digital files, people frequently copy and paste on their computer without thinking about any of the repercussions. Just because something is found on a mainstream Internet database does not mean you can use it without anybody else noticing. Because the Internet has been around for decades, the law has adapted accordingly. The mouse clicks and other actions you take on the Internet can, and often do, have legal consequences.
3. Copyright law does cover a large body of work that is useful in the classroom and work environment. Since it usually is quick and easy to obtain permission to use a protected work, you should be able to use most of the resources you planned to use. Further, there actually are websites that have material available for public use. Once again, when in doubt, find out who is the copyright holder of the work and obtain permission by placing a telephone call or sending an email.
4. Criminal charges for copyright violations may include a felony, misdemeanor, a large fine, and jail time. Even if a criminal conviction is simply a fine, there are other non-legal consequences to consider. Non-legal consequences of having a conviction on your record include potential adverse action against your certificate of license to teach, difficulty obtaining employment, bad academic record, termination of your employment, and other ramifications from your school or employer.
5. When you break copyright laws, you are placing your school/employer at risk. Just because you are the one physically making copies of protected material does not mean that you are the only one that could suffer legal consequences.

Quick facts to know:

If a work does not have a copyright symbol, the name of an author, or other official looking label, does that mean I can use it legally for my own purposes?

No. A work does not need to be labeled to be covered by copyright.

People who create works (e.g., music, pictures, movies, clips, writings, etc.) automatically receive copyright protection even if they do not apply for it. Therefore, you must determine if the work you are trying to use is protected even if it may not appear to be at first glance. Unless you have permission from the copyright holder to use it, or meet a narrow exception, you legally are not allowed to use it.

If somebody writes in the title of a work "for fair use only" or "I do not claim the rights of this video," does that make the use of the work legal?

No. Like the educational use exception, the fair use exception in copyright law is complex. Volumes have been written about what works qualify under the fair use doctrine, and it comes down to a case-by-case analysis and determination. Bold and blanket statements about how to meet the requirements are misleading and often incorrect. However, if you are certain the fair use doctrine applies, keep in mind that it does not give you unrestricted rights to use or to make copies.

Copyright law basics just for teachers

YouTube Policy* – A teacher may show a YouTube video to students in class provided that it is strictly for educational purposes and the video on YouTube was posted by the original creator. Many times a third party adds language that a work is "for fair use only," that the third party does not claim "legal rights" to the work, or even that the third party has obtained permission from the original creator to use the work. None of these third party statements make the work legally available for the teacher to use. Each subsequent user must derive an independent basis to use the work. It is against YouTube policy for a teacher (or anyone else) to make a copy of any YouTube video, although a teacher may post a link to a video on their website or other online database. It is against the law to show a DVD, or stream a movie/video to a class unless you have obtained written permission from the copyright holder or the movie specifically was made and intended to be shown for educational purposes. This rule applies even if the teacher owns the movie source or has rented it specifically to show in class. As mentioned above, it is usually a quick and easy process to obtain written permission to use a protected work, especially from makers such as PBS or other organizations orientated toward the education field. One caveat to the "quick and easy" process is when you are dealing with a very distinct and protected brand such as the St. Louis Cardinals or Disney. These entities tend to be rather possessive about their protected works. Teachers cannot make copies of original materials that are intended for a student to use once and then to be discarded, such as workbooks, standardized tests, answer sheets, and similar materials. Teachers cannot make copies of textbook pages, workbooks, publishers' reprints or periodicals as a substitute for purchasing the material from the publisher. It is okay to make a copy of a textbook page for temporary replacement for a student who forgot his book. A teacher cannot make class sets of textbook pages to avoid buying the textbook or other material a publisher produces. When teachers do make copies of permis-

sible works, the charges for obtaining the copyrighted material cannot be passed on to the student.

Conclusion

The general mantra set out above will keep you out of trouble. There are interactive websites where you can obtain more detailed information about specific questions. One of your best resources on copyright issues is your school librarian, although she or he cannot give legal advice. If you still need information after consulting with the librarian, contact the MSTA Legal Services Department at 866-343-6186.

*YouTube has been used as an example of a particular company's policies. Policies will vary by copyright holder, so make sure that you have authenticated who is the holder and that you have applied the appropriate rules.

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