

## 13 - OTHER LEGAL CONCERNS

A variety of your legal obligations and potential liabilities not previously discussed appear here. Be aware of them.

### **CAUTIONARY NOTES**

Some ROP districts have offered good advice about potential legal problems for teachers which we'll pass along to you:

- Make a special effort to avoid the use of stereotypes in assessment of and reaction to pupil behavior and achievement.
- Be sure that all reprimands relate to misbehavior and are not applied differently on the basis of race, national origin, sex or achievement level.
- Do not leave your class unattended to answer phones, have a cup of coffee, etc. The law is specific and you are liable.
- Do not give away ROP materials, student projects or services involving ROP funds. This is taxpayers' money, and there may be **no** gifts of public funds.
- Maintain a certain reserve and be friendly rather than "chummy." Be wary of being alone with a single student member of the opposite sex. See that other students are in attendance.
- Never drive a single student anywhere in your car.

### **NONDISCRIMINATION REGULATIONS**

Avoid discriminating against any student or prospective student by striving to be *inclusive*. This statement mandates our responsibilities:

*The County Board of Education and the County Superintendent of Schools believe in the inherent worth of every individual and the right of each student to receive equal opportunities in all educational programs and activities which are conducted by the San Diego County Office of Education.*

*The County Board of Education and the County Superintendent of Schools shall not unlawfully discriminate against anyone on the basis of race, color, national origin, ancestry, religion, socioeconomic status, marital status, or membership in legally constituted organizations, sex (including sexual harassment), handicap or age in any of its policies, procedures or practices. This nondiscrimination policy covers admission, access to, treatment, and employment of all applicants, employees, and students in all programs and activities managed or operated by the County Superintendent of Schools.*

A poster with the above statement should be in every ROP classroom. (A copy is in the **chapter appendix**.) If you do not have such a poster, request one from your district or site representative.

And from the California Code of Regulations, Title 5:

*A certificated person shall not, without good cause, in the course and scope of his or her certificated employment and solely because of race, color, creed, gender, national origin, handicapping condition or sexual orientation, refuse or fail to perform certificated services for any person.*

Pertinent federal regulations are printed in the **chapter appendix**.

But ask yourself are you discriminating, even inadvertently; by your choice of words in the classroom, or as you talk with employers? Consider, for example:

**Term**

between 20 and 30 or mature  
girl - guy - kid  
draftsman  
pretty girl with up-to-date wardrobe  
salesgirl  
handicapped  
no kids/no family problems  
married and stable  
young and promotable

**Acceptable Alternate**

*do not refer to age*  
staff member - worker  
drafter  
individual presents a good appearance  
salesperson  
disabled  
*avoid*  
reliable  
promotable

**GENDER EQUITY**

ROP teachers recognize that work roles for women and men are changing. Although overt gender stereotyping is less common than in the past, subtle bias persists, affecting both males and females. As an ROP teacher, you need to recognize, confront and remedy any tendency—by yourself or others—to treat men and women differently.

Your behavior is crucial. Beyond that, your example prepares students for the world of work, another arena in which discrimination will not be tolerated. Be aware that:

- Your instructional materials cannot use illustrations or language with an obvious sex bias. Where no materials are available without a sex bias, you must point out that in reality men as well as women (or the reverse) could do the work described.
- Testing, appraising and counseling materials cannot differ based on gender.
- You must not discriminate against any person on the basis of gender in program activities, admission, or counseling and guidance.
- Avoid all forms of sex stereotyping in communicating with students.

The relevant California law states in part:

*It is the policy of the State of California to afford all persons, regardless of their sex, equal rights and opportunities in the educational institutions of the state . . . .*

## **DISCRIMINATION BY EMPLOYERS**

As you work with students and employers, be aware that “equal employment opportunity” and sexual harassment are real concerns for many students who are seeking employment or who attend a community classroom. Although we like to feel that barriers are gone, unfortunately some discrimination or harassment persists—perhaps unconsciously—in the attitudes and actions of employers.

You should not maintain a working relationship with an employer who discriminates against or harasses students in your program.

## **SEXUAL HARASSMENT**

Your district or college no doubt has a policy regarding sexual harassment. However, be aware of the following policy adopted by the San Diego County Board of Education:

*Sexual harassment of or by any employee shall not be tolerated. The County Board of Education and the County Superintendent . . . consider sexual harassment to be a major offense which will result in disciplinary action up to and including dismissal of the offending individual and may lead to personal legal and financial liability.*

*Pursuant to Education Code Section 212.5, unwelcome sexual advances, requests for sexual favors and other verbal, visual or physical conduct of a sexual nature made by someone from or in the work or educational setting constitute sexual harassment when:*

- 1. Submission to the conduct is made either an explicit or implicit condition of employment, status or promotion.*
- 2. Submission to or rejection of the conduct is used as the basis for an employment or academic decision affecting the harassed individual.*
- 3. The harassment substantially interferes with an individual's work or academic performance or creates an intimidating, hostile or offensive work or educational environment.*
- 4. Submission to, or rejection of, the conduct is the basis for any decision affecting an individual regarding benefits and services, honors, programs or other available activities at or through the work or educational setting.*

## **SAFETY INSTRUCTION AND LIABILITY**

Providing safety instruction and requiring correctly completed safety tests of students is a means of avoiding liability for yourself. As noted in Chapter 4, all ROP curriculum must include safety instruction, reinforcement and assessment appropriate to the student and industry for which the student is training.

Develop safety instruction and a safety test appropriate to your course, and require students to satisfactorily pass the test before performing lab procedures or going to community sites. Remember to include safety questions in **all** unit tests to document that safety is an integral part of your class. **Sign and date each test. Keep safety tests on file for several years** in case documentation is needed long after students have left your course.

## **YOUR LIABILITY AND NEGLIGENCE**

All school employees are personally liable if, in the performance of their school duties, their negligent or wrongful conduct results in harm to students, colleagues or other individuals. Teachers face the risk of lawsuits when any of the following occurs: injury to students, assault and battery arising out of administration of corporal punishment, slander, libel, false arrest, false imprisonment or malpractice. Money judgments awarded against school employees must be paid by the employee or through the employee's liability insurance.

Typical examples of negligence are:

- Failing to provide proper supervision or reasonable care during a classroom activity.
- Dismissing or cancelling a class without authorization.
- Providing improper first aid that results in further injury.
- Permitting students to use defective equipment.
- Conducting unauthorized or unsupervised field trips.
- Inflicting unjustified physical pain or mental suffering.

## **PERSONAL ASSAULT/PROPERTY DAMAGE**

Your rights, in case of damage to your person or property by a student, are, according to the Education Code:

*Whenever any employee of a school district...is attacked, assaulted, or menaced, by any pupil, it shall be the duty of such employee, and the duty of any person under whose direction or supervision such employee is employed in the public school system who has knowledge of such incident, to promptly report the same to the appropriate law enforcement authorities....Failure to make such report shall be a misdemeanor punishable by a fine of not more than two hundred dollars.*

*An employee of a school district whose person or property is injured or damaged by the willful misconduct of a pupil who attends school in such district, when the employee or the employee's property is (1) located on property owned by the district, (2) being transported to or from an activity sponsored by the district or a school within the district, (3) present at an activity sponsored by such district or school, or (4) otherwise injured or damaged in retaliation for acts lawfully undertaken by the employee in execution of the employee's duties, may request the school district to pursue legal action against the pupil who caused the injury or damage, or the pupil's parent or guardian....*

## **THEFT OR DAMAGE TO ROP PROPERTY**

Immediately report any loss, theft, vandalism or nonrepairable damage of ROP property to your site administrator or ROP district representative. ROP and your district have varying procedures and forms for such cases. The local administrator must report theft to the local police. Remember that loss of ROP property impacts the annual inventory and such losses must be accounted for. (See the copy of Capital Outlay Disposition Request, Form 458 in the **chapter appendix**.)

For your information, the Education Code states:

*Students and their parents are financially responsible for all willful damage to school equipment or school property and for the loss of school equipment or school property that has been loaned to a student.*

## **TEACHERS TRANSPORTING STUDENTS**

The best advice is **DON'T**. If you transport a student, you are the primary carrier, and your insurance company will have prime responsibility in case of a mishap. A standard auto liability policy does not provide coverage for commercial use.

In addition, the Supreme Court has allowed a California suit involving simple negligence. This means that you, as driver or car owner, can be sued by your passenger.

## **UNAUTHORIZED PRIVATE GAIN OR ADVANTAGE**

It is the policy in many school districts that teachers may not bring and sell in the classroom materials from their own place of business or sell a business service or influence students to purchase goods or services from a particular supplier.

As noted in Chapter 3, ROP equipment and supplies may not be utilized for your personal use. There can never be personal gain from your employment as an ROP teacher, i.e. painting/repairing cars, upholstering chairs, selling floral arrangements, catering, etc.

Further, from the California Code of Regulations, Title 5:

*A certificated person shall not:*

*Use for his/her own private gain or advantage or to prejudice the rights or benefits of another person any confidential information relating to students or fellow professionals;*

*Use for his/her own private gain or advantage the time, facilities, equipment, or supplies which are the property of his/her employer without the express or clearly implied permission of his/her employer;*

*Accept any compensation or benefit or thing of value other than his/her regular compensation for the performance of any service which he/she is required to render in the course and scope of his/her certificated employment. This rule shall not restrict performance of any overtime or supplemental services at the request of the school employer; nor shall it apply to or restrict the acceptance of gifts or tokens of minimal value offered and accepted openly from students, parents or other persons in recognition or appreciation of service.*

## **EMPLOYMENT OF MINORS**

If one of your ROP students is offered employment, be aware that for minors who are under the age of 18 and still attending high school, a permit to employ must be on file with the employer during the period of employment.

Many regulations govern the employment of minors, and official requests for work permits are obtained through the school district. As an ROP teacher, your responsibility is to direct the student to obtain such a permit and, if necessary, inform the employer of this requirement.

## **COPYRIGHT**

Use of copyrighted material is a recurring issue in teaching. Copyright can apply to textbooks, software, computer programs, material on the Internet, television, printed materials, videos and films, etc. Knowledge of the law will protect you and your district from legal or financial penalties.

**Avoid copyright infringement yourself, and with students, stress the legal, ethical and practical problems caused by unauthorized use.**

As a rule of thumb, secure and keep on file written permission for use of any copyrighted material.

See the regulations regarding copyright in the **chapter appendix**. These regulations are San Diego County Office of Education Board policy and are based on current law.

## **USE OF TECHNOLOGY**

The County Superintendent of Schools encourages employees' use of technological resources. The employee in whose name an on-line service account is used (user) is responsible for its proper use at all times. Users are expected to appropriately use technological resources available to them to permit them to more effectively perform the duties and responsibilities of the operations and programs of the San Diego County Office of Education.

Users should be aware that computer files and communications over electronic networks, including e-mail and voice mail, are not private. Information maintained on technological resources may be required to be disclosed under the California Public Records Act.

Employees are authorized to use on-line resources of the San Diego County Office of Education in accordance with user obligations and responsibilities specified below:

1. Users shall keep personal account numbers, home addresses and telephone numbers private. They shall use the system only under their own account number.

2. Users shall not use technological resources to transmit records or confidential information about students, employees or privileged matters of San Diego County Office of Education to anyone not legally entitled to receive it.
3. Users shall not use the technological resources to promote unethical practices or conduct any activity prohibited by law, policy or administrative regulation.
4. Users shall not transmit material that is threatening, obscene, disruptive or sexually explicit, or that could be construed as harassment or disparaging of others based on factors such as, but not limited to, their race, national origin, sex, sexual orientation, age, disability, religion or political beliefs.
5. Users may only place copyrighted material on the system with appropriate permission. Users may download copyrighted material for their own use and only in accordance with copyright laws.
6. Users shall not read other users' mail or files; they shall not attempt to interfere with other users' ability to send or receive electronic mail, nor shall they attempt to read, delete, copy, modify, forge or fraudulently use other users' mail.
7. Users shall report any security problem, vandalism or other misuse of the network to administrator.

Vandalism includes, but is not limited to, uploading, downloading or creating computer viruses and/or any malicious attempt to harm or destroy San Diego County Office of Education equipment or materials or the data of any other user.

8. User privileges may be canceled in the event of violation of any conditions of this administrative regulation, applicable law or violation of the San Diego County Office of Education Internet Use Agreement.

## **COUNSELING STUDENTS**

Counseling students is the province of **counselors**. But note these regulations for counselors which have been spelled out by the U.S. Office of Civil Rights:

*Counselors may not direct or urge any student to enroll in a particular program or measure or predict a student's prospects for success in any program based upon the student's race, color, national origin, sex, or handicap. Counselors must not counsel handicapped students toward more restrictive career objectives than non-handicapped students with similar abilities and interests. If a vocational program disproportionately enrolls male or female students, minority or non-minority students or handicapped students, steps must be taken to insure that the disproportion does not result from unlawful discrimination in counseling activities.*