



UPDATE

SAN BERNARDINO TEACHERS ASSOCIATION

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FROM: Justin Arnold, CTA Staff
RE: Legal Issues

Robert V. Rodriguez, SBTA-President

September 24, 2014

There have been a number of legal-related issues that have surfaced in the last few weeks. In light of this, I have consulted with legal counsel and have composed this advisory to help you and your members. Thank you!

1) Classroom Recording Requires Consent

No person can electronically listen or record "in any classroom of the elementary and secondary schools without the prior consent of the teacher and the principal of the school." (Education Code, § 51512.) Any such recording may be punished as a misdemeanor, and pupils who record may be subjected to discipline. It is not clear, however, if this code section applies to a staff meeting outside instructional time. However, the purpose of this code is to avoid disruption of the teaching process and school discipline, it likely is limited to instructional settings. This Ed Code section is a criminal violation with regard to non-pupils doing the recording (for pupils it can be a basis for discipline), the impacted teachers could file a complaint. The law does not provide for any civil (money) remedy.

2) Recording Confidential Communications Requires Consent

It is highly unlikely that the District's recording of a classroom would record "confidential" information. Most everything in a classroom is inherently public and not confidential. The consent of all parties is required to electronically record a "confidential communication." (Penal Code, § 632 [this Code section is provided at the end of this memo].) A communication is "confidential" if the communication occurs when the circumstances "reasonably indicate" that any person involved in the exchange desires the communication be confined to those participating in the communication. However, communications are not confidential if "made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded." (Penal Code, § 632(c).)

3) Privacy Rights

Similar to confidentiality, privacy rights of school staff do not normally attach in a classroom setting – there is no reasonable expectation of privacy there. As noted above, the California Constitution explicitly states that the right to privacy is inalienable. Federal constitutional law has been held to imply privacy rights and provide protection against governmental surveillance, especially through the Fourth Amendment. However, as with Penal Code section 632, privacy rights generally boil down to whether there is a "reasonable expectation" of privacy. Establishing such a reasonable expectation in a work place can be difficult. Further, as a rule of thumb, whenever you see a law that uses the term "reasonable," it means that the Legislature is authorizing a judge or jury, down the road, to determine whether in a particular set of facts, something was "reasonable" or not.

4. First Amendment Rights There are many bodies of law that cover public workplace and public employee speech rights, and generally all of them are subject to employer restrictions. Under U.S. Supreme Court law, most employee speech that arises from teacher job duties is NOT protected by the First Amendment, though that speech may be protected by EERA or one of the whistleblower laws.

To give legal opinions about what particular speech is protected or not, we need to know as many details as possible about what was actually, said, where, and to whom, what the CBA and District policy say, and if in the classroom, the age of students.

Memo

To: All Members
From: Robert V. Rodriguez 
Date: September 24, 2014
Re: October's Calendar

Please note that the October Calendar has been changed due to circumstances beyond our control. Please share this information the membership. Thank you!!!

Event	Old Date	New Date
SBTA Board Meeting	October 1 st	October 8 th
SBTA Fall Leadership	→ → →	October 17-19 th
SBTA PP & P (Happy Hour) <small>Due to our Fall Leadership Conference</small>	October 17 th	Cancelled ☹
SBTA Rep Council	October 15 th	October 22 nd

Sorry for any inconvenience.