

# ***AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE***



**PRESENTED BY:**

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Ernest H. Tuttle, IV represents teachers on a daily basis in many counties throughout the State. It is our experience that as society has become more litigious, that legal threats against teachers have increased dramatically. A single incident can cause a teacher to have four separate legal cases at one time. They are: (1) lawsuit by a parent, or student; (2) dismissal case by the school district; (3) a credential investigation by the Commission on Teacher Credentialing; and (4) a criminal case.<sup>1</sup>

## **AVOIDANCE:**

The most important thing to learn is how to avoid potential problems in the first place. It is always much easier to “win” a lawsuit by avoiding a lawsuit than by winning the lawsuit at trial.

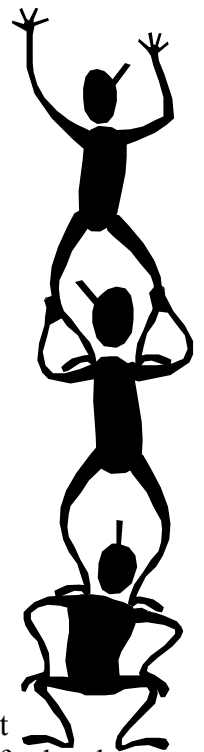
### **Professional Distance:**

Teachers should attempt to keep some professional distance between themselves and their students. Some things to avoid:

- a. Giving students rides to or from school alone;
- b. Keeping students after school alone;
- c. Hugging and kissing students no matter how harmless the intention was;
- d. Giving students gifts;
- e. Taking them on family vacations;
- f. Permitting them to stay overnight at your home;
- g. Letting students live with you because they have family problems; and
- h. In general, getting overly involved in their personal family problems.
- i. Employing students to do work around your home in any capacity, such as babysitting; mowing lawns; painting; housework, etc.

### **Touching:**

Teachers should be careful how they touch students. Male teachers are especially vulnerable to allegations of wrongful touching. It has been our experience that our society views touching by women differently than touching by men. It is not illegal to touch students. It depends on the circumstances. For example, Education Code Section 44807 provides that teachers may use the same degree of physical control that a parent could use (short of corporal punishment) and provided it is reasonable to protect other students, property, maintain order and maintain a proper learning environment.



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<sup>1</sup> This newsletter is intended for informational purposes only and is not intended to solicit business or create an attorney/client relationship. It is intended to help prevent the need for legal services.

### **Sexual Language:**

Teachers should be careful with the language that they use with students; making sexual remarks or making jokes that can be understood to have sexual or double meanings can cause great harm to teachers. We have had to advise some teachers that they simply had to change their sense of humor in dealing with students or they would not last in the teaching profession.

### **Coarse Language:**

The use of coarse language has been problematic for teachers. Some agricultural teachers and some coaches have been partially vulnerable in this area.

### **Extra Curricular Activities:**

Be careful with extra-curricular activities with mixed groups of boys and girls. Certain teachers by nature of their position, such as band teachers and agricultural teachers, spend an enormous amount of time away from the school site in mixed groups of boys and girls. This is a potentially explosive situation and teachers need to be extremely careful. Teachers in these positions must avoid becoming overly familiar with their students. Also, all teachers should be extra cautious on field trips. Make sure there are enough chaperones. Strange things have happened on field trips.



### **E-mail/Internet:**

The new way to have employment problems is the misuse of District e-mail programs, the Internet, or District computer equipment. Sometimes, things said orally appear much worse when put in writing. There is also a permanency to the written word. Sending or receiving inappropriate e-mail and/or misuse of District equipment by accessing inappropriate websites with District equipment, either during the school day or after the school day is almost guaranteed to cause trouble. Remember, there is no privacy on the Internet. Districts have the ability to track every keystroke that you have made and every e-mail you have opened or sent and each website visited. District programs can then print this matter. Large stacks of embarrassing emails or photographs have been retrieved and have ended up on the superintendent's desk.

### **Money:**

Many teachers have to raise and handle large sums of money for school purposes. In our experience, most teachers are not trained in accounting practices. They neither took accounting courses in college nor have they received any training from their District. There have been many problems with student funds improperly accounted for or merchandise not paid for. Also, poor accounting practices of booster clubs have caused some teachers extensive grief.

### **District Property:**

Misuse or borrowing of District property without permission has caused problems for many teachers. Computers, cameras, E-mail, Internet Servers, if provided by the District, are the District's property and should not be used for personal use.

### **WHEN IN DOUBT, CONTACT CTA:**



If you become aware of any of these types of allegations against you or another teacher, it is important to immediately contact your CTA professional staff representative before saying anything or taking any type of action in response to the allegation. A teacher is entitled to representation at any discussions with the district which may lead to discipline. If necessary, or appropriate, a CTA member will be referred to a lawyer for legal advice.

By contacting your CTA representative at the earliest possible moment, it may help resolve the problem before it goes any further. In any event, a teacher should never resign without first seeking advice. Many times, a teacher faced with embarrassing allegations has resigned, to their sorrow, at the suggestion of the district before seeking advice.

### **CONSEQUENCES:**

#### **Civil Lawsuit by Students or Parents:**

It is very annoying and upsetting to get sued. In addition, lawsuits against teachers can lead to disciplinary action against them. The number of lawsuits against teachers over the years has increased dramatically. However, CTA members are entitled to the benefits provided by CTA through their Insurance Company. Depending on the circumstances, this policy can help to defend and protect teachers from such lawsuits.

#### **Dismissals:**

Districts are filing more dismissal cases against teachers. In addition, they are giving out many more notices of unsatisfactory performance and notices of unprofessional conduct to teachers. These notices are usually the first step in a dismissal process against a teacher. Teachers should immediately contact CTA if they receive a notice of unsatisfactory performance or notice of unprofessional conduct. Districts are also taking more action to suspend teachers without pay. CTA provides legal representation to members in dismissal matters.

#### **Credential:**

The Commission on Teacher Credentialing appears to be investigating allegations against more teachers every year. Criminal cases, dismissal cases, resignations with charges pending, and suspensions of more than 10 days without pay will trigger credential investigations. A teacher should immediately contact CTA if they receive a letter of inquiry from the Credentials Commission. CTA provides legal representation to members facing credential investigations.

## **Criminal:**

The most serious employment danger that a teacher could face today is a sex offense charge. The term “sex offense” is much broader than most people imagine. It does not have to involve any touching. For example, using suggestive sexual language with a minor may constitute a sex offense. When a teacher is charged criminally with a sex offense by the County District Attorney’s Office, the following will immediately occur:

1. The teacher will be placed on a leave of absence without pay pending the resolution of the case. Frequently, their health insurance benefits will also be suspended.

2. The teacher’s credentials will be immediately suspended.

Thus, the teacher will immediately be suspended without pay and without the ability to earn a living in their chosen profession pending the outcome of the criminal case. The criminal case will often take at least six months to be resolved. If the criminal charges against the teacher are eventually dismissed, the teacher’s legal problems are not over. The teacher may face a dismissal attempt by the District; a credential investigation by the Credentials Commission and a lawsuit for the same conduct. This is not considered “double jeopardy” because the standard of proof is much greater in a criminal case than in a civil matter.

## **CONCLUSION:**

CTA’s Group Legal Services program is designed to help teachers by advising them both to avoid problems with school districts and once a problem has occurred. If you are faced with any allegations of wrongdoing or believe the school district is doing something wrong, it is important to immediately contact your CTA professional staff representative before saying anything or taking any type of action in response to the allegation. If necessary, or appropriate, a CTA member will be referred to a lawyer for legal advice. By contacting your CTA representative at the earliest possible moment, it may help resolve the problem before it goes any further.

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