



Your Union, Your Voice Your Newsletter

www.hesperiateachers.com



Hesperia Teachers Association

March 2017

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DO

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Tina Viayra

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Hollyvale

Marla Baty

Dance like no one is watching; email like it may one day be read aloud in a deposition.

~Unknown

President's Message

As we look forward to our spring break it is a good time to take a moment to reflect upon some of our practices. It is important that we keep up on the latest developments in the laws that come from a variety sources. Some of these items may seem familiar but it is always a good idea to take a second look and consider the implication for you in your classroom and for our profession.

Contract Highlights

This is the time of year that teachers have a chance to voluntarily transfer to another site. HTA feels very strongly that all members desiring a change should be placed before the district seeks out of district candidates. If multiple candidates with permanent status and similar backgrounds apply for a position, obviously only one candidate can be successful. But it is entirely another matter when qualified HUSD employees are not successful and then the position is awarded to a candidate from outside of HUSD especially when that candidate is less qualified than the in-house candidates.

Please read the following contract language. If you apply for a position and are not the successful candidate, be sure to follow the steps asking for the reason in writing. If an outside candidate is granted the position over you, it is important that you start the grievance process immediately.

Please contact your site rep for more information.

Hesperia High School

Ellen Stephen
 Devon Bostock
 Maq McNair
 Stacey Barnes

Hesperia Junior High

Cheryl Franks
 Cindy Walker

Joshua Circle

Lorelei Bibler

Juniper

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Kingston

Todd O'Neal

Krystal

Jamie Barnhardt

Lime

Penny Hale
 Christine Robinson

Maple

Virginia Marquez
 Terry Eddy

Mesa Grande

Kim Kelly

Mesquite Trails

Louise Oliekan
 Elizabeth Krall

Mission Crest

Susana Castillo
 Teri Jo Muzquiz

Mojave

James Gaier

Oak Hills

Steve Trudeau
 Sean Shea
 Jim Kutch

Cely Echevarria
 Victoria Morse

Ranchero

Allison Baughman
 Noella Harrie

Shadow Ridge

Kelly Ford

Sultana

Shane Haldeman
 Seta Ghazarian
 Brett Simmons

Joe Ardito

Topaz

Marcia Rhodes
 Wendy Spears

Article Fifteen**Assignments, Transfers, Reassignments and Vacancies****B. Voluntary Transfers**

1. A Unit Member may submit a request in writing or via District email for a voluntary transfer at any time. However, the common practice is not to transfer probationary teachers.
2. Notice of District certificated vacancies shall be posted via District email and on the District web site.
3. Applications to fill vacancies shall be submitted in writing or via District email to the Office of the Assistant Superintendent of Personnel. When a vacancy occurs during the school year, the site principal may initially fill the vacancy(ies) through reassignments. Any resulting vacancy(ies) shall be posted District-wide.
4. Transfer requests shall not be denied arbitrarily, capriciously, or without basis in fact. They shall be considered according to the educational qualifications, experience, and seniority of the applicant as they relate to the needs of the school with the vacancy. However, Unit Members shall be given priority consideration for any vacancy and shall be interviewed by the administrator(s) who will make the selection. No vacancy shall be filled until five (5) days (or six, if posted on a Monday) after its posting. Any resulting vacancy(ies) shall be posted District-wide.
5. When two (2) or more Unit Member applicants with equal qualifications have applied for a vacancy, the one with the greatest seniority shall be selected.
6. If a Unit Member applies for a vacancy and is not selected for the position, he/she shall be granted, upon request, a meeting with the administrator(s) who denied the request in order to discuss the reasons for the denial. A Bargaining Unit Member will be given a written reason for denial of transfer, upon request.
7. Unit Members not granted a requested transfer shall be notified in writing within fifteen (15) days after a decision is made.
8. District employee applicants will receive priority consideration, and no vacancy shall be filled until five (5) days (six if posted on Monday) after its posting.

Dates to Remember

March 20-24

Spring Break

April 3

School Board Meeting @ 6:00

Educators and the Law

As educators in the public-school system we do have free speech rights, however in our classrooms we are bound by a different set of rules. Discussion may come up with and between students that may be considered sensitive or questionable. We are bound to remain unbiased in all matters regarding religion, sexual orientation, politics or any of the other subjects that are considered controversial.

Much of this is a repeat of information shared last year but we think it is important for members to be reminded of it, plus there is some new information that is quite significant.

Whatever our personal opinions or beliefs, the law is clear and in order to protect our students and ourselves it is recommended that members familiarize themselves with these laws.

For example, we usually think of the provisions of Title IX as they relate to sports. However, Title IX goes much further. Title IX is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. Specifically, the guidance states that "Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation."

Practices as simple as lining students up by gender can be categorized as a violation of Title IX. Members should be cautious that they are not categorizing student behaviors or achievements based on gender. Some may think that this is not a big deal, that it is common practice and that they plan to continue with the practice. However, we know that it just took one person with the right information about PE minutes to mandate teachers to turn in weekly PE minutes. It just takes one person with the knowledge of the law to report a site, and none of us want to be the one that caused the district or districts to be defendants in a lawsuit.

Freedom of Speech and Religion

The law is clear that it is permissible to teach about religion in regard to historical context and significance. For example, in the primary grades, the social studies

standards include learning about traditions and celebrations and it would be difficult to teach these without reference to religion. Sharing personal beliefs, on the other hand, is where teachers can get into trouble. On the one hand, teachers can argue that they were simply sharing their own beliefs and students are free to make up their own minds. However, students are a captive audience in our classrooms. Attendance in our classes is not optional. When we are in our classrooms we are speaking on behalf of the school district. We are also frequently someone that our students respect, and when we share our beliefs that may differ from our students and their families we can cause distress and confusion in our students. It is best to keep our beliefs a private matter.

Teachers Religious Liberties - <http://www.firstamendmentcenter.org/teachers-religious-liberties>
Religion in The Public Schools: A Joint Statement of Current Law-
<https://www.aclu.org/other/joint-statement-current-law-religion-public-schools>

Other laws to consider:

AB9 – Seth's Law

Seth's Law is named after a 13-year-old California student who tragically took his own life in 2010 after years of anti-gay bullying that his school failed to address.

Seth's Law specifically contains the following requirements; "If school personnel witness an act of discrimination, harassment, intimidation, or bullying, he or she shall take immediate steps to intervene when safe to do so"

www.ggea.org/assets/documents/HRC/Seth's%20Law.pdf

AB537 – Student Safety and Violence Protection Act

Changed California's Education Code by adding actual or perceived sexual orientation and gender identity to the existing non-discriminating policy.

AB537 protects students AND school employees against discrimination and harassment

<https://gsanetwork.org/resources/legal-resources/ab-537-fact-sheet-california>

SB48 - The Fair, Accurate, Inclusive, and Respectful Education Act (FAIR 2011)

The FAIR Act requires schools in California to integrate age-appropriate, factual information about social movements, current events and the history of people with disabilities and lesbian, gay, bisexual and transgender (LGBT) people into the existing social studies lessons that include contributions of both men and women, people of color, diverse ethnic communities and other historically underrepresented groups.

<http://www.cde.ca.gov/ci/cr/cf/senatebill48faq.asp>

California Supreme Court Ruling: Your Personal Emails and Texts May be Public Records

This information has recently come to our attention. We don't know much about this at this point, but felt that it was important to share to with our members. As more information becomes available, we will share what we learn. Please read the following pages carefully.



California Supreme Court: Personal Emails and Texts May be Subject to PRA Requests

On March 2, 2017, the California Supreme Court unanimously held that when a public employee or official uses a personal account to communicate about the conduct of public business, the communication may be subject to disclosure under the California Public Records Act (“PRA”). (*City of San Jose v. Superior Court of Santa Clara County* (S218066, March 2, 2017).) In effect, this means that if an agency employee or official discusses public agency business on his or her personal email account, cell phone, computer or other electronic means, the agency may be required to disclose those communications.

Practical Pointers

Q. What does this decision mean for school districts?

A. The decision by the California Supreme Court means that if a district employee or official is conducting district business on his or her personal email account, cell phone, computer or by other electronic means or devices, such records might be responsive to a PRA request.

This is a significant decision that likely raises many questions for public agencies, including:

When does a communication on a private account become a “public record”?

A key aspect of the Court's holding was that, when determining whether a writing constitutes a “public record,” what matters most is the *content* of the writing, and not necessarily how and where the writing is stored. The Court stated that incidental mentions of agency business are insufficient to make a writing a public record. At a minimum, the writing must relate in some substantive way to the conduct of the public’s business. The Court acknowledged that this will not always be clear, and it is not so broad as to include “every piece of information the public may find interesting.” For example, this generally does not include communications that are primarily personal.

Whose personal accounts could contain “public records”?

The Court clarified that *any* employee or official may create a “public record,” even if the writing is prepared and maintained on his or her private account. For public school districts, for example, this would include school board members, administrators, teachers, classified employees and any other employee who prepares a writing that substantively relates to the district’s business.

How should public agencies search for records not in their possession?

Perhaps the most difficult question raised by this decision is how agencies should search for public records on private accounts. The Court noted that a public record retained by a public employee or official is “retained by” the agency itself, even if located on the employee’s or official’s personal account. In other words, the agency has “constructive” possession of the record. Must the agency then search an employee’s or official’s personal account to comply with a PRA request?

In short, no. The Court clarified that the agency need only make a “reasonable effort” to locate public records on a private account, and each agency may develop its own policies that respect individual privacy. The Court did not go further by providing a legal standard for addressing privacy concerns, instead stating that these issues should be considered on a case-by-case basis.

The Court also provided guidance on how agencies may search for records. For example, the Court indicated that, after communicating the request to the employees in question, an agency may reasonably rely on those employees to search their own personal accounts for responsive material. Agencies could also require employees to submit an affidavit confirming that any material withheld was not responsive to the request.

What should public agencies do in response to this decision?

At a minimum, public agencies should immediately review—and if necessary revise—their policies and practices related to employees' and officials' use of electronic communication to conduct agency business, as well as records retention policies and PRA response protocols. Agencies should also ensure all employees and officials are trained on these policies, including how to distinguish personal records from public records.

Agencies may also consider adopting policies that require employees and officials to use their public agency accounts when conducting agency business, thereby reducing the likelihood that public records will be on private accounts.

Finally, when reviewing these policies and procedures, agencies should keep in mind the Court's underlying policy consideration, that public agencies may not evade the PRA by communicating through personal accounts. To do so, the Court explained, could allow employees and officials to “hide their most sensitive, and potentially damning, discussions in such accounts.”

If you have any questions regarding this decision and how it affects your agency, please call one of our six offices.

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