

LEGAL MAILBAG – JUNE 6, 2024



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The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag:

As the principal of a middle school, I have to deal with all sorts of challenges, and perhaps my least favorite is disciplining employees. But I have been to enough workshops to know that documentation of employee deficiencies is essential. Hopefully, a strong letter will straighten out an errant employee, but if not, a disciplinary letter will serve as the basis for progressive discipline going forward.

Last week, I met with a teacher and her union representative as part of my investigation of allegations that she was yelling at her students. I asked her point blank if she has been raising her voice at students, but the union representative interrupted before she could answer, and he asked me to define “raising her voice.” Given that I was not the one accused, I was annoyed at the lawyerly tactics, but I kept my cool. I explained that I meant that the volume of her voice in addressing students was higher than a conversational tone without any extrinsic need to amplify her voice, such as a lawnmower outside her window.

I was rather proud of how I clarified the accusation, but then without even asking for permission, the teacher and union representative excused themselves and talked privately. They returned a short while later, and the teacher finally answered my question by saying that she “couldn’t recall.” With that, I ended the interview. Based on the testimony of students and even a paraeducator who spends part of her day in the teacher’s room, I determined that the accusation was true, and I wrote a letter substantiating the accusation and warning her that future incidents of yelling at students will result in further disciplinary action up to and including suspension without pay or termination of employment.

The collective bargaining agreement in our district with teachers requires that a teacher sign off acknowledging receipt of any disciplinary letter before it is included in a teacher's personnel file, and I sent her the letter and directed her to sign off and return the signed copy to me for inclusion in her personnel file. However, rather than signing as directed, the teacher wrote back to say that her union representative had advised her not to sign the letter because she will be filing a grievance, and she would be following his advice.

Can she do that?

Signed,
What Do I Do Now?

Dear What:

No. You issued your directive to comply with your contractual obligations, and the teacher will be insubordinate if she does not sign the letter. Insubordination is a serious matter, and, in such situations, Legal Mailbag likes to remind recalcitrant employees that insubordination is one of only six reasons for contract termination that are set forth in the Teacher Tenure Act.

Legal Mailbag notes that you seem perturbed by the actions of the union representative at the meeting you had with the teacher. However, the actions of the union representative during the "investigatory interview" you were conducting were well within the bounds of appropriate conduct. While you can always require that the employee, not the union representative, answer your questions, union representatives have the right to ask for clarification of questions before the employee answers them. That makes sense because an employee must understand the question for his or her responses to be reliable.

The union representative and the employee also have the right at any time during an investigatory interview to talk privately, which we call a "caucus," and they do not need your permission to do so. While you may prefer to receive an immediate answer to your questions, an employee has the right to caucus with the union representative before answering.

Here, however, the union representative overstepped by directing the employee not to sign the letter. The employee is free to file a grievance to challenge your letter as unjustified (*i.e.*, not for "just cause"), but such action does not excuse a failure to follow a directive. A basic labor relations principle is "work and grieve," which means that an employee is free to challenge an employer's action through the grievance procedure, but the employee remains obligated to comply with directives in the interim, whether it is to do an assignment, for example, or to sign the letter, as is the case here.

The directive from the union representative does not affect your right to direct the employee, and the employee has a choice to make. Legal Mailbag suggests that you expressly warn the employee that continued refusal to comply with your simple directive will result in another, more serious disciplinary offense of insubordination. Typically, such a warning results in compliance, but if it does not, you may then proceed with a separate disciplinary proceeding. You should interview the employee for a second time (with union representation if requested) about her refusal to follow your directive, and, absent any legitimate excuse, you may then impose further discipline for insubordination.