



Protecting Yourself From Allegations

2018

*Student safety is of paramount importance and all of us need to make every effort to ensure safe learning environments for all students. When safety is compromised, or inappropriate actions occur, it needs to be reported immediately. All staff should be trained on mandatory reporting requirements and procedures. But what happens when an unfounded allegation is made against a teacher or staff member? While such allegations are rare, it is possible that sometime during your career, you or someone in your building, may be accused of inappropriate conduct or contact with a student. While there is no guaranteed way to avoid such accusations, **there are ways to reduce your risk.***

DO

- **Familiarize yourself with District policies and seek appropriate training.** Familiarize yourself with [MMSD Board Policy 4221](#) which governs the use of restraint and/or seclusion of students. Staff who are expected to restrain students or break-up fights should receive appropriate training.
- **Exercise good judgement.** Consider how your actions might look to someone who has only superficial knowledge of education and of the children involved. Ask yourself how your conduct would look to someone who wants to question your professional behavior.
- **Make sure all student interactions are in plain view of others to the extent possible.** This includes keeping the door to your room open when you are meeting with students, avoiding meeting alone with students, and keeping windows unobstructed.
- **Consider the age and physical development of every child and whether contact is student initiated.** Touch that is acceptable with 1st graders may not be with 4th graders. In the early elementary setting, some affection and nurturing may be permissible. By older elementary levels, physical contact, especially affectionate physical contact, may be viewed with suspicion. Student initiated contact may also be viewed more appropriately than staff initiated contact.
- **Keep notes of any situation that you believe might become a concern in the future.** Be specific about who was present, where and when the event took place.
- **If you are an MTI member, contact MTI to discuss any incident in which your actions have been questioned.** This will guarantee that you receive the necessary representation.

DON'T

- **DON'T restrain a student unless absolutely necessary to prevent them from harming themselves or others.** Breaking up a fight or trying to calm down a volatile student who is out of control are the most common situations in which educational employees get injured or accused of some form of physical abuse. **Familiarize yourself with [MMSD Board Policy 4221](#) attached to this document which governs the use of restraint and/or seclusion of students.** Being aware of, and complying with, Board policy, as well as receiving training on the appropriate use of restraint in such instances, is critical to providing you with protection in such circumstances.
- **DON'T put yourself into any situation which creates even the impression of impropriety.** In particular, never give a student a ride home, or elsewhere, or invite a student to your home without the express permission (written preferred) of the student's parents, your principal, and the presence of another adult.
- **DON'T become a student's counselor unless that is your job.** If a student confides in you on a personal topic of a sexual or illegal (e.g., alcohol or drug use) nature, tell the student you are not the one to talk to and refer him or her to a counselor, social worker or school psychologist. Report any situation which falls within the areas of the mandatory reporting requirements.
- **DON'T "friend" or communicate with students using social media.** Maintain professional boundaries.

What should you do if allegations are made against you?

One of the most important benefits of MTI membership is the right to MTI representation, MTI members are entitled to MTI representation in any matter which can adversely impact their employment. ***If you are advised that allegations have been made against you, and you are an MTI member, you should immediately contact MTI staff for representation at 257-0491 (see the back of your MTI membership for more information on this right).*** Non-members receive no MTI representation on such issues.

If the allegations made against you are **employment-related**, you may be asked to meet with your principal, MMSD Labor Relations attorneys, or other District administrators. If you are an MTI member, exercise your right to request MTI representation be present for any such meetings or discussions. Do not meet without MTI representation present.

If the allegations made against you are of an employment-related **criminal nature**, you may also be asked to meet with Police Officers. Again, MTI members should request MTI representation in such meetings and MTI may provide a referral to legal counsel for such matters.

Most allegations are resolved promptly through discussions with the involved parties. More complicated or serious allegations may require additional investigation. If the charges are of a particularly serious nature, the employee may be placed on a paid administrative leave while the investigation is pending. Such a leave is non-disciplinary with any potential discipline determined after the investigation is complete.

What protections do you have from false or unfounded accusations?

MTI members have significant employment and legal protections from false accusations. MTI-represented employees who choose not to join the union have far fewer protections.

Employee Handbook Rights. Due to MTI's advocacy in the MMSD Employee Handbook, ***all MTI-represented employees have "just cause" protection from unfair discipline.*** Generally speaking, "just cause" protection means that the employer needs to prove that they have a good reason and conducted a fair investigation before determining to discipline or terminate an employee. MTI will provide representation and challenge the discipline of any MTI member who is subject to discipline without just cause. MTI will also provide members with highly qualified legal counsel should the grievance involve an appeal before an impartial hearing examiner for determination of whether just cause exists. Non-members do not receive MTI representation on such issues.

Legal Rights. The School District is responsible to indemnify (hold harmless) teachers and other employees against liability for certain acts occurring during the scope of employment. The protection includes the cost of defending such actions as well as any damages that might actually be awarded. The School District, however, provides *no legal representation* for employee's whose actions are not viewed as falling "within the scope of employment" or are the subject to criminal allegations and may, in fact, take adverse action against any employee in such instances.

Teachers who are MTI members receive the benefits of MTI representation and are also members of WEAC and NEA and, as such, are covered by an Educators Employment Liability (EEL) policy which provides*:

- Additional civil coverage for \$1 million and for monitoring of any legal defense provided by the district
- EEL protection to members who must defend themselves against criminal charges related to their employment by reimbursing attorney fees in the investigatory (pre-charge) phase and further reimbursing attorney fees and legal costs to a maximum of \$35,000 when the member is found innocent or the charges are dropped

The Educators Employment Liability protection assures that teachers who are members of MTI receive the best legal advocacy possible should they be subject to false or unfounded allegations of criminal wrongdoing. Non-members are not covered by this policy.

*see EEL policy document for specific coverage

MMSD Policies and Procedures: 4221

Use of Restraint and/or Seclusion

POLICY

School discipline requires the guidance of students in a way which permits the orderly and efficient operation of the school. The BOARD does not condone the use of, restraint or seclusion by employees when dealing with students, and corporal punishment and unreasonable use of physical force are expressly prohibited. The BOARD recognizes, however, that it may be necessary for school personnel to use reasonable and appropriate restraint and/or seclusion when a student's behavior presents a clear, present, and imminent risk to the physical safety of the student or others and it is the least restrictive intervention feasible.

PROCEDURE

1. Reasonable Use of Restraint:
 - a. Reasonable restraint may be used by school personnel when necessary to restrain, remove, or disarm students whose behavior presents a clear, present, and imminent risk to the physical safety of the student or others.
 - b. Restraint is necessary only when it is the least restrictive intervention feasible.
 - c. In determining whether the use of restraint is reasonable and necessary, all circumstances surrounding the incident shall be considered, including without limitation, the seriousness of the problem and the threat posed by the student, and the availability and use of other means of intervention not involving the use of restraint.
 - d. The degree of force used and the duration of the restraint shall not exceed the degree and duration that are reasonable and necessary to resolve the clear, present, and imminent risk to the physical safety of the student or others.
2. Training related to the use of restraint:
 - a. Except in circumstances set forth in 2.b., no District employee shall engage in restraint unless he or she has received training in the use of restraint.
 - b. A District employee who has not received training in the use of restraint may engage in restraint only in an emergency and only if a District employee who has been trained in the use of restraint is not immediately available due the unforeseen nature of the emergency.
3. Reasonable Use of Seclusion:
 - a. Seclusion may be used on a student if the student's behavior presents a clear, present, and imminent risk to the physical safety of the student or others and is the least restrictive intervention feasible.
 - b. Seclusion may be used only if a District employee maintains constant supervision of the student.
 - c. Seclusion may be used only if the area or room used for seclusion is free of objects or fixtures that may injure the student.
 - d. If a student is secluded in a room, no door connecting the room may be capable of being locked.
 - e. If a student is secluded the student must have adequate access to bathroom facilities, drinking water, necessary medication, and regularly scheduled meals and the duration of the seclusion is only as long as necessary to resolve the clear, present, and imminent risk to the physical safety of the student or others.
4. Reasonable use of physical intervention:
 - a. Physical intervention may be used on a student if the student's behavior presents a clear, present, and imminent risk to the physical safety of the student or others and is the least restrictive intervention feasible.
 - b. In determining whether the use of physical intervention is reasonable and necessary, all circumstances surrounding the incident shall be considered, including without limitation, the seriousness of the problem and the threat posed by the student, and the availability and use of other means of intervention not involving the use of physical intervention.
 - c. Examples of physical intervention that could be reasonable and necessary include, but are not limited to, the following:
 1. Using physical intervention to quell a disturbance or prevent an act that threatens physical injury to any person;
 2. Using physical intervention to obtain possession of a weapon or other dangerous object within a student's control;
 3. Using physical intervention for the purpose of self defense or the defense of others;
 4. Using physical intervention to prevent a student from inflicting harm on himself or herself.
5. Corporal Punishment and Unreasonable Use of Physical Intervention Prohibited:
 - a. The unreasonable use of physical intervention occurs as a result of using physical intervention (1) when it is not necessary to use such physical intervention, or (2) when it is no longer necessary to use such physical intervention.

- b. Corporal punishment is the unreasonable and unnecessary use of physical intervention. It is defined as the intentional infliction of physical pain which is used as a means of discipline.
- c. Corporal punishment and the unreasonable use of physical intervention are prohibited.
- d. Examples of corporal punishment and the unreasonable use of physical intervention are as follows:
 - 1. Slapping;
 - 2. Paddling;
 - 3. Punching;
 - 4. Kicking;
 - 5. Pinching;
 - 6. Prolonged maintenance of physically painful position.

6. Reporting:

- a. Each incident of restraint or seclusion shall be reported to the Building Principal as soon as practicable after the incident of restraint or seclusion has ended.
- b. Each incident of restraint or seclusion shall be reported to a student's parent no later than one business day after the incident.
- c. Each incident of restraint or seclusion shall be documented by school personnel in a written report within 2 days after the incident.
- d. Annually by September 1, beginning on September 1, 2013, each Principal shall submit to the Board of Education a report containing all the following:
 - 1. The total number of incidents of restraint and seclusion during the previous school year.
 - 2. The total number of students who were involved in incidents of restraint or seclusion.
 - 3. The number of children with disabilities who were involved in incidents of restraint or seclusion.

7. Definitions:

- a. In this Policy the following definitions apply:
 - 1. Restraint - a restriction that immobilizes or reduces the ability of a student to freely move his or her torso, arms, legs or head. The definition of restraint does not include briefly touching a student's hand, arm, shoulder or back to calm, comfort, or redirect the student.
 - 2. Seclusion - involuntary confinement of a student, apart from others, in a room or area from which the student is physically prevented from leaving. The definition of seclusion does not include the following:
 - 1. Directing a student who is disruptive to temporarily separate himself or herself from the general activity in the classroom to allow the student to regain behavioral control and the employee to maintain or regain classroom order if the student is not confined to an area from which he or she is physically prevented from leaving.
 - 2. Directing a student to temporarily remain in the classroom to complete tasks while other students participate in activities outside the classroom if the student is not physically prevented from leaving the classroom.

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