

# Inappropriate Staff Conduct/ Maintaining Professional Boundaries

## Why Does a Board of Education Need a Policy and Regulation?

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NEW JERSEY SCHOOL INSURANCE GROUP

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# N.J.S.A. 18A:28-5

## Tenure of Teaching Staff Members

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- .... shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or unbecoming conduct such a teaching staff member or other just cause ....
- Tenured teaching staff only dismissed from tenured position by Arbitrator.
- An Arbitrator determines if dismissal of tenure staff member is warranted, based on facts and circumstances of each case.
- Past Commissioner cases and Arbitrator cases define inefficiency, incapacity, and/or unbecoming conduct.



# Why Does a Board of Education Need an Inappropriate Conduct/Maintaining Professional Boundaries Policy and Regulation?

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- For all the right reasons.
- This conduct impacts the lives of those accused, whether found guilty or not.
- This conduct impacts students for the rest of their lives.
- A New Jersey court held a tenured Principal personally responsible for extensive damages.
- NJ Supreme Court establishes a higher degree of care by school staff and the school district for the intentional acts of its employees, districts must have reporting procedures and training.



# In the Matter of Brian Frugis and Susan Frugis, individually and as guardians for their minor child, R.H. v. Samuel Bracigliano and Elmwood Park Board of Education....

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## FACTS:

- 1995 conviction of Principal for injuries suffered by two boys after being sexually abused by the Principal.
- Principal's conviction based on taking and retaining of pictures of the boys for sexual gratification.
- Principal covered office door window and brought boys into office and took photographs.
- Evidence indicated suspicion was present among school staff and others.



In the Matter of Brian Frugis and Susan Frugis, individually and as guardians for their minor child, R.H. v. Samuel Bracigliano and Elmwood Park Board of Education....

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## Procedural History

- Trail Court grants judgment for boys and directed verdict against Board for liability. Damages in excess of \$750,000 awarded to plaintiffs.
- Appellate Division concluded the evidence against district was overwhelming; however, a reasonable fact finder could have found the Board was not negligent. Appellate Division reverses as to the directed verdict against the Board.



In the Matter of Brian Frugis and Susan Frugis, individually and as guardians for their minor child, R.H. v. Samuel Bracigliano and Elmwood Park Board of Education....

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## New Jersey Supreme Court

- Supreme Court concluded jury on remand should be instructed on the heightened duty of school boards to ensure student safety from foreseeable harm, particularly those presented by the intentional acts of school personnel.
- Supreme Court states school districts should have policies for reporting abuse, training programs, etc.



# In the Matter of the Tenure Hearing of Brian Yatauro....

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- Relationship arose when tenured music teacher consoled student when student's grandmother died.
- Relationship escalated to kissing, embracing and sexual contact.
- Board suspends teacher.
- Criminal charges filed and found not guilty of criminal charge.
- ALJ/Commissioner found credible evidence that teacher engaged in sexual conduct with student.
- Teacher terminated.



# In the Matter of the Tenure Hearing of Henry Allegretto....

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- ALJ concluded Board established credible evidence that tenured teacher:
  - discussed aspects of his personal sex life with students, made inappropriate comments of a sexual nature to female students, etc.
- ALJ finds unblemished record over lengthy service not enough to remove tenure.
- Commissioner increases suspension and increment withholding.
- Teacher's conduct was limited to language and unblemished record & first offense.





# In the Matter of the Tenure Hearing of Gregory Gomes...

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- Teacher had no prior discipline issues in 16 years.
- Principal's investigation concluded tenured teacher admitted he accessed a number of pornographic sites using two separate school district computers.
- Teacher indicated he was writing a romance novel and accessed sites to "spice it up".
- Teacher indicated he did not know he was leaving a "trail" of the sites on the computer directory and he never accessed sites in the presence of students.
- ALJ/Commissioner concluded teacher violated public trust and confidence – teacher dismissed.



# Commissioner Affirms Board of Examiners Decision to Revoke Certificate

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- Commissioner affirmed the State Board of Examiner's decision to revoke the Teacher's certificates as the testimony established the Teacher:
  - Was touching a student's leg and putting his hand up her skirt during a field trip;
  - Allowed the student to rest her head on his shoulder during an awards ceremony and while riding on a class trip bus;
  - Allowed the student to enter his hotel room twice during a field trip;
  - Drove the student home after a field trip contrary to Board Policy;
  - Exchanged 1,857 text messages with the student between April 18 and May 11, 2012, some of which were sexually explicit; and
  - The student admitted to two State Police detectives she and the Teacher were engaged in a consensual sexual relationship which began after the student's 18<sup>th</sup> birthday.

*See In the Matter of the Revocation of the Certificates of Ronald Moreno by the State Board of Examiners, DKT. NO. 1213-107, Commissioner of Education, 12 May 2015.*



# Commissioner Terminates Teacher for Using Demeaning Names and Terms

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- The Assistant Commissioner adopted the ALJ's decision finding the Tenured Teacher failed to uphold the implicit standards of good behavior expected of a Teacher, as his remarks offended publicly accepted standards of decency in referring to students using demeaning names and terms and engaging in the use of profanity in their presence despite several warnings and being given many second chances.
- ALJ concluded the Tenured Teacher spoke to and about students in a derogatory, demeaning, and humiliating manner and used racial, ethnic, and socio-economic epithets and stereotyping comments to students.
- The ALJ concluded the district clearly demonstrated the Teacher had been in a recurrent pattern of conduct unbecoming a teacher and the appropriate penalty was to dismiss the Teacher.
- The Commissioner concurred.



# Arbitrator Terminates Teacher for Inappropriate Staff Conduct

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- An Arbitrator removed the Teacher from his position for the following:
  - Accessing pornography on school district computers;
  - Using obscene and inappropriate suggestive language to female students;
  - Making and engaging in inappropriate comments to female students; and
  - Using profanity with students while they were under his supervision as a track coach.
- Upon hearing all the testimony, the Arbitrator indicated:
  - The Teacher's conduct cannot be condoned; and
  - The Teacher's conduct was unbecoming as a Teacher and the Teacher was terminated.



# Board of Examiners Suspends Certificate for Neglect and Failure to Provide Adequate Supervision

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- Teacher/coach allowed two female students to remain in hotel room for a substantial period of time during a multi-day track meet.
- Board filed tenure charges – Teacher resigned.
- Board withdrew tenure charges after resignation.
- ALJ concluded Teacher and his roommates had beer in their room and two female students spent time in the room at the invitation of another coach.
- DYFS substantiated charge of “neglect and failure to provide adequate supervision” against the Teacher.
- ALJ found the Teacher exercised poor judgment, but revocation of certificate not warranted – resignation from tenured position appropriate penalty.
- State Board of Examiners ordered certificates be suspended for two years.

*See In the Matter of the Suspension of the Certificates of Corey Younger by the State Board of Examiners, SB#13-05, State Board of Education, 04 January 2006.*



# Teacher Terminated for Pattern of Inappropriate Conduct

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- Female student testified Teacher would comment on:
  - Her boyfriend, her relationship with her boyfriend, and how he would like to take her out to dinner during the summer.
  - Homebound student testifies the Teacher would comment on her beautiful eyes and how he wanted to take her to dinner.
  - Other students testify the Teacher made suggestive comments to them in past incidents.
- ALJ concluded the district proved by a preponderance of the credible evidence the Teacher:
  - Engaged in a pattern and practice of making inappropriate comments of a sexual nature to students;
  - Demonstrated a lack of capacity to properly service students under his charge by reason of his inappropriate actions and remarks; and
  - Was determined unfit to engage in teaching students.
- Commissioner concurred with the ALJ – Teacher dismissed.

*See In the Matter of the Tenure Hearing of Wayne Slaughter, School District of the City of Bridgeton, DKT. NO. 326-8/02, unpublished decision, Commissioner of Education, 08 July 2002.*



# Teacher Terminated for Conduct that Undermined Public Confidence

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- 1<sup>st</sup> Grade Teacher posted comments, “I am not a teacher – I’m a warden of future criminals!” and “They had a scared straight program in school – why couldn’t I bring 1<sup>st</sup> graders?”
- The tenure charges asserted the Teacher breached her duty to maintain a safe, caring, and nurturing educational environment for her 1<sup>st</sup> grade class, offended district parents, libeled her students, and reflected a low opinion of the children entrusted to her care.
- The district further charged the Teacher failed to exercise appropriate discretion and her actions disrupted the educational environment in her school.
- The charges also asserted the Teacher’s conduct undermined public confidence in the school and violated district policy prohibiting inappropriate staff conduct that states school staff shall not make inappropriate comments to or about pupils.
- Teacher commented that the Facebook comments were done on her own time and to her friends.
- Based on these facts, the ALJ ordered the Teacher be dismissed from her tenured position of employment within the school district and the Commissioner concurred.

*See In the Matter of the Tenure Hearing of Jennifer O’Brien, State-Operated School District of the City of Paterson, Passaic County, DKT. NO. 108-5/11, Commissioner of Education, 12 December 2011.*



# Behavior Patterns in Legal Cases

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- Most cases involve male staff w/ female students.
- Many cases begin w/ relationship and/or contact outside the school building.
- Most cases involve some type of sexual discussion in advance of further inappropriate behavior.
- Commissioner/Arbitrator/Courts have little tolerance for inappropriate behavior, particularly with issues of sex, drugs, weapons, etc.
- Many times, other staff members know or suspect when another staff member is engaging in such inappropriate behavior.





# Inappropriate Staff Conduct

## Review of Important Policy Issues

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- Inappropriate Comments
  - Sexual comments
  - Sexual humor
  - Inappropriate comments about student's clothing & appearance
  - Comments about student's boyfriend/girlfriend
  - Comments with sexual overtones
  - Inappropriate comments by staff to student about staff member's personal life not relevant to staff member's professional responsibilities



# Inappropriate Staff Conduct Review of Important Policy Issues

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- Inappropriate Conduct
  - Social relationship between staff member and student outside of staff member's professional responsibilities
  - Sexual harassing conduct
  - Inappropriate touching between staff member and student
  - Corporal punishment
  - Signs of affection beyond the teacher-student relationship
- Inappropriate Conduct is NOT
  - A student's sign of appreciation to staff member at school functions, etc.



# Inappropriate Staff Conduct Review of Important Policy Issues

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- Inappropriate Language or Expression
  - First Amendment Protection Issues
    - Some language and expression by staff members is traditionally not protected by First Amendment
  - Staff member's use of profanity, obscene language, public lewdness and/or comments with sexual overtones
  - Distribution and/or discussion of pornography



# Inappropriate Staff Conduct Review of Important Issues

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- Miscellaneous Concerns
  - Unannounced or uninvited visits by students to staff member's house, place of work, etc.
  - Transportation of student by staff member in staff member's private vehicle
  - Need to provide information to parents/legal guardians regarding inappropriate or unacceptable behavior



# What Must Staff Members Do?

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- Establish Boundary Rules With Students from the Beginning
  - It is recommended boundaries are established early in the process.
  - Classroom rules, student conduct expectations, how the teacher will address the students, how the students shall address the teacher, etc.
  - Staff members must stay within their assigned professional responsibilities at all times.

# What Must Staff Members Do?

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## ○ Be Aware of all Personal Interactions with Students

- Do not “open the door” to a potential boundary violation.
- If a student’s conduct approaches a boundary violation – immediately stop and correct the conduct.
  - If conduct is by student, teacher should counsel student on “why” such conduct cannot continue or seek administrative assistance on counseling the student on stopping the conduct if staff member is not comfortable discussing it with student.
  - If conduct is by a teacher, teacher should immediately cease such conduct and may want to acknowledge and discuss the situation with administration.

# What Must Staff Members Do?

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- Throw a “Life-Preserver” to a Co-Worker
  - A staff member can prevent the *perception or the appearance* of a boundary violation by having a discussion with the co-worker.
    - This discussion may be difficult, but may make a co-worker realize a perception or appearance that he/she did not realize or prevent a boundary violation from occurring.
    - This discussion could save a life of a co-worker and of a student.
- Reporting Responsibilities
  - Staff member has a legal and professional obligation to report a co-worker if teacher has reason to believe a student may have been abused or neglected.

# What Must Staff Members Do?

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- Use Common Sense in Locations/Settings with Students
  - Conduct one-on-one interactions in “plain view.”
    - Meet in school location where it is quiet, yet open and visible.
    - Do not close doors or work in area with “blocked view.”
    - Do not have student in personal automobile unless expressly approved or in an emergency situation.
  - Avoid having just one student in an automobile – have at least one other person, preferably an adult.
  - Do not have students come to teacher’s personal residence or teacher should not go to a student’s house without express permission and without a specific approved purpose.





# What Must Staff Members Do?

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- Seek Assistance if Concerned
  - A teacher should seek administrative support if the teacher feels uncomfortable in how students are interacting with him/her (i.e. younger teacher, popular teacher, coaches, and advisors).



# What Must Boards of Education Do?

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- Develop and adopt a Policy and train staff members on inappropriate staff conduct/maintaining professional boundaries.
  - Strauss Esmay Policy and Regulation Guides 3281 and 4281
- Consider communicating with parents on school policies and regulations regarding acceptable and unacceptable teacher and student conduct.
- District must investigate reports of professional boundary violations, even if the report comes from an anonymous source or is alleged to occur “out of or away from school.”

# What Must Boards of Education Do?

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- Reporting Requirements
  - If *preliminary* investigation finds certain professional boundaries may have been violated, the district must immediately notify:
    - Department of Children and Families (DCF)
    - Parents/guardians of student(s)
    - Local law enforcement
  - If *final* investigation finds certain professional boundary violation(s), the district must take immediate action to include notification to DCF and local law enforcement and take immediate appropriate employment action.

# DISCUSSION

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