Never a Dull Moment! Case Studies & Tales from HR

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Roadmap for Today

- Case Studies
  - Disciplinary Action
  - Evaluations
  - Leaves
- Q & A (*i.e.*, stump the presenters)

Disclaimer

- The hypotheticals presented today are loosely based upon real-life cases that we have worked on.
- However, the facts of each case have been adjusted to protect privacy and confidentiality rights (and to also make for a more interesting discussion).

Case Study #1

"Rage on Social Media"

- At the beginning of each school year, teachers are required to review a presentation which warns them to be careful when posting to social media any information regarding students considered confidential.
- The teachers are also warned to not make disparaging comments about students, parents, or colleagues.
- Finally, teachers are reminded to make their personal social media accounts private.

Case Study #1

"Rage on Social Media"

- Principal Jim receives an e-mail from a parent about Susie, a tenured teacher in the District. The message reads:

Dear Principal Jim:

I was recently made aware of posts that Teacher Susie made on her Facebook page, which were public. Please see the attached screenshots of Susie's offensive posts about the students in her class. I expect the District does not tolerate this type of behavior and will take immediate action.

Case Study #1

"Rage on Social Media"

- Principal Jim reviews the screenshots of the teacher's public social media posts, which include, among other inappropriate items, the following:
  - Susie wrote that there was no better form of birth control than to have someone observe her classroom.
  - Susie stated that the worst part of her job was calling and speaking to parents.
  - Susie posted handwriting samples of students for her social media followers to examine and opine on who had previously written offensive language on a desk about Susie.
  - Susie referenced specific discipline issued to a student and a complaint from that student's parent that she was targeted because of race.
  - Susie referred to another parent as "insane."
  - Susie referred to a student as an "a-hole."
  - A video was shared by Susie with a title including a racial slur.

Case Study #1

"Rage on Social Media"

- Principal Jim refers the parent e-mail and social media posts to Human Resources for guidance and investigation.
- What are your initial steps?
  - Review public social media page accessible at that time.
  - Review CBA + Board Policy.
  - Administrative leave pending investigation.
  - Review personnel file.

Case Study #1

"Rage on Social Media"

- Review of Susie's personnel file reflects that she was issued a written reprimand just months earlier for losing her temper and cursing at students in the classroom.
- However, she has never been issued a Board Notice of Remedial Warning and recently received a "Proficient" on her performance evaluation.
- Assuming Susie admits to making the inappropriate posts in question, is termination a defensible option?

Case Study #1

"Rage on Social Media"

- **Key Question** – Is Susie's proven conduct remediable?
  - Remember: The District holds the burden of proof in a tenured teacher dismissal hearing.
  - Closely consider the harm caused to students/parents by the conduct in question.
  - Also consider prior administrative directives and training related to conduct standards and appropriate use of social media.

Case Study #1

"Rage on Social Media"

- **Outcome?** In a case involving similar underlying facts, the Hearing Officer upheld the District's dismissal decision.
  - The teacher's violations of the social media policies were numerous and severe – she breached her responsibilities to the students, parents, and the District.
  - Was it remediable? Giving the teacher a warning would have served "little purpose." This was not a single "one off" misuse of social media.
  - According to the Hearing Officer, the damage was already done. The conduct was cruel and occurred over a period of time, making it irremediable *per se*.

Case Study #2

"It Isn't Mine"

- You receive a report from a staff member that Mike, a tenured teacher, is exhibiting some strange behaviors in the classroom.
  - Mike is slurring his words, having difficulty standing, and appears to have fallen asleep at his desk.
  - Based on the concerning symptoms, 911 is called to transfer Mike to a medical facility.
  - Before leaving the premises, Mike is <u>not</u> administered a breathalyzer test.

Case Study #2

"It Isn't Mine"

- While awaiting the paramedics, the Principal goes to Mike's classroom to retrieve his personal belongings.
  - The Principal observes an open bottle of liquor in Mike's open backpack and takes a picture of it with his cell phone.
- What are your initial steps to conduct the investigation into Mike's conduct?

Case Study #2

"It Isn't Mine"

- Your investigation does not uncover any witnesses to Mike drinking alcohol while on the premises, nor was there any reports that Mike smelled of alcohol.
- During the due process interview, Mike presents medical documentation from his visit to the hospital immediately following the incident in question, which reflects that he tested negative for the presence of drugs or alcohol in his system.
  - Mike denied using any drugs or alcohol on the day in question. He acknowledged not being his usual self, but attributes it to family issues he is having.
  - Mike did acknowledge possessing liquor in his backpack while in the school building but claims that he had hid it from a family member on the night prior and forgot about it.

Case Study #2

"It Isn't Mine"

- What are your options?
  - Disciplinary action?
  - Fitness-for-duty medical exam?
  - ADA issues?
  - Review District's current drug and alcohol testing protocols.

Case Study #3

"Refusal to Meet"

- Andrew, a tenured teacher, was issued a Notice of Remedial Warning approximately ten years ago with directives to abide by all administrative directives for the remainder of his employment.
- Last year, Andrew received a "NI" on his performance evaluation.
  - Andrew's rating was partially due to his failure to comply with deadlines set to submit SLOs and other evaluation documents.
  - Andrew was placed on a PDP for this school year which required him to complete and submit evaluation documents in accordance with a specified timeline.

Case Study #3

"Refusal to Meet"

- One week before Andrew's summative conference, the Principal notifies Andrew that he needs to submit the completed evaluation documents to her by the day before the conference.
- On the day before the conference, Andrew notifies the Principal that he will be unable to complete the required evaluation documents due to problems in his personal life.
- In response, the Principal rescheduled the summative evaluation conference and gave Andrew an extension to complete the documents.

Case Study #3

"Refusal to Meet"

- After Andrew failed to provide the documents by the extended deadline, the Principal provided another extension and rescheduled the summative conference.
  - The Principal notified Andrew that the summative conference would be moving forward as scheduled, even if he did not submit the documentation.
  - Andrew failed to attend the rescheduled summative conference without notifying the Principal in advance.

Case Study #3

"Refusal to Meet"

- After consulting with HR, the Principal decided to provide a final extension to Andrew to submit the required documentation and rescheduled the summative conference for a final time. Andrew was notified that his failure to comply with these directives would constitute insubordination.
  - Andrew again failed to submit the documents by the deadline and did not attend the summative conference, providing no advance notice to the Principal.
  - When questioned why he did not attend, Andrew reported that he did not "remember" seeing the Principal's e-mail correspondence.

Case Study #3

"Refusal to Meet"

- What should your next steps be to address Andrew's non-compliance with the PDP and administrative directives?
- Disciplinary options?

Case Study #3

"Refusal to Meet"

- You schedule a due process interview with Andrew to discuss his insubordination and non-compliance with the PDP.
- Andrew, however, fails to attend the meeting without advance notice, even after being provided notice of the meeting via multiple methods.
- You reschedule the meeting two more times and Andrew again fails to attend both without providing any notice.

Case Study #3

"Refusal to Meet"

- Is dismissal appropriate?
  - Violating the PDP directives
  - Failing to comply with Principal directives
  - Failing to attend summative conferences
  - Failing to attend due process meetings
  - Violating the Notice of Remedial Warning

Case Study #4

"The Intermittent Leave Conundrum"

- Mya, an Art teacher, provides the District with FMLA paperwork indicating the need for intermittent leave to attend scheduled treatment for her mental health condition.
- The FMLA medical certification reflects that Mya needs to work the following reduced schedule:
  - Mondays – Off
  - Tuesdays – Off
  - Wednesdays – Leave 2 hours early
  - Thursdays – Leave 2 hours early
  - Fridays – Leave 2 hours early

Case Study #4

"The Intermittent Leave Conundrum"

- The Principal comes to you with concerns about Mya's request. He states that it will be difficult to find coverage for Mya's Art class but expresses bigger concerns about the impact that Mya's absences will have on the students.
- Mya meets the eligibility requirements to take 12 weeks of leave under the FMLA – what are the District's options to address the operational impact caused by the intermittent leave?

Case Study #4

"The Intermittent Leave Conundrum"

- Section 825.601 of the FMLA Regulations outline limitations on intermittent leave for school employees.
- If an eligible instructional employee requires leave on a reduced leave schedule for their own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employer may require the employee to:
  - Take leave for a period of particular duration, not greater than the duration of the planned treatment; or
  - Transfer temporarily to an available alternative position, with equivalent pay and benefits, and which better accommodates recurring periods of leave.

Case Study #4

"The Intermittent Leave Conundrum"

- Best option to address Mya's leave request?
  - Benefits of requiring Mya to take a continuous period of leave?
  - What if Mya was a bus driver, not a teacher?

Questions?

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