



Danger, Will Robinson

Anyone who has been in a position of leadership understands the frustration that comes with being unable on most occasions to tell others how you are handling a particular situation at work. You are aware that most everyone knows about an issue with a certain student or employee, and you desire to communicate that you are not oblivious or indifferent ... and you ARE taking appropriate steps. However, due to confidentiality concerns and your professional duty to keep matters private in most cases, you just aren't able to share much.

At times this approach serves you well, such as when you are contacted by the media and may legitimately respond that it is a confidential staff or student matter and you are unable to disclose information. Having noted this, don't forget that some employee records are public, if the employee has been demoted, resigned, or was terminated, and the records relate to the cause of such personnel action.

Now, we have established it is often prudent to say: "I am unable to discuss confidential student or employee matters." However, what about those instances when a former employee or parent of a current student is absolutely raking you or your district over the coals on social media or in the media?

At this point feel obligated to say, "Danger, Will Robinson!" No, Will Robinson is not an Iowa school administrator. Just Google the phrase if I have you befuddled. On a side note, if you just Googled that phrase, you are way too young. OK, here is the actual warning, before you decide to publicly share more than the standard phrase concerning an otherwise confidential topic, please run the matter past your district's legal counsel, or base the decision off previous guidance your attorneys have provided the district.

Let's get back to the raking over the coals. Here is the underlying point I want to make in this column (sorry it took four paragraphs to get here): It is my legal opinion that neither you nor the district always has to sit back and take it when a parent or former employee has opened the door and is just blistering you on social media or in the news.

Should you consider whether you are just fanning the flames by giving additional information or responding in some manner? Absolutely. (Refer to paragraph six of Roark's column on page 2 for additional guidance.)

Is it wise to get your supervisor's OK or at least keep him or her informed of your actions before you put something out? Most definitely.

Consider this common example: A parent and student filed a bullying complaint with the district regarding an alleged bullying incident. You spent no less than 20 hours on the investigation and appropriate follow-up with the family. However, the result of your thorough investigation was that the bullying complaint was unfounded. A week later the parent starts describing you as one step removed from the devil himself on numerous Facebook posts. She states that you and your district don't care if kids get bullied, and that you took no action when her son recently was bullied at school. This then leads to numerous other community members sympathizing with the parent and further commenting that it is just horrible that you and the district don't care about kids being bullied.

This is where the fanning the flames analysis needs to take place. For the sake of a more interesting column, let's assume things have gotten so out of control that it has started to affect the operation of the building or the confidence community members may have in the administration, and the district would like to respond. Let's also assume that you already talked to the parent right after the first posts were brought to your attention, which would be a wise first step. Regardless, she is relentlessly going after you and the district despite your efforts to get her to see things from a different perspective. After determining your means of communication (e.g., email to parents in the building or district, response to media questions, etc.), I see no legal problem with sharing a response such as the following: "The Carver Community School District is aware of public concerns a parent in our district has raised regarding alleged bullying at Schon Elementary. While we are unable to share many of the details concerning this alleged bullying incident due to student confidentiality, it is important for the parents in our district to know that we take bullying extremely seriously and do not tolerate bullying behavior in our buildings. Regarding the incident in question, school officials spent at least 20 hours thoroughly investigating the matter and regularly communicating with parents of the involved students."

Your communications folks are more than welcome to slice and dice my sample response, but hopefully everyone understands the underlying point I am making. Such a response does not breach student confidentiality. I find nothing illegal, unethical or immoral if you ever decide that a similar response is necessary.

As a related matter, educators sometimes think that everything they see and hear at school is protected under the Family Educational Rights and Privacy Act. Please consider the following guidance from the U.S. Department of Education:

"FERPA does not prohibit a school official from disclosing information about a student if the information is obtained through the school official's personal knowledge or observation, and not from the student's education records. For example, if a teacher overhears a student making threatening remarks to other students, FERPA does not protect that information, and the teacher may disclose what he or she overheard to appropriate authorities." (*Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary School*)

www2.ed.gov/policy/gen/guid/fpco/brochures/elsec.pdf

We don't want to take such guidance the wrong way. This does not mean that educators may now talk/gossip with others about things that happened in class, just because the matter didn't end up in a student's records. Such gossiping would undoubtedly be unethical and unprofessional. However, it does mean that school officials are not always required to request law enforcement to obtain a subpoena prior to discussing things that happened in the classroom, on school property or at a school activity.

You should also know that the actions of parents are not protected under FERPA. While you should again use ethical considera-

tions and your concern for the emotional well-being of the parent's child(ren) as guides, there are times when you may publicly share how a parent or other community member acted at a public event or in one of the district's buildings. Use your judgment and have multiple individuals filtering what you intend to share publicly, but I wish to make clear that there is indeed a distinction between their acts and comments, and those of students.

Let's get to the former employee example, and then I will wrap things up (I should have used that phrase in my December column). You are having a delightful morning when another administrator in the district contacts you and asks if you have seen the latest edition of your local newspaper. Well, no, but it doesn't take the deductive skills of Sherlock Holmes to know this isn't going anywhere good. You open the paper online and proceed to read a lengthy article in which a former district employee is making scathing remarks regarding your lack of concern for his disabilities and that the district did nothing to help him.

Once again, please check with your district's legal counsel, but this Iowa attorney is of the opinion that the former opened the door and some sort of response beyond "It is a confidential personnel matter" is appropriate. So here is my shot at this one: "The Carver Community School District wishes to be a welcoming setting for all, to include students, staff members, and community members with disabilities. The district is aware of allegations made by a former employee concerning his disabilities and opinion that the district allegedly failed to support him during his time with the district. While we have no plans to discuss specifics of this former employee's disability, we believe it is critical for the community to know that school officials spent many hours working with this individual to identify what appropriate accommodations might be provided so that he could successfully fulfill the essential functions of his job. After communication and collaboration with the former employee, the district provided such accommodations. We wish him the best in his present and future endeavors."

Improve on this to your heart's content. I'm just making the point that once the former employee opened the door, you may indeed walk through it, as long as you do so in a restrained, professional and ethical manner. That's where the wise guidance of your legal counsel will come in handy.

Sorry this wasn't the cheeriest column to begin 2019, but I am frankly getting tired of listening to stories about my friends and professional colleagues continually getting blistered in the news and on social media. (Hopefully you guys aren't offended that an attorney just referred to you as a colleague. It makes me feel better about myself, so just go with it for my sake.) Restraint is often the best course of action, but every once in awhile things get so out of control that it is my opinion you shouldn't hesitate to appropriately give the other side of the story, at least what you're able.

May you all have an outstanding 2019!

This article is intended only as a reference in regard to the subject matter covered. It is furnished with the understanding that SAI is not engaged in rendering legal advice. If a legal opinion is desired, private legal counsel should be consulted.



School Law Conference | Tues., Feb. 12 | 9 a.m. - 3 p.m. The Meadows Events & Conference Center

General Sessions

Mental health of students, staff and parents - Reminding administrators and other staff to remember that their role is not to diagnose, but rather to assess behavior and its impact on the educational environment and safety. Regarding mental health screening technology, what duties may or may not be created for districts? What are some legal considerations for such screeners? What accommodations are reasonable, to include the use of assistive animals?

Communications with community, media, parents, law enforcement and other outside parties - When and what may administrators and other educators share with such parties, whether about student information, incidents that occurred at school, safety issues, staff notes and surveillance videos?

Breakout Sessions

Social media issues regarding students and staff - What duty does the school have to take action when troubling matters arise in group chats? What rights do students and staff have to express speech on social media, whether at or away from school? When may school officials search technology, and how does the district's ownership of the technology impact searches and authority to discipline?

Bullying, sexting and vaping - Review the statutory standard for bullying. When may bullying impact the ability to open enroll late or receive immediate athletic eligibility? How may districts may use Good Conduct policy to discipline students relating to these issues? Criminal implications of sexting and vaping. Is vaping covered by the Smoke Free Air Act?

Review of how changes to Chapters 20 and 279 have impacted administrators and teachers - Brief review and explanation of mandatory vs. permissive subjects of bargaining, and some recommended strategies for districts. How have these changes impacted evaluations, probationary periods, intensive assistance, terminations and staff discipline? Which staff disciplinary documents are now subject to public records requests under Chapter 22?

Title IX and equity issues - Review of the role of equity coordinators and what districts need to do to ensure those coordinators understand their duties, and the district itself is staying compliant with state and federal law. What are some past Title IX complaints or examples that educators may learn from? What are best practices when a district learns a complaint has been filed against the district and/or school employees with the Civil Rights Commission or Office of Civil Rights?

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