



TEACH BUT DON'T TOUCH

Practical advice for school employees on avoiding false allegations of improper conduct with students

It's the worst thing that can happen to a school employee: being falsely accused of inappropriate behavior with students. Even if you're ultimately exonerated, the damage has already been done, and the stigma can linger for years.

Virginia teacher and NEA member Ron Mayfield Jr. committed suicide two weeks after being wrongly accused of hitting a wheelchair-bound, middle school student. He jumped off a bridge into the Roanoke River, not far from where he often had fished with his father and later with his own son.

His widow told *The Washington Post* that Mayfield had been depressed, tired, and nervous during his suspension from work. "I cannot have my face on television and in the newspaper over this incident," he wrote to her in a note.

Tragically, Ron Mayfield Jr. never knew that the police already had cleared him of any wrongdoing. The day before he took his own life, investigators had notified school officials that there was no evidence to substantiate the charge and that the case had been closed.

Nobody bothered to call the falsely accused teacher.

While teacher suicides are relatively rare, false allegations are not. Greg Lawler, an attorney with the Colorado Education Association, is the coauthor of a book that documents how false allegations can ruin careers and lives, *Guilty Until Proven Innocent*. "Whenever there is an allegation, there is a victim, whether it is the accused or the accuser," Lawler says.

"Students these days know all too well the consequences of an abuse complaint, and they know how to game the system," he warns. "They know how to get an unpopular teacher fired by making false allegations, and unfortunately, some of them try to do just that."

Because the stakes are so high, the NEA Representative Assembly voted to produce this publication providing suggestions for how school employees can avoid compromising situations that might lead to bogus accusations of abuse.

COMMONSENSE POINTERS FOR AVOIDING FALSE ALLEGATIONS

Whenever possible, never be alone with a student. That's because a student's allegations made when there are no other witnesses hinge on credibility, and authorities often tend to favor the alleged victim in these circumstances. So don't be alone with a student in a house or a car, and never give a student a ride home. To the extent possible, avoid being alone with a student in a classroom.

Risky situations include: one-on-one tutoring, counseling, after-school or recess detention, and make-up tests. If you can't avoid being alone with a student at school, keep the door open and stay in plain sight.

Always maintain a professional demeanor and distance. That means: no flirting, teasing, or joking about sex. Don't socialize with students or treat them as "pals" or "friends." Never give gifts, unless you give one to every student, and don't single out any one student for constant special attention or flattery.

Never send e-mails, text messages, or cards to students unrelated to schoolwork. Don't ask students about their social lives or comment on their personal appearance and avoid discussing intimate details of your own private life. Don't hire students to babysit or allow them to visit your home. Be the adult and maintain boundaries.

Avoid physical contact with students. This is a particularly difficult area. Younger children often seek and need physical comfort from their teachers who, sadly, may be the only source of compassion and love that some students have. In the early elementary grades, an occasional hug is probably OK. But as a general rule, it's best to avoid most forms of physical contact, especially kissing, hair stroking, tickling, and frontal hugging. And use common sense: a "high five" to acknowledge a job well done is fine; a slap on the bottom is not.

Male teachers have to be especially careful when it comes to physical contact of any sort. While a female teacher's touch may be perceived as comforting, a male teacher's may be viewed as sexually suggestive. And male employees are far more likely

to be accused of inappropriate contact with students than female employees. According to one expert, accusations involving female teachers and male students make up less than 5 percent of the cases.

Avoid using physical force to enforce discipline. When students are misbehaving or out of control, avoid touching or grabbing them to get their attention. Instead, use verbal commands and other disciplinary methods.

There may be a rare occasion when you will have to use physical force in self-defense or to prevent injury to others. If that happens, use the minimum force necessary to prevent harm and immediately call for help. Also, if this is a persistent problem, you may want to ask your district for special training.

Never allow a student to obsess over you. While a crush can be flattering, it also can be fatal, so always nip it in the bud. An unfulfilled fantasy can result in a student acting out to gain attention or retaliating for being ignored. If a student expresses a love interest, respond with an unambiguous "no." Don't equivocate and certainly don't encourage the student by acting pleased by the attention. It's also advisable to share this information with another adult and your Association representative. In some circumstances, it may be appropriate to tell your supervisor and ask that the student be transferred.

Be particularly wary of "troubled" students. This is a tough one. Some students come to school with a host of emotional needs and chronic problems, and they may confide in their classroom teacher and ask for support and guidance. Particularly for a student with emotional problems, a teacher's efforts to help unfortunately can be misconstrued as something more and may lead to an infatuation or dependence. Plus you don't have the skills or training needed to assist.

While you can and should express concern and compassion, don't take on the role of confidant or counselor. Instead, refer the student to the school counselor, a trained professional who has both the expertise to assess what services the student may need and the experience to know how to arrange for the delivery of those services to the student.

Be especially vigilant if you hold certain teaching positions. Anecdotal evidence suggests that employees who perform certain jobs are at increased risk of false allegations. These include athletic coaches and performing arts teachers—drama, band, chorus, and debate, as well as publications advisers. This trend may be the product of the intense nature of such activities, which may weaken teacher/student boundaries, coupled with a substantial amount of after-school, weekend, and off-campus contact.

This publication was prepared by Michael D. Simpson, NEA Office of General Counsel, with input and assistance from attorneys for numerous NEA state affiliates.

September 2006



But that can't happen to *me*...

FACING DOWN FALSE ACCUSATIONS

One student, one accusation, and a teacher's life is changed forever.

By Michael Gallagher E-mail: Galla17@aol.com



NEA Member Michael Gallagher taught elementary school in Abington, Pa., for 25 years until he was falsely accused of sexual molestation and rape. After a nine-month nightmare, he was fully exonerated. He has since retired with full benefits. This is his story.



When I answered the door that cold, dismal morning in December, I faced two detectives from the police department.

"Are you Michael Gallagher?" one asked.

"Yes."

"Someone's filed a complaint against you, and we want you to come to the station with us." Confused and dazed, I asked if I should call a lawyer.

"No," they said, so I didn't. That was my first big mistake.

At the station, my wife and I were put in separate rooms. Both of us were questioned.

I was told that a student I taught 12 years ago had accused me of sexually molesting her, raping her 20 times.

I was flabbergasted! Who would make such an accusation? The police named a girl in my fifth-grade class in 1985. I couldn't really place her. That had been a good class, and only a few students stood out.

I've taught more than 800 students in my 25 years in the classroom. Why had this one made such a false accusation about me? I went into teaching to help children, not harm them.

I answered the detectives' questions, permitted them to search my house, and even took a polygraph. These were all big mistakes on my part.

When I was released after seven grueling hours, I finally used my common sense and called my Pennsylvania State Education Association attorney. Upset that I'd waited so long to call, he made quick plans to represent me.

Incredibly, a month later, on January 22, 1998, I was arrested and placed in a cell for three hours before my bail arraignment. To my surprise and horror, every television camera in the Delaware Valley filmed me, in handcuffs, accompanied by two uniformed officers, walking into the courthouse.

With little formality, the judge set a preliminary hearing date and bail, and I was released on my own recognizance — with one condition. I could have no contact with children whatsoever.

Here I was, a well respected teacher and a law-abiding citizen, being treated as a pedophile!

The school board suspended me immediately without pay. I then began the longest journey of my life, aided by the unending support of my entire family, district teachers, and friends.

Phyllis "Honey" Pertnoy, my local Association president, wouldn't rest until I was proven innocent.

She raised much needed money, spoke in my defense all over the country, and pledged to be a character witness. It made me proud to be an NEA member.

While waiting for trial, the state attempted to remove my teaching certification. The notice stated that an indictment or arrest was, in effect, as good as a conviction.

What few rights teachers really have, I thought. How much we need our Association to fight for us.

Finally, in October, an assistant district attorney, at our urging, questioned my accuser again. The young woman contradicted her earlier testimony and failed a polygraph test. She had lied about everything.

A few days later, at a news conference, the district attorney's office announced my total exoneration. The media—from local newspapers to Dateline NBC—picked up the story.

Could such a tragedy happen to you? I'm hearing from people all over the country who, just like me, have been falsely accused.

Here are some tips:

- If accused by any law enforcement officer, never talk without an attorney. Don't feel compelled to discuss your innocence.
- If you are not under arrest, don't go with the police—your attorney can make these arrangements.
- Talk with no one about the accusation except your attorney and immediate family members.
- Be wary of any law enforcement agency. Most are ethical, some are not.
- Always remember, there's a tendency for administrators and police to believe the accuser, not you.
- Above all, be cautious. I wasn't.

Reprinted from the May 1999 *NEA Today*

What to Do if the Unthinkable Happens

Even if you follow the advice in this publication, there's no guarantee that you won't be the victim of false allegations. And if that happens, here are some suggestions about what to do and what not to do:

- **First, call your Association representative.** Depending on the local, that person may be a building representative, the Association president, or a UniServ director. Your Association representative can provide advice and help you obtain legal representation under various Association programs. (See "Did you know..." below.)
- **Don't talk to school administrators or law enforcement officers.** Even innocent statements can be misconstrued and misused. The decision whether to meet with these officials and what, if anything, to say to them should be made only after consulting with your legal and/or other Association representative. In most

circumstances, your representative should accompany you to any meeting.

- **Don't sign anything.** It goes without saying that this will be an enormously stressful time, and you should not make any decision about signing a statement or other document without first discussing it with your representative.
- **Don't talk to the media,** unless and until you and your representative decide that it is in your best interest to do so.
- **Don't resign from your job.** No matter how bad things look, resigning will not help, and it may be interpreted as an admission of guilt. You should not consider this option until you have consulted with your representative.

Did you know....

One of the benefits provided by NEA and your state Association is job rights protection under the Kate Frank/DuShane Unified Legal Services Program (ULSP). The ULSP is a jointly sponsored NEA and state affiliate program that provides appropriate legal assistance to members who are subjected to discipline or discharge by their employer.

But did you also know that NEA provides two other important benefits that may be available to members who are falsely accused? Some cases involving very serious allegations can result in criminal charges being filed against you and may require you to retain a criminal defense attorney. If the charges arise in the course of your employment and you are fully exonerated or all the charges are dropped, then the NEA Educators Employment Liability (EEL) Program will reimburse you up to \$35,000 for attorneys' fees.

(Note: If the criminal charges are limited to corporal punishment, there is reimbursement even if you are not exonerated.) Be sure to contact your state Association before retaining a criminal defense attorney. Your state Association may be able to recommend a reputable attorney who has experience with child abuse cases.

You also might be sued for damages by the alleged victim and/or the parents. Under the EEL Program, all NEA members are covered for claims up to \$1 million in civil lawsuits against them for damages and attorneys' fees arising out of their employment activities. The policy kicks in after any insurance available through the school district, and is subject to several exclusions. Check with your state Association for additional information about the scope of coverage under the EEL Program.



Great Public Schools for Every Child

1201 16th St., N.W. | Washington, DC 20036

© 2006 by the National Education Association. All rights reserved. NEA state and local affiliates are granted an express license to reprint and distribute copies of this publication.