

# YOUR RIGHTS

## A Touchy Subject

The conundrum of today's education professional is likely best summarized in the mixed signals sent regarding touching students. If a teacher touches a student, the teacher runs the risk of potential claims against the teacher and the school. However, if a teacher refuses to engage in even a handshake or a hug, then parents worry that the teacher is cold and does not connect with students.

This article addresses several questions that frequently arise regarding appropriate touching of students. Obviously, this is a topic that could encompass an entire book, so rather than a detailed examination of the issues, the article attempts to give practical guidance for teachers.

All right, everyone repeat after me - the only truly safe touch is a handshake. Given the litigious society that we live in, any touch beyond a hand shake can be misinterpreted and can lead to a claim and possibly a lawsuit. Since this column is intended to explain Your Rights and to tell you how to avoid legal problems, the sad advice that must be given is that affectionate touching, even hugs, can be misinterpreted and should be avoided.

As with every rule, there are exceptions, and there are times when touch is unavoidable. Let's look at a few scenarios and I will try to explain the issues from a legal perspective:

- A student has just fallen outside on the playground and is bleeding from a cut leg. The teacher is the first on the scene and the student needs first-aid. The teacher must quickly decide how to respond. To stand by and let the child bleed is certainly not the answer. However, before jumping right, in a couple of considerations should be kept in mind. If the injured child is a female and the first teacher on the scene is a male, the teacher may be well advised to provide emotional support to the injured child until a female teacher arrives on the scene to assist in the first-aid. If the time is not available to wait, then the male teacher should first ask for the student's permission to touch the leg and to administer first-aid. In either case, the smart professional makes a written report of the incident and provides the report to the school administration as soon as possible.
- Two students are fighting and need to be broken up. This

scenario happens all too frequently and often provides the opening for a claim against a teacher. Recent legal cases have touched on this area and provide some guidance. Courts typically look at the following four-part test in determining whether a school official's use of force violated a student's rights:

- (1) the need for the application of force;
- (2) the relationship between the need and the amount of force administered;
- (3) the extent of injury inflicted; and
- (4) whether the force was administered in a good faith effort to maintain discipline or maliciously and sadistically for the very purpose of causing harm.

*Golden v. Anders et al.*, 324 F.3d 650 (8th Cir. 2003). In this case, a principal grabbed a sixth-grader by the collar and flung him down on a table and held him there for some time. The student was kicking a soda machine and had his hand on a teacher in a threatening way. The student suffered injuries and required a steroid injection in his neck as a result of the handling. The Court found in favor of the teacher and dismissed the case. The Court refused to find liability because the teacher was acting in manner that required instant judgment and was not directing his actions at the child.

What does this case do for us? First, it shows that courts are willing to side with teachers when the actions are reasonable. Second, it shows that when touching a student in the context of a fight or to protect a student, teacher or staff, courts are much more lenient than when the touching occurs in other contexts. Another case involved a teacher that slapped the legs and buttocks of a child. The court sided with the teacher because the child had tried to kick the teacher. However, the same contact in a different situation would have surely resulted in serious problems and ramifications for the teacher and the school. Many schools have policies regarding breaking up fights and every professional should familiarize themselves with the policy and then follow the policy.

- A 7-year old child is sad and down because Buffy, the family dog just died. She approaches the teacher at a quiet moment and looks like she needs a hug. Is it okay to hug the child? This is one of the scenarios where professional judgment comes into the equation. We all know it would not be appropriate for a male teacher to pick the girl up and have her sit on his lap while she put her head on his shoulder. Even if the genders are reversed, allowing a child to sit on your lap is simply not a good

idea and can, and has, led to claims and litigation. Whether a simple hug is appropriate depends upon such factors as how well the teacher and the student know each other, whether the student is a person that would openly accept a hug, and whether the teacher is comfortable with a hug. If a hug is called for, then it is advisable to ask the student, "Do you need a hug?"

It is certainly unfortunate that this column has to be written and that a lawyer has to spend time discussing whether it is okay to show a child that he or she is not alone and that you care. But history has taught us that it is better to be mistaken as a professional that is a bit cold, than to be mistaken for a professional that engages in inappropriate contact with children.

This article could go one of two ways at this point: I could either now set out a long list of things to avoid and

give you endless accounts of sad stories about how allegations of inappropriate touching have ruined careers, or I could simply say use your best judgment and always keep in mind the fact that every action can be perceived by two people in two very different ways.

Finally, as always, if you find yourself defending your actions against the words of a student, contact your NEA representative immediately. We can often help early in the process and hopefully prevent any formal allegations that can scar a career. In closing, stick with handshakes, never put yourself in a situation where it is your word against the child's, be smart and you will avoid this troubling topic altogether.

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