



School Email and Confidentiality

Email is a wonderful thing. We can quickly and inexpensively communicate with colleagues, friends, and loved ones. In real time as they say. A byproduct of this fast, efficient, and convenient method of communication is that it has made us, most of us I suppose, more productive. Are we less busy? No. History has shown us that a natural consequence of technological advancement is that more is expected of us. Regardless, today the ability to email is ubiquitous. We write email in the grip of quiet convenience, scribed often in the solitude of our offices, homes, cars, and pretty much anywhere with iPhones and smartphones providing email services.

It may be easy in such circumstances to allow ourselves to lose sight of the fact that email is written correspondence to which we must be held accountable.

There are several legal cases that have arisen where the confidentiality of email correspondence between a person and their attorney has been waived because the individual used the email service provided by their employer. New York statutes are clear that communications between a client and an attorney do not lose their privileged character just because they are transmitted by electronic means. The purpose is to recognize the wide spread use of commercial email. The question becomes who owns the electronic means and what is its purpose.

For those readers who use school district email, it is critical that you read and understand your district's acceptable use policy. You are often required to sign one either annually or when you are first employed. Even if your acceptable use policy allows you to send personal emails using the district's address or on the district's server, or even if your district has no policy at all, I recommend you do not use school email to send sensitive personal material. Quite simply, you cannot expect to have confidential communications with your attorney using school email.

The courts have nonetheless set up a four-part test when considering whether attorney client privilege applied in a given dispute over use of employer email. The first was whether the employer maintained a policy banning personal use or other objectionable use. Second, whether the employer reserved the right to monitor computer or email use. Third whether the employees were notified of this right

to monitor and finally whether a third party, such as your technical person, had the right to access your computer or email. It is conceivable then that in a dispute, someone asserting a privilege may convince a

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court that the employer failed to meet such a test.

But as I noted above, even if your employer does not have a policy or has failed to notify you of the policy and the procedures in it, out of an abundance of caution you should not expect to communicate confidentially with your attorney using school email. The reason is that the school district owns the email. The courts have recognized the school district's right to access your email. It is as if the district is looking over your shoulder as you write the email.

Everything noted above applies to private employers. Given that

the school districts are public employers, public policy and transparency are added considerations for the courts in privilege disputes. This should inform users of school email that they should be doubly cautious. An employee should take every precaution to make sure their correspondence with their attorney remains privileged. It includes taking steps that evince the employee's intention that the communication

was confidential such as password protecting documents, using one's own personal device and web-based email addresses. The courts consider attorney client privilege waived when one party's conduct is so careless that it suggests they are unconcerned with privilege or it otherwise increases the likelihood that their opponent will discover the material. The privacy notice at the end of an email is insufficient to protect your communication as privileged. So do not be surprised if your attorney asks you to correspond using web-based email in lieu of work email. ■

From Common Core to Common Learning

Sponsor Opinion piece by Dr. Bruce H. Crowder, Senior Reseacher, Educational Vistas, Inc.

At this time in New York State education, it appears that Common Core State Standards (CCSS) remain in place while grades 3-8 ELA and math testing has moved to a new vendor. Also, significant changes to APPR are taking form. Exactly what this means for educators has yet to be explained. However, the experience educators have had with Common Core continues, and that is good.

With the related six shifts in ELA and math calling for deeper understanding,

educators are experiencing the challenges of curriculum planning and implementation. Whether using the so-called NYS curriculum modules for ELA and math or developing a local variety, there is the need to address more rigorous content, new tests, and new practices. All of this falls under the label of curriculum. In fact, there is a need for an appropriate definition of curriculum that accurately meets its purpose and function. The one that follows does the job.

Curriculum is the relationship of teaching, learning, and assessment within an integrated web.

Common Core is not a curriculum. It serves as the basis for learning expectations. As such, it was developed through a backwards planning approach from end points. Therefore, the learning process spirals down to establish important vertical grade-to-grade articulation. Spiral down; deliver up is the mantra. Therefore, Common Core sets the focus for developing a single district curriculum. Ideally, the curriculum should be computerized in a uniform format from grade to grade and clearly display subject and grade curriculum mapping for easy access by staff and even parents.

With a common curriculum based on CCSS, alignment and articulation en-

sure a systemic approach within the enterprise that supports what to teach, when to teach it, and how to measure the related learning. However, it must be understood that the teacher makes the final decision regarding the need for reteaching, use of unique approaches, and teachable moments. In addition, each teacher is in touch with prior learning, current learning, and subsequent learning. When teachers are asked to identify their internal customer, aside from students and parents, they realize it is the teacher at the next level.

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"I am not a teacher, but an awakener."

—Robert Frost