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Conduct Unbecoming: Disciplining Educators For Non-School-Related Behavior

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The involvement of a Connecticut middle school Principal and a middle school Guidance Counselor in the writing and production of films the media has described as being replete with female nudity, violence and sexually suggestive, if not downright explicit, dialogue raises questions about the extent to which school boards can discipline employees for non-criminal conduct that occurs off school grounds and outside the school day. Although it is indisputable that everyone is entitled to his or her own private life, for public school educators, what happens in Vegas (or even in Connecticut) does not necessarily stay in Vegas.

Over twenty years ago, the Connecticut Supreme Court held in Kelley v. Bonney that public school teachers qualify as "public officials." While the court's decision focused on the appropriate legal standard for defamation claims brought by a public school teacher in response to criticisms of his classroom performance, it reflected the wider reality that the public has a significant interest in the conduct of educators – particularly those within their community's public schools -- regardless of where that conduct occurs.

Two years earlier, in the 1990 case of Rado v. Board of Education, the Connecticut Supreme Court affirmed the termination of a tenured teacher despite the fact that he had been acquitted at trial of eavesdropping on other school employees, a felony. Similarly, in the 1997 case of Gedney v. Groton Board of Education, the Connecticut Appellate Court upheld the termination of a tenured teacher who was arrested for possession of both cocaine and drug paraphernalia, despite the fact that upon his compliance with the terms of the accelerated rehabilitation which he had been granted, his criminal record was, as a matter of law, expunged.

Both the Rado and Gedney courts based their decisions, at least in part, upon the fact that the respective school boards had established "due and sufficient cause" for the terminations, which "includes any ground which is put forward . . . in good faith and which is not arbitrary, irrational, unreasonable, or irrelevant to the committee's task of building up and maintaining an efficient school system." Due and sufficient cause can be predicated upon behavior that "must necessarily have undermined [the educator's] capacity to effectively work . . . with fellow staff members, sets an extremely poor example for students and staff and reflects personal values inconsistent with [his] continued employment as a teacher." In fact, in considering whether conduct constitutes due and sufficient cause, the courts held that "the impact of that conduct upon the operation of the school is a *significant* consideration" (emphasis added).

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The Rado and Gedney decisions both involved criminal misconduct. In elucidating the parameters of "due and sufficient cause," however, the courts did not cite the illegality of those employees' conduct, but rather its *effect*. Using the rubric established in Rado and Gedney, an educator's creation and promulgation of films that might be perceived as sexually objectifying women could possibly hinder the educator's ability to "effectively work" with colleagues, particularly if he holds a supervisory position and is therefore responsible for leading and evaluating staff. Similarly, such conduct might be deemed "an extremely poor example for students," especially when considered in conjunction with Title IX's proscriptions against gender-based discrimination.

One might argue that non-school-related conduct that involved creative works implicated First Amendment, free-speech protections, thereby distinguishing it from the behaviors addressed in Rado and Gedney. Over 45 years ago, however, the United States Supreme Court held that even constitutionally protected speech must be balanced against an employer's right to maintain an orderly workplace. Thus, in 2003, the United States Court of Appeals for the Second Circuit -- which has federal appellate jurisdiction over Connecticut – applied that balancing test to reject a teacher's claim that his termination for off-campus conduct violated the First Amendment. The court noted that a teaching position "requires a degree of public trust not found in many other positions of public employment," and thus, an educator is "beholden to the views of parents in the community," and any "disruption created by parents can be fairly characterized as internal disruption to the operation of the school."

Needless to say, all relevant factors should be carefully weighed before any employee is disciplined. A particular act should not considered in a vacuum, unless, of course, the conduct is so obviously egregious as to outweigh any prior positive performance. Nonetheless, even with those protections in place, it is important for both educators and school boards to understand that when considering the appropriateness of a public school educator's conduct, that inquiry is not necessarily limited to what occurs within the scope of the school day or of the educator's pedagogical duties.

Attorney McKeon is a Member of the law firm of Pullman & Comley LLC, which represents a number of Connecticut school districts. More articles about issues pertaining to school districts and other educational institutions can be found on the firm's blog Education Law Notes at http://schoollaw.pullcomblog.com.
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