

LEGAL REFERENCE GUIDE FOR MEMBERS OF THE LOUISIANA FEDERATION OF TEACHERS

PREPARED FOR THE LOUISIANA FEDERATION OF TEACHERS AND ITS LOCAL UNIONS

BY

LARRY SAMUEL
RITTENBERG, SAMUEL & PHILLIPS, LLC
ATTORNEYS AT LAW
715 GIROD STREET, SUITE 100
NEW ORLEANS, LOUISIANA, 70130
WWW.RITTENBERGSAMUEL.COM
(504) 524-5555

REVISED JULY, 2017

This guide is intended to provide information for educators employed in traditional Louisiana public school districts and charter schools.

In addition to rights and protections under state and federal laws, members of the LFT enjoy additional benefits. Educators who are protected by Federation Collective Bargaining Agreements enjoy even greater rights and protections.

Many benefits listed in this guide are available only for members of an LFT local in good standing at the time that the problem occurred.

This information may become outdated because of changes in the law, and court decisions. We recommend that you check with the LFT for updates and visit our website at www.rittenbergsamuel.com.

1.

FALSE ACCUSATIONS AGAINST EDUCATORS; POSSIBLE POLICE INVOLVEMENT

What are your rights if you are accused of corporal punishment, excessive force, or a morals offense? What should you do if the police become involved?

Your reputation and your job are both at risk if you are accused of these types of offenses. Law enforcement authorities may be contacted. The school district (or charter school) and the police or sheriff's office may conduct separate investigations. While you may want to cooperate with any investigation, you may unintentionally say or write something that could hurt your legal rights. Whether you are innocent or guilty:

- ◆ **Immediately contact LFT or your local before writing or saying anything!**
- ◆ If the police want to speak with you, we recommend that you state that LFT advises its members to first speak with an attorney.
- ◆ If the officer asks you to sign a summons, we recommend that you sign it. A summons only acknowledges that you will appear in court. It is not an admission of guilt. Signing the

summons may avoid an arrest.

- ◆ If the principal, an administrator, or a supervisor wants to speak with you or convene a conference or request a written statement, request additional time to secure representation.

These recommendations are for your protection. It is important for you to know and exercise your rights. Even if you are innocent, you should first obtain advice from a union representative before taking action on your own that may be against your best interest. Additionally, LFT will advise you of your protections and benefits under the AFT Occupational Liability Plan.

2.

PERFORMANCE EVALUATION PROBLEMS

What are your rights if you receive a poor rating through the performance evaluation process?

School districts and charter schools are required to follow specific procedures when conducting performance evaluations. If the procedures have not been followed, your rights have been violated. Additionally, schools must comply with the most important component of the evaluation process: providing *meaningful* remediation and assistance.

Immediately contact LFT or your local for information and assistance when you receive at the onset of the problem, when you first receive indication that your performance is in question. It may be advisable for you to respond or take other action early in the evaluation process, particularly if you are placed on an Intensive Assistance Program (IAP). You may lose your opportunity to exercise your rights if you wait until the end of the evaluation process.

3.

DISMISSAL OR DISCIPLINARY ACTION

What are your rights if you are accused of an offense and recommended for termination or other disciplinary action?

If you are accused of an offense or threatened with disciplinary action, it is important for you to know your rights and to exercise your rights. Your rights will depend on whether you work at a traditional public school, RSD school or charter school, and will depend on your position (teacher, clerical, paraeducator, bus operator, etc.) and your classification (temporary, probationary, or tenured).

Once you acquire tenure, you have greater due process rights and job protection. Tenure provides you with protection against many offensive employment practices. Depending on your position, you may not be dismissed, suspended without pay or demoted unless you are accused of certain types of offenses and hearings have been held. You may have a right to representation at disciplinary conferences and hearings.

Immediately contact LFT or your local for information and assistance at the onset of the problem and prior to a conference or hearing.

4.

THREATS ON YOUR SAFETY

What are your rights if a student or parent threatens you with physical harm? This is a “criminal assault.” You have the right to:

- ◆ Contact the police or sheriff’s office to press criminal charges, seek a peace bond or restraining order.
- ◆ Request expulsion of the student.
- ◆ Demand that the student is removed from the school in certain situations.
- ◆ Ask the school district to ban the parent from school property.

There are other steps to address this problem. Contact LFT or your local for information and assistance.

5.

JOB-RELATED INJURIES/WORKERS’ COMPENSATION

What are your rights if you suffer a work-related injury?

If your injury was caused by a battery committed by a student or any other person, or if you suffered emotional injury because of an assault (a statement threatening you with physical harm) you have the right to receive full pay for the duration of your disability without loss of sick leave days. Medical substantiation may be required.

If you were injured by physical contact with a student while assisting a student to protect the student’s safety, you have the right to receive full pay without loss of sick leave days for a maximum period of one year (teacher) or ninety days (other school employees) because of your disability associated with the injury. If your injury was due to other causes, you are entitled to workers’ compensation, which consists of a percentage of your regular wages, up to a maximum amount. Medical substantiation may be required.

You are also entitled to reimbursement of all medical expenses, doctor’s bills, hospital bills, prescription drugs, over-the-counter drugs, prosthetics, and certain transportation costs. You have the right to seek treatment by a physician or hospital or clinic of your own choice. Your employer has the right to send you to a doctor of their choice only for an examination, but you have the right to select the doctor who will treat you. (Note: There are some limitations on your right to change doctors).

You are required to complete certain forms as soon as you are injured. You should clearly state whether you were injured because of an assault or battery or while physically assisting a student .

Contact LFT or your local for information and assistance.

6.

DRUG AND ALCOHOL TESTING

What are your rights if you are directed to undergo drug or alcohol testing?

School districts and charter schools do not have an unlimited right to require teachers, paraeducators, and clericals to undergo mandatory drug and alcohol screening. There must be individualized suspicion that you are impaired. Because of a lawsuit filed by two LFT local unions, the United States Court of Appeals for the Fifth Circuit has held that it is unconstitutional to require teachers, clericals, or paraeducators to be tested for drugs or alcohol after an injury unless there is individualized suspicion that your injury was caused by your impairment due to drugs or alcohol. Note: school employees who hold “safety-sensitive” or “security-sensitive” positions may be required to undergo drug and alcohol screening after a work-related injury, and random screening.

Immediately contact LFT or your local for information and assistance.

7.

STANDARDIZED TEST PROBLEM

What are your rights if you are suspected of testing improprieties?

When there are suspicions of standardized test irregularities, the school district may conduct an investigation. You may be asked to make a statement, or to respond to questions, or submit information, or to attend a conference or hearing. You may face the possibility of disciplinary action and even dismissal.

Contact LFT or your local before you provide any information, or attend a hearing or conference.

8.

SIGNING DOCUMENTS

What if you are directed to sign a document that is inaccurate or you disagree with the contents?

We recommend that you sign the document, and write: "My signature does not necessarily mean that I agree with the contents of this document."

9.

REPORTING CHILD ABUSE

What are your responsibilities if you have cause to suspect that a child has been abused or neglected?

Louisiana law requires you to contact Child Protection authorities when you have cause to suspect that a child has been physically or sexually abused, or neglected. You may be arrested if you fail to make a report to Child Protection. Some school district and charter school policies require you to also notify the school and complete a form.

Contact the LFT or your local for information and assistance.

10.

CRIMINAL CHARGES AGAINST STUDENTS

What are your rights if a student commits a criminal act against you?

If a student has committed a criminal act against you such as physical battery, assault (statements threatening you with physical harm), etc., you have the right to press criminal charges. This is separate from school district punishment. In some situations, schools are limited in their punishment of special education students. However, in many situations you still have the right to press criminal charges even if the school does not impose discipline.

Contact LFT or your local for information and assistance.

11.

STUDENT INJURIES

What should you do if a student is injured while under your supervision?

Despite precautions, it is inevitable that students will be injured at school or during school activities. Many parents believe, erroneously, that the teacher, supervisor, or the school district or charter school is automatically liable. But in many cases, no one is liable. The question of whether the employee, the school district or charter school or no one is liable is based upon whether the child was injured because of negligence, or of someone's intentional act.

Immediately assist the student and help obtain treatment if necessary. Refer the student to the office or nurse, and complete all necessary forms.

Give the principal a list of all adults and students who may be witnesses. If you are concerned that you may be accused of failing to properly supervise the student, or being negligent, or committing an intentional act, immediately contact LFT or your local for assistance.

12.

SEARCHING STUDENTS OR THEIR PROPERTY

Are you permitted to search a student who you suspect possesses a weapon, drugs, or stolen property?

You must comply with your employer's policy governing searches. Louisiana law requires school districts to implement policies that state who may conduct the search, and under what circumstances. If you violate policy, disciplinary action could be taken against you and you could unknowingly expose both yourself and the school or school district to a lawsuit.

Do NOT search students or property on your own. Instead, contact an administrator and comply with policy.

13.

AFT OCCUPATIONAL LIABILITY INSURANCE

What protection do you have if you are sued because a student claims injury?

Federation members have outstanding occupational liability protection through a program administered by the American Federation of Teachers. A summary is printed in the brochure entitled "AFT Occupational Liability Plan," available at LFT or your local union office.

If you are served with a lawsuit or receive a letter from an attorney, immediately contact LFT or your local for assistance. If you have been sued, there are deadlines to submit a written response, which should be handled by an attorney.

CALL LFT OR YOUR LOCAL FOR ASSISTANCE...

If your school administration doesn't support your recommendations regarding student discipline.

- ◆ If you experience problems with absences or tardiness. You should call at the onset of the problem. There may be options that are available to you to prevent a problem later. Waiting until the end of the year may be too late.
- ◆ If your school does not have a "School Crisis Management and Response Plan."
- ◆ If you know of illegal activities at your school and fear reprisal if you report to authorities.
- ◆ If you experience any other problems and want to consult with professionals who have decades of experience and give you and your interests the top priority.

**LOUISIANA FEDERATION OF TEACHERS
9623 Brookline Ave.
Baton Rouge, Louisiana, 70809
(800) 634-5089
www.lft-aft.org**

**LARRY SAMUEL
RITTENBERG, SAMUEL & PHILLIPS, LLC
715 Girod Street, Suite 100
New Orleans, Louisiana, 70130
Telephone: (504) 524-5555
Fax (504) 524-0912
www.rittenbergsamuel.com
email: samuel@rittenbergsamuel.com**

To protect your privacy and confidentiality, we recommend that you do not communicate with us or the union through your school computer or through an email server provided by your employer.