

## CLIENT ALERT: Federal Court Allows Claims to Proceed Based on School District's Investigation of Sexual Relationship

A new decision from the Federal District Court in Massachusetts provides a warning for employers regarding state privacy and tort claims that can arise in an investigation of employee wrongdoing. The litigation, which resulted from a sexual relationship between a teacher and principal, **continues a circuitous path**, with this latest round in favor of the former school employees. Initially, the school district prevailed when an arbitrator ruled that the district had statutory cause to dismiss the teacher. However, the teacher and principal sought subsequent redress in Federal court and have preliminarily prevailed in a recent ruling. *Coughlin, et al. v. Arlington, et al.*, C.A. No. 10-10203-MLW, December 19, 2011. Because of an allegedly overzealous investigation, the court allowed state law privacy and tort claims to move forward against the town, school district, and three individual defendants.

As the facts have been reported by the court, the case began with the effort of the superintendent to non-renew the contract of the principal. This led to a public outcry and public meeting in which the principal revealed that the Superintendent had lied on his resume. The principal's contract was renewed.

For allegedly retaliatory motives, the superintendent began monitoring the principal's work e-mail. He was assisted in this endeavor by the school district's network technician. Within the principal's school e-mails, the superintendent and technician found the credentials for the principal's non-school e-mail account and began accessing that account as well. Both the school and personal e-mail accounts included explicit, sexual messages between the principal and a teacher.

A School Committee member released to the press both school and personal e-mails along with allegations that plaintiffs had committed forgery. (The alleged forgery involved doctoring an e-mail sent by the superintendent to the principal.) The press also received the work e-mails through a public records request when a state court judge denied plaintiffs an injunction seeking to bar release of the documents. Finally, the School Committee member accused plaintiffs of forgery in the community.

The Federal court judge rejected any invasion of privacy claim based on release of the e-mails from the plaintiff's school accounts. The school district had instructed all employees that they should have no expectation of privacy regarding e-mails messages on the school account. Moreover, the state court had found the e-mail messages to be a public record. However, the court also held that accessing of an individual's personal account may qualify as an unreasonable and substantial invasion of privacy and that the disclosed facts were of a "highly personal or intimate nature." Defendants argued that the accessing of the personal account was necessary to substantiate the inappropriate relationship and conduct of the plaintiffs. The court disagreed, finding that defendants already had sufficient proof from accessing the school account.

Defendants also argued that accessing the personal account was appropriate because it involved a matter of public concern. The court agreed that the relationship and sordidness of communications over a school e-mail account were matters of public concern. However, the court held that garnishing the matter with more blatant details from the personal e-mails was “morbid and sensational prying.”

Defendants also argued that no invasion of privacy claim was available because the facts were already part of the public domain. The Court disagreed, finding that the personal emails were more blatant than those already part of the public record. As a result, the most blatant details of how the plaintiffs conducted their relationship were entitled to remain private.

The court also held that accessing plaintiff’s personal e-mails and releasing certain of those e-mails to the press could be found to be “beyond all possible bounds of decency and utterly intolerable in a civilized community.” As a result, plaintiffs had satisfied the pleading requirements for their claim of intentional infliction of emotional distress.

Additionally, the court found sufficient the allegations that the superintendent and network technician (by acting in concert with the superintendent) had an improper motive for their conduct. As a result, claims for intentional interference with advantageous relations and defamation survived a motion to dismiss.

It appears that this litigation will continue, without any clear prediction as to who will ultimately prevail.

This case is a strong example of what can happen when an employer has a legitimate business reason for investigating the conduct of one or more of its employees but fails to create appropriate boundaries for that investigation. When conducting investigations of alleged employee misconduct, employers must remember that potential invasions of employee privacy, even in the arguable service of a greater good, can lead to costly litigation. We continue to encourage businesses to consult with their M&J attorney as to the appropriate nature of the investigation and in establishing appropriate boundaries for that investigation.

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