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TELEPHONE AND COMPUTER MONITORING BY EMPLOYERS OR BIG BROTHER MAY BE WATCHING

Employers have the legal right to monitor employee performance in the workplace and modern technology advances have expanded and enhanced its ability to do so. Employers now have the capability to electronically monitor telephone calls, email and computer use. An employee's right of privacy is not violated by this monitoring, as long as the employer follows the rules. The rules vary somewhat according to the method of communication, that is, telephone, email and/or computer use and they will therefore be addressed separately.

A. TELEPHONE MONITORING

The Law:

Although an employer provided telephone system belongs to the employer, the law only allows telephone monitoring when it is done to serve a legitimate business interest. The employer can therefore only intercept and listen to business related calls. A personal call may not be monitored. If, during the monitoring process, the call is determined to be personal, monitoring (listening) must cease. Of course, if the employer finds the employee is engaging in too many personal calls, the employer has the right to discipline the employee.

Board Policy and Regulation:

There are no specific BOE policies and/or regulations concerning employee use of the BOE telephone system. The Board can, of course, rely on the aforesaid legal standards in monitoring and/or controlling use/misuse of its telephone system. The only current policy regarding telephone use, Policy 800.35, is limited to cell phone assignment and use by employees, which, it should be noted, is limited to conducting official business.

Employee Handbook:

Page 54 of the Employee Handbook (viewable on-line) restricts employees' use of school system telephones (as well as personal cell phones) for personal use during the duty day to emergencies or situations that cannot be postponed until close of business. No phones, either school owned or personal, are to be used for other jobs or businesses during the workday. Supervisors are directed to monitor phone call patterns and to take appropriate corrective action for violations of appropriate use.

B. COMPUTER AND EMAIL MONITORING

The Law:

Employers are permitted to monitor all email and computer usage if the employer owns and/or provides the computer equipment and it is intended to be used for work purposes only. Unlike the law pertaining to telephone use, there is no distinction between business and personal use in employer monitoring of computer usage; the employer is allowed to monitor everything, be it business or personal. Courts have consistently held that the law protects employees from invasion of privacy as to their

private lives, but not their use (even if for private purposes) of the employer's computers.

Employees who use employer's computers for private email, "surfing" or shopping should be aware that employers have the right to view the same. Further, deleted email and/or information can be retrieved from a computer, so employee reliance on the "delete" key is misplaced.

I'm certain many of you have recognized the inherent inconsistency in the law as to telephone and computer use. Telephone systems and computers are both owned by the employer, and are, therefore, the employer's property, but employee telephone use is afforded a broader privacy right than computer and email use.

Board Policy and Regulation:

There are no specific BOE policies and/or regulations covering the aforesaid legal standards for employee use of employer computer systems. The Board does have a regulation, Administrative Regulation: 409, outlining required security measures for computer use by employees and volunteers in order to safeguard information.

Employee Handbook:

The Employee Handbook, pages 14 through 19 and page 54 outline the Board's rules controlling employee computer use. The preamble, at page 14, specifically states that "AACPS reserves the right to monitor the use of computer and electronic communication resources. All electronic communications transmitted to or from AACPS network are considered the property of AACPS and users are not entitled to any expectation of privacy with regard to the information contained in such communications." In other words, the Handbook incorporates, restates and provides

notice to employees of the law discussed earlier. The Handbook language is broad, applying to all computer resources located within AACPS' property, regardless of whether they are owned or leased by the school system, another organization or another individual. In addition, BOE provided laptop computers, PDAs and other remote messaging or computing devices are included in this rule, regardless of their physical location. Page 16 of the Handbook emphasizes that all personal use of computers, electronic communications and WEB resources are prohibited unless such use is approved, before the fact, by the Chief Information Officer of the Technology Division. Pages 17 and 18 of the Handbook outline certain specific examples of unacceptable uses of computers, electronic communication and the internet, but the list is not all inclusive. In other words, unacceptable use can also be determined on a case by case basis. Bottom line: think before you act – you have no right to privacy in any computer, internet and/or email use and the results of such use are considered to be the property of AACPS.

Page 54 of the Employee Handbook broadens computer use prohibitions to include restrictions on use of employees' personally owned computers. Employees are prohibited from using personal computers for other jobs or businesses during the work day and from using them for any other personal reason except for emergencies that cannot be postponed until close of business. Supervisors are directed to monitor employee use of personal computers and to take appropriate corrective action for violations of appropriate use.

Violation of the aforesaid computer use rule, the Employee Handbook generally, or any BOE Policy or Regulation, as evidenced by employer search of your computer,

internet and/or email use can result in administrative sanctions (prohibited or restricted use of computer resources in the future) or disciplinary actions, including criminal charges or termination.

BOARD OF EDUCATION MEETINGS

The Superintendent presented “Targets-Goal II” of the Anne Arundel County Public Schools Strategic Plan at the October 21, 2009 meeting of the Board of Education. “Goal II” of the Strategic Plan is to provide a “safe and supportive learning environment for all students” through system-wide safety and discipline standards and to eliminate disparities among all “No Child Left Behind” student groups in referral, suspension and expulsion rates. “Target” numbers were previously set for the 2006-2007 through 2011-2012 school years in the following categories:

- 1) percentage of schools free from “persistently dangerous school” designation by the State Department of Education
- 2) number of students receiving one or more referrals,
- 3) number of students receiving one or more suspensions,
- 4) number of students receiving one or more expulsions,
- 5) number of out of home school placements,
- 6) percentage of school based administrators and key personnel participating in system-wide drills involving the Incident Command System (ICS) Teams,
- 7) percentage of visitors displaying ID badges at all times in all school facilities,

- 8) percentage of schools demonstrating proficiency in their site-based approved Emergency Management Plan,
- 9) percentage of designs for new or renovated buildings employing “Crime Prevention Through Environmental Design (CPTED) (e.g. access control, surveillance, defensible space).

Goal II categories fall into two broad categories, i.e., categories 1 through 5 concern student behavior, while categories 6 through 9 pertain to security of the school itself. Although related, the two broad categories will be addressed separately.

Categories 1 through 5: Student Behavior

Clearly, student referrals (category 2), suspensions (category 3), expulsions (category 4) and removal from home school (category 5) all reflect varying levels of unacceptable behavior by students, which taken to the extreme, could result in a persistently dangerous school designation (category 1). On a positive note, no Anne Arundel County Public School has ever been designated as a “persistently dangerous school.” Expulsions have plummeted from 399 during the 2005-2006 school year to a mere 13 last year, which, on its face, appears to reflect a resounding success in BOE efforts. As noted in Elisabeth Hulette’s article in the Capital, however, the drastic drop (96.7%) in expulsions is predominantly due to BOE policy change, i.e., principals are no longer allowed to expel students for a broad variety of offenses. Grounds for expulsion are now limited to possession of firearms, use of a weapon, distribution of drugs or physical attack. The number of suspensions rose only slightly from last year, with an increase of nine, but missed its Target Goal by 305 (Target Goal 5,692, actual number 5,997). Referrals increased by 231 (2007-08 school year 11,996 compared to 2008-09

school year (12,227) and missed its Target Goal by 1,212 (2008-09 Target Goal 11,015). The failure to come close to Target Goals, reflected in the increase, rather than decrease, in number of suspensions and referrals may be partially due to the “trickle down effect” caused by the reduction in grounds for expulsion. If punishment is required and expulsions are limited, the other options will necessarily be exercised in its place. Finally, out of home school placements decreased from 933 (2007-08) to 874 (2008-09), well below the Target Goals for both school years, 1056 and 1034 respectively.

Categories 6 through 9: School Security

Categories 6 through 9, reflecting issues surrounding school security, have all reached their 100% Target Goal except for category 7, which measures AACPS staff and visitors displaying ID badges at all times in all school facilities. The ID requirement has remained at 70% compliance for the last two years, missing its Target Goal of 100% by 30%. There is, however, no break down in the report as to individual compliance rates for individual schools.