

**STATEMENT REGARDING DISMISSAL OF OFFICIAL MISCONDUCT 2<sup>ND</sup> DEGREE CHARGES AS TO  
MICHAEL C EGLINSKI AND BRIAN BOWLAND**

Prepared by: Sam Clymer, McCracken County Attorney  
March 1, 2019

This morning I filed an Order dismissing the charges of Official Misconduct 2<sup>nd</sup> Degree that had been brought against Principal Michael Ceglinski and Director of Pupil Personnel, Brian Bowland. The remaining charges of Failure to Report Child Dependency, Abuse or Neglect, in violation of KRS 620.030 pertaining to Mr. Ceglinski remain. As to Mr. Bowland, the charge of Official Misconduct 2<sup>nd</sup> Degree was the sole charge against him. As such, Mr. Bowland is at this time no longer facing criminal charges. Please allow this statement to serve as an explanation for this decision.

The charges of Official Misconduct 2<sup>nd</sup> Degree against both Mr. Ceglinski and Mr. Bowland were based upon their individual actions and involvement in allegedly violating KRS 620.040(4) by intentionally causing an internal investigation to be conducted by school personnel into an allegation of criminal activity perpetrated by a student against another student rather than immediately reporting the alleged criminal activity to law enforcement authorities.

It had previously been the interpretation by law enforcement officials, prosecuting authorities and public servants under its purview, that KRS 620.040(4) prohibited school personnel from conducting internal investigations involving criminal activity allegedly perpetrated against a student and imposed a duty upon school personnel to immediately report such activity to law enforcement for investigation. This interpretation was based upon the plain language of the statute and the understood legislative intent that allegations of criminal conduct perpetrated against students must be immediately brought to the attention of professional law enforcement personnel so that a competent and reliable investigation could be conducted in order to serve the best interest of these vulnerable victims and ensure that perpetrators were held accountable.

I consulted with investigators with the McCracken County Sheriff's Office and evaluated the facts in relation to the mandates of KRS 620.040(4) prior to these charges being issued against Mr. Ceglinski and Mr. Bowland. Based upon the interpretation of KRS 620.040(4) described above, I was confident that the facts of the case supported the issuance of a charge of Official Misconduct 2<sup>nd</sup> Degree as to both men. As such, I advised these investigators that the charge was appropriate.

Subsequent to speaking with the investigators and approving these charges, I conducted extensive legal research into the statute itself, as well as Kentucky case law interpreting other statutes that are within the same act. While no precedent could be located that specifically addressed the interpretation of KRS 620.040(4), I was able to rely upon legal authorities interpreting other statutes in the same act that used language similar to KRS 620.040. This research was completed last night, February 28, 2019.

The results of my research have caused me to look at the meaning of KRS 620.040(4) differently and have led me to the conclusion that the previously accepted interpretation of that statute was not correct. I am now firm in my position that KRS 620.040(4) applies exclusively in circumstances wherein school officials receive reports mandated by law to be made by a person with knowledge or reasonable grounds to believe that a child is dependent, abused or neglected (as defined by KRS 600.020(1) & (20)) as a result of the act or omission of his or her parent, guardian, person in a position of authority or special trust, or other person exercising custodial control or supervision of the child.

I am also now firm in my position that KRS 620.040(4) does not absolutely prohibit school personnel from conducting internal investigations when they receive these types of reports. Rather, the statute prohibits school personnel from conducting *solely* an internal investigation into the allegation *instead of* reporting the allegation to the proper authorities so that official investigations can be conducted.

My changed interpretation of KRS 620.040(4), makes my position that the statute does not apply to the facts of this case because the allegation criminal conduct at issue does not constitute a situation wherein a child was dependent, abused or neglected (as defined by KRS 600.020(1) & (20)) as a result of the act or omission of his or her parent, guardian, person in a position of authority or special trust, or other person exercising custodial control or supervision of the child. Additionally, my research revealed no other legal authority imposing a duty upon school personnel to immediately report this type of allegation to law enforcement and to refrain from initiating an internal investigation prior to reporting it. Accordingly, Mr. Ceglinski's and Mr. Bowland's actions in so doing do not form the basis of liability for Official Misconduct 2<sup>nd</sup> Degree.

I know that the explanation I've laid out is a complicated and confusing example of the "legal gymnastics" we attorneys often have to do in to make certain that laws are understood and applied correctly. The bottom line is that I no longer believe that the facts of this case support the charge of Official Misconduct 2<sup>nd</sup> Degree. Given this belief, it is incumbent upon me to take immediate responsive action. The right thing to do in this situation is to see to that these charges are promptly dismissed so that the ends of justice can be served. I did that this morning.

It is important for the citizens to know that as prosecutors, we have dual roles. Not only are we to be zealous in our efforts to hold offenders accountable for their actions, but we also must ensure that all people are afforded full procedural and substantive due process and that the true interests of justice are served in every case. We are to impose prosecution when justice requires it, but we are also to withdraw prosecution when the interests of justice and due process likewise require.

In submitting this statement, it is my intent and my hope that the news of Mr. Ceglinski and Mr. Bowland being relieved of criminal liability will be as quickly and widely spread as was the news that they were initially charged with a criminal offense.