

## MEMORANDUM

Prepared By: Raymond A. Basile  
To: Dr. Stephen Hagen and Central Nine Career Center School Board  
Date: January 28, 2013  
Subject: Central Nine Law Enforcement Program

### Summary of Issue

On Wednesday, January 23, 2013, Dr. Hagen contacted me regarding the employment status of Tom Shively, Central Nine's law enforcement program teacher, and asked whether Central Nine faced increased legal exposure by employing Mr. Shively or any subsequent law enforcement teacher directly rather than requiring CERT to provide its own teacher. Currently, CERT administers the law enforcement program by organizing and establishing the course agenda. The program is run on-site at Central Nine and is taught by Tom Shively, a Central Nine certificated employee under the academic direction of a CERT advisor.

The brief answer is that under certain circumstances, yes, it could increase the potential liability of Central Nine to have the teacher remain a Central Nine certificated employee.

### Alter Ego

There are two potential avenues of increased liability. The first is whether such employment increases the prospect of someone successfully claiming Central Nine and CERT are alter egos, resulting in Central Nine being found liable for the debts of CERT. Retaining the teacher as a certificated employee does not increase that risk. However, as with Building Trades, Central Nine needs to be very careful to avoid exchanging payments between the entities with little or no documentation, directly paying each other's debts, or holding themselves out to the public to be one and the same. If those precautions are taken, then retaining the teacher as an employee rather than having CERT hire him should pose no additional risk of this type of liability.

### Comparative Fault

The second avenue of potential increased liability could arise in a personal injury or wrongful death claim from a student. If that occurs, because the program is run through and at Central Nine, Central Nine can expect to be named as a defendant regardless of the employment status of the teacher. Under Indiana law, the judge or jury will apportion fault for injury or death, including the plaintiff who may have been partially responsible. Indiana is a modified comparative fault state, meaning the plaintiff can recover so long as he or she isn't more than 50% at fault. Whatever fault is not apportioned to the injured or deceased student would be apportioned to the defendants such as CERT and Central Nine.

If the teacher is found to be partially at fault (poor supervision of students or accidentally causing the injury himself), then the entity that employs him will incur losses through directly liability or the indemnification of its employee teacher. On the other hand, if Central Nine does not employ the teacher, it may still be partially liable for hosting the program on its campus and for possible

negligent supervision of the program, but its potential liability will likely decrease if it no longer employs the teacher.

#### Insurance Issue

Finally, it should be noted that any potential benefit of having the teacher be employed through CERT rather than Central Nine is substantially diminished by the fact that CERT is listed as an additional insured on Central Nine's insurance policy. While there are certainly other unrelated considerations that must be addressed as part of any decision, such as (1) the value of retaining Mr. Shively as an employee and (2) the cost to Central Nine of requiring CERT to provide a teacher and its own insurance, from a purely legal standpoint and to minimize Central Nine's exposure, the CERT program should be removed from Central Nine's insurance policy as an additional insured and the teacher become employed directly by CERT.