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CENTER FOR PUBLIC POLICY - L. DOUGLAS WILDER SCHOOL OF GOVERNMENT AND PUBLIC AFFAIRS

### CEPI Education Law Newsletter

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APRIL 2003: Vol. 1-8

#### ACADEMIC FREEDOM: A RESURGENCE OF CONTROVERSY

##### Overview:

From time to time the *academic freedom* of classroom teachers produces conflict on university, college, and secondary school campuses. In recent months our nation's involvement in Iraq ("Operation Iraqi Freedom") has provided the stimulus for a resurgence of controversy as some classroom teachers (and students) have openly expressed their views (both pro and con) regarding the matter. In some communities, as the war in Iraq began, some teachers and students protested against the war by walking out of classes during instructional time, while others joined rallies in public parks in support of our troops. In other communities teachers and students marched with other citizens expressing one point of view or the other.

The situation in Iraq also has produced debate and heated discussions inside public school classrooms, from California to New Mexico to Colorado to Maine to Virginia. Ironically, while in some school systems classroom teachers (especially history, government, and social studies teachers) were encouraged to provide information and engage their students in research projects, discussions, and debates, in other communities school officials initiated disciplinary actions against teachers because of similar activities. As a result, the limitations and boundaries of *academic freedom* were once again being tested.

*Academic Freedom: What Is It?* Academic freedom is a traditional and respected concept in education law (especially in higher education), with deep roots as "a liberty interest protected by the First Amendment to the United States Constitution." Meyer v Nebraska (1923) As the Supreme Court has said, "[individual instructors] are at liberty to teach that which they deem to be appropriate in the exercise of their professional judgment." Edwards v Aguillard (1987)

Applied within the special and limited context of a public elementary or secondary school classroom, academic freedom possesses two basic dimensions: (1) *substantive freedom* of classroom teachers to determine content and methodologies which serve an educationally defensible purpose, and (2) *procedural protection of classroom teachers* from dismissal from employment except for established and bona fide violations of law, policy, and regulations. (Hudgins and Vacca, 1999) Briefly stated, academic freedom can be characterized as the right to "speak freely about political or ideological issues without fear of loss of position or other reprisal." Black's Law Dictionary (1999)

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*Academic Freedom: Are there Limitations?* The United States Supreme Court has spoken several times on the subject of academic freedom. In the high court's view judges "will not tolerate laws that cast a pall of orthodoxy over the classroom. Teachers and students must always remain free to inquire, to study, to evaluate." Sweezy v New Hampshire (1957) The United States Supreme Court has emphatically stated that the freedoms of "speech and inquiry and of belief are fundamental values to safeguard, especially in our educational system." Epperson v State (1968) Moreover, the court has made it clear that neither students nor teachers "shed their constitutional rights to freedom of expression at the schoolhouse gate." However, in the Supreme Court's opinion these rights are *not absolute*, must be *exercised with reason*, and shall not "materially and substantially disrupt" the educational environment of the school. Tinker v Des Moines (1969).

Constitutional standards applied to speech and other expressive activities taking place in public schools are different from those applied to these same activities taking place out in the community. Boroff v Van Wert City (2000) As a general rule, public school officials possess legal authority and control over all expressive activities that take place inside school and at school-related functions, whether they are directly related to the curriculum or not, where "the public might see the school's imprimatur...so long as their actions are related to legitimate pedagogical concerns." Hazelwood v Kuhlmeier (1988)

*Local School Boards and the Curriculum.* In matters of curriculum, state law vests local boards of education with considerable authority and control. Local communities, through their elected or appointed school boards, have a legitimate and compelling interest in the choice of a suitable curriculum for the benefit their children. Virgil v School Board (1989) In addition to state mandated requirements, local community standards and attitudes impact on curriculum. It therefore follows that local boards of education legally possess and exercise broad discretion in regulating the content of a school's general curriculum and the specific instruction (including both the subjects taught and the teaching methods) in each classroom. Newton v Slye (2000) In practice, however, a balance must be struck between the interests of a board (as employer) and the interests of a teacher (as professional) in promoting the efficiency of the educational services performed on behalf of the community. Hudgins and Vacca (1999)

*Classroom Teachers and the Curriculum.* In their classrooms teachers cannot be made to simply read from officially approved lessons. Carey v Board of Education (1979) They are given considerable leeway in the preparation of lessons. As a general rule, courts consider classroom methodologies and techniques as the professional prerogative of teachers. Owasso ISD v Falvo (2002) However, the education of school children is not left to the whim of individual teachers to teach what they please, whenever they please, and in any way they please. Pelozo v Capistrano (1994) As the United States Supreme Court reminded us more than fifty-years ago, "A teacher works in a sensitive area in the schoolroom. There he (or she) shapes the attitudes of young minds towards the society in which they live." Adler v Board of Education (1952) What is more, classroom teachers do not have a "constitutional right to require others [i.e., students] to submit to their views and to forgo a portion of their education they would be entitled to." Palmer v Board of Education (1980)

### **Emerging Issues:**

*Age, Maturity, and Level of Education.* Courts of law have consistently recognized such pedagogical goals as the development of independent thought and tolerance for diverse views and opinions in students. To merely expose students to objectionable material and subjects is not enough to establish an abuse of academic freedom. Mozert v Hawkins County Board of Education (1987) At the same time, however, courts also have stressed the role of the public schools in "inculcating fundamental values necessary to the maintenance of a democratic political system." Board of Education v Pico (1982) and Bethel School District v Fraser (1986)

As general rule, college and university professors possess a broader scope of academic freedom than do secondary school teachers, and secondary school teachers possess a broader scope of academic freedom than do elementary school teachers. It must be noted, however, that the academic freedom of college and university professors (as employees) is not unlimited. Urofsky v Gilmore (2000)

Judges consistently view the age, maturity, and sophistication of students as key factors in evaluating issues associated with academic freedom. Essex (2002) More often than not, when evaluating public school curriculum cases, courts see the *appropriateness* of controversial subjects presented, taught, and discussed in classrooms as being different from *one grade level to another* (e.g., grades *one through six*, grades *seven through nine*, and grades *ten through twelve*).

It is a fact that students at all grade levels initiate unforeseeable discussions of controversial subjects in class and often they ask difficult questions requiring complex answers. As a general rule judges look more favorably at class discussions of questionable and controversial topics when the discussions are initiated by students and not by teachers. However, teachers still must be careful not to let the discussion go beyond the limits of the subject being studied. Hudgins and Vacca (1999)

*Relevance to Subject.* Classroom teachers in public schools are not free to determine the content of the courses they teach, nor are they free to ignore what is prescribed or proscribed both by state law and local school board policy. The classroom is not a public forum for unlimited discussions of controversial topics. Miles v Denver Public Schools (1991) It therefore follows that all (a) teaching methodologies and strategies employed, (b) materials selected and used, (c) assignments made, and (d) explanations, demonstrations, and discussions conducted in the classroom must be *relevant to required course content*. Hudgins and Vacca (1999)

*Fair and Balanced Treatment.* Whatever the grade level, classroom teachers are expected to present a balanced and unbiased treatment of their subject. While teachers are often asked by their students to express a personal opinion on a subject, the classroom is neither a pulpit nor a platform for presenting personal views (*i.e.*, private speech), nor is it a place to indoctrinate students. McCarthy, et al. (1998) Even though teachers are free to respond honestly to student questions and to speak out on matters of “public concern,” Pickering v Board of Education (1968), they must be very careful that a fair and balanced treatment of the subject is maintained, especially when the discussion is likely to be sensitive and emotional in nature.

### **Case Law Examples:**

An excellent case on point is a 1993 decision of the United States Court of Appeals for the First Circuit that involved a teacher-led discussion in ninth grade biology class. In Ward v Hickey (1993), a non-tenured teacher claimed that the board’s decision to not renew her contract was a direct result of her having discussed a controversial issue with her students. The subject of the discussion was the abortion of Down syndrome fetuses. The court held that the classroom teacher’s First Amendment right of free speech had not been violated. In the court’s view, while teachers retain their First Amendment right to free speech, public school officials may limit classroom speech to promote educational goals.

Lacks v Ferguson (1998) is a decision from the United States Court of Appeals for the Eighth Circuit. This case involved a tenured teacher in Missouri, who taught English and journalism and sponsored the school newspaper. Ms. Lacks was dismissed from her teaching position for violating a local school board policy that required teachers to enforce a section of the student code of conduct prohibiting students from using profanity in school. The dismissal was a result of her having used an innovative and controversial teaching method in her classroom

that allowed her students to be creative. It seems that the teacher divided her class into groups and directed them to write original short plays. Subsequently the plays were performed and read aloud for other students and videotaped. There also had been some poetry writing. The student works contained “profanity,” which one student witness described as “extreme,” “disgusting,” “upsetting,” and “embarrassing.” The school board considered her classroom activities (about which she had been warned to stop) as a “willful and persistent violation of board policy.” She challenged her dismissal in court claiming, among other things, that her First Amendment rights had been violated. At trial she prevailed, since the court saw the use of profanity by her students as “presented in the context of creative expression in the classroom.” On appeal, however, the district court was reversed. To the Eighth Circuit, the school board’s anti-profanity policy (1) was explicit, and (2) contained no exceptions. What is more, the teacher had received reasonable notice that student profanity in school was prohibited, and the school board had a legitimate interest in prohibiting the use of profanity in a classroom creative writing exercise. Citing Bethel School District v Fraser (1986) and directly quoting from Hazelwood v Kuhlmeier (1988), the appellate court stated that “educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.”

That same year, the United States Court of Appeals for the Fourth Circuit decided Boring v Buncombe County School Board (1998). In this case a high school drama teacher was reassigned to another position after she had selected a controversial play for her students to perform in a statewide competition. As a defense, she claimed that she had the prerogative to select and produce the play. In her view, teachers have a First Amendment right to participate in the development of the school curriculum. While the court agreed that the play was a part of the curriculum, it did not see curriculum development as a prerogative of classroom teachers. In the opinion of the court, school officials and not classroom teachers develop the curriculum. In this case the school board had, in good faith, exercised its legal authority regarding Boring’s selection of the controversial play.

Downing v West Haven Board of Education (2001) is another case on point. This time the matter involved a public school teacher who taught keyboarding to students in grades nine through twelve. The issue in the case arose when the teacher wore a T-shirt to class on which the following statement appeared: “Jesus 2000.” Subsequently her principal told her either cover the shirt while in school or leave and go home. She claimed that this was a violation of her First Amendment free speech and free exercise of religion. School officials responded that they found the T-shirt to be objectionable because it violated the Establishment Clause of the First Amendment. More specifically, if this teacher were allowed to wear the T-shirt in her classroom, in front of her students, it would appear as an official endorsement of religion. As such, the school system would be in violation of the separation of church and state. The court agreed and held that the actions of school officials were reasonable.

### **Policy Implications:**

In this writer’s opinion, *academic freedom* is a bedrock element of an effective learning environment in schools. To put it another way, students will learn best when classroom teachers are free to present an honest, comprehensive, up-to-date, and balanced view of their subject. As the above research demonstrates, however, academic freedom is not without certain limitations and must be balanced with the legal authority of local school boards to supervise the schools and to develop and control the school curriculum, including course content.

In an effort to minimize future issues involving academic freedom, the following *ten suggestions for policy development* are proposed. These suggestions are solely intended to assist local school officials as they revisit and examine existing school system policies regarding classroom curriculum. Local school board policy must make it clear that:

- Legal authority over the school curriculum vests with the local school board.
- The school board is duty bound to make certain that the curriculum in each school includes all subjects, courses of study, standards of learning, and standardized measures of student progress mandated in state law and state board of education policy.
- The school board (as employer) expects all school system administrators, classroom teachers, and other professional staff members (as employees of the board) to strictly follow and otherwise implement all required elements of the official curriculum of the school district.
- Administrators, classroom teachers, and other professional staff members will be held accountable for (a) covering the required curriculum in their subject area, and (b) student academic progress and achievement.
- Teachers are free to supplement the curriculum in their classrooms.
- The selection of all supplemental materials (including but not limited to textbooks, periodicals, films, video-tapes, computer programs) must be done in accordance with official school system policy and procedures covering such matters.
- The inclusion and involvement of outside speakers and other third parties in classrooms and at school-sponsored functions, and the scheduling of all student field trips, must be accomplished in accordance with appropriate school system policy and procedures.
- Teachers are expected to present a complete, comprehensive, up-to-date, fact-based, and balanced treatment of their subject, in a style and manner appropriate to the age, maturity, and grade-level of their students.
- Teaching methods, course materials, class assignments, and class discussions must be relevant and directly related to the specific subject(s) and course content being taught.
- Classroom teachers, and other professional staff, are encouraged to promptly, appropriately, and honestly respond to questions posed by students; however, it is expected that teachers and other professional staff will a) confine their responses to the subject being studied and other school-related matters, and b) refrain from giving personal (i.e., as private person) opinions.

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