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THE FIRST AMENDMENT AND CLASSROOM BULLETIN BOARDS

Overview

In their training public school teachers are encouraged to find creative ways to establish and maintain a classroom atmosphere supportive of and conducive to student learning. Of the many helpful suggestions made by professors, teacher trainees are encouraged to effectively utilize *classroom bulletin boards* to extend and enhance the subject matter being taught. Ironically, however, classroom bulletin boards in public schools often have been sources of controversy. More often than not bulletin board issues spring up when someone (student in the class, parent, another teacher, school principal, visitor) is offended by what is posted.

Because most classroom controversies are settled through existing administrative processes within a school system, case law involving classroom bulletin boards and other displays are hard to find. As a general rule, even when someone files a lawsuit, judges exercise restraint. Judges grant "broad discretion to school authorities in matters involving the curriculum, student grading, and methods of teaching." Drake and Roe (2003) However, a recent decision from the United States Court of Appeals for the Fourth Circuit represents an exception.

On May 2, 2007, the Fourth Circuit decided Lee v.York County School Division (4th Cir. 2007). The case involves a classroom teacher (Lee) in a Virginia public high school who claimed that his right to free speech guaranteed under the First Amendment was violated when, on a day that he was absent from work, his principal removed certain materials on bulletin boards in Lee's classroom. The principal had not done this with any other classroom teacher. The materials removed from Lee's classroom bulletin boards were the subject of a complaint to school officials from a private citizen. The complaint expressed a concern over "the overly religious nature" of some of the posted materials Lee v. York County (4th Cir. 2007)

Subsequently, Lee filed suit in a federal district court where he unsuccessfully claimed that the high school had "a policy, custom and practice of allowing instructors to post upon the walls and bulletin boards of their assigned classrooms pictures and printed and illustrated materials that are consistent with the educational mission of the school,…that are of a general and personal nature that are not otherwise inconsistent with the educational mission of the school,…or that are consistent with the mission and/or vision of the approved club of

which [the teacher is] the faculty sponsor." Lee v. York County (E.D. Va. 2006) In addition to his classroom duties, Lee was the faculty sponsor of an approved student club.

The trial court disposed of his claim on the ground that Lee had expressed no speech that is protected by the First Amendment. In the court's view, Lee's classroom postings were "curricular in nature" and as such "did not constitute speech on a matter of public concern." Lee v. York County (E.D. Va. 2006) Summary judgment was granted to school officials. Lee next took his case on appeal to the Fourth Circuit.

The purpose of this commentary is to discuss the Fourth Circuit Court's decision and to suggest relevant policy implications for local school officials, especially for public school systems located within the jurisdiction of the Fourth Circuit. At the outset, however, because Lee involves several interrelated issues (speech, academic freedom, and curriculum decision making), it is first necessary to build a constitutional and legal foundation and to place the case into a proper context.

Constitutional Foundations

The First Amendment to the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for redress of grievances." Made applicable to the States through the Fourteenth Amendment, the rights and protections of the First Amendment (especially the right to freely speak out) have been extended to public school teachers in the workplace. Pickering v. Board of Education (1968), Tinker v. Des Moines (1969), and Mt. Healthy v. Doyle (1981)

Academic Freedom and the Curriculum

Do the rights and protections of the First Amendment impact on a teacher's professional prerogatives in their classroom? Are a teacher's First Amendment rights and protections limited by the school system's curriculum? In addition to connecting their comments to the subject being taught at the time, must public school teachers limit comments made to students to matters of public concern? Of all areas of public school operation, *academic freedom* of classroom teachers offers a prime example of where the application of First Amendment guarantees can clearly be observed

Academic freedom means, "[t]he right…to speak freely about political or ideological issues without fear of loss of position or other reprisal." BLACK'S LAW DICTIONARY (1999) Alexander and Alexander remind us, however, "academic freedom is not, in and of itself, a separate constitutional protection, but instead it is a desirable end to be achieved by the enforcement of the individual rights and freedoms in the classroom as guaranteed by the Bill of Rights."

Generally speaking, as specifically applied in a public school setting, academic freedom "includes the right of teachers to speak freely about their subjects, to experiment with new ideas, and to select appropriate teaching materials and methods." Fischer, Schimmel, and Kelly (1999) While classroom teachers are contractually obligated to carryout and implement the school curriculum, they are free "to determine, within reasonable bounds, content and methodology which serve an educationally defensible purpose…." Vacca and Bosher (2003) As the United States Supreme Court has opined, "teachers are at liberty to teach that which they deem to be appropriate in the exercise of their professional judgment." Edwards v. Aguillard (1987)

The United States Supreme Court has made it clear that public school officials are not free, in the name of curriculum regulation, to violate the rights of teachers. Meyer v. Nebraska (1923) Moreover, state laws that "cast a poll of orthodoxy over the classroom will not be tolerated. In the high court's view, teachers and students must always remain free to inquire, study, and evaluate. Sweezy v. New Hampshire (1957) More recently, however, lower courts have held that teachers are not free to say and do what they want in their classrooms. The public school classroom is not a "public forum." Miles v. Denver Public Schools (10th Cir. 1991)

Teacher classroom speech and expression are subject to reasonable regulation and control as articulated in local school board policy. To judge the appropriateness of teacher classroom speech and expression courts will examine: (1) the *context* (e.g., classroom, laboratory, library, playground, etc.) within which the act(s) took place, (2) the *intent* of the act(s), (3) the *nature of the of the audience* present (e.g., elementary, or middle, or high school students), (4) the *relationship*, if any, to the school curriculum and the subject[s] being taught at the time, and (5) the resulting *impact* on students. Vacca (2003)

Regarding the school curriculum itself, the Fourth Circuit held, in Boring v. Buncombe County (4th Cir. 1998), that *curriculum development* is the prerogative public school officials and not classroom teachers. In the words of the court, "…it is far better public policy, absent a valid statutory directive on the subject, that the makeup of the curriculum be entrusted to the local school authorities who are in some sense responsible, rather than to the teachers, who would be responsible only to judges, had they a First Amendment right to participate in the makeup of the curriculum." Boring v. Buncombe County (4th Cir. 1998)

Lee v York County School Division, et al. (4th Cir. 2007)

On appeal, the Fourth Circuit affirmed the district court's ruling. In reaching its decision, the appellate court narrowed Lee's First Amendment claim to the Free Speech Clause only; thus ruling out Establishment Clause (i.e., religion) issues raised by Lee at trial. Citing the lower court's reliance on such benchmark decisions as Pickering v. Board of Education (1968), Tinker v. Des Moines (1969), Connick v. Myers (1983), and Boring v. Buncombe County Board of Education (4th Cir. 1998), the Fourth Circuit characterized Lee's classroom postings as curricular in nature and therefore not matters of public concern. As such, his bulletin board postings were not subject to First Amendment speech protections. On this point the Fourth Circuit supported its opinion with the following direct quote from the Supreme Court's decision in Garcetti v. Ceballos (2006): "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline."

Mainly relying on Hazelwood v. Kuhlmeier (1988) and Boring v. Buncombe County Board of Education (4th Cir. 1998), the Fourth Circuit Court emphasized that courts "have generally recognized that the public schools possess the right to regulate speech that occurs within a compulsory classroom setting, and that a school board's ability in this regard exceeds the permissible regulation of speech in other governmental workplaces or forums." What is more, "the determination of what manner of speech in the classroom…is inappropriate properly rests with the school board rather than with the federal courts…." And, "[a]lthough schoolteachers provide more than academic knowledge to their students; it is not a court's obligation to determine which messages of social or moral values are appropriate in the classroom. Instead, it is the school board, whose responsibility includes the well-being of the students, that must make such determinations." Lee v. York County School Division (4th Cir. 2007)

In affirming the district court decision, the appellate court held that because the removed items constitute "school-sponsored speech bearing the imprimatur of the school, and they were designed to impart particular knowledge to the students…, the items are curricular in nature." In summary, the dispute over Lee's classroom bulletin board postings "is nothing more than an ordinary employment dispute." Lee v. York County School Division (4th Cir. 2007)

Policy Implications

The decision in Lee v. York County School Division is only binding within the jurisdiction of the Fourth Circuit. However, the Court's rationale also has ramifications for local public school officials in other jurisdictions as well. In my view, the Court's rationale should stimulate all local school boards to: (1) revisit existing personnel policies (especially policies having a direct bearing on expectations for teacher classroom performance, and evaluation), and (2) be clear when drafting new policies dealing with the purposes and uses of school display areas, especially those located in instructional spaces like classrooms.

What follow are suggestions for local school board policy, based upon my analysis of the Lee decision. Policies specifically covering the contractual expectations for classroom teacher performance must make it clear that:

- The school board, operating within the scope of the legal authority granted to it by appropriate state statutory law, decides on the makeup of the school system's curriculum.
- Classroom teachers are expected to carry out the educational mission of the school system.
- Classroom teachers are contractually bound to carry out and implement the school system's curriculum.
- Classroom teachers are expected to determine, within reasonable bounds, the appropriate methodologies and professional techniques necessary to teach the curriculum in their classrooms and laboratories.
- All curricular and extracurricular activities must be appropriate to the subject being taught, and to the age and maturity levels of students
- Classrooms (as well as other locations in the school building designated as instructional spaces) are *limited purpose* and not open/public forums.
- School building and classroom/instructional display spaces, including school bulletin boards, are to be used for school and curriculum related purposes.
- Classroom teachers are expected to: (1) limit their workplace discussions with students to matters directly related to their professional work as an employee of the school system, and (2) refrain from discussing or in any other way presenting their personal (non-employee related) beliefs and attitudes to students.

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Note: The views expressed in this commentary are those of the author.