Teacher Freedoms

Public school teachers do not relinquish their rights as a condition of accepting an employment position in the public schools. Although teachers are expected to be sensitive to the professional nature of their positions and have a regard for the integrity of the profession, they do enjoy certain constitutional freedoms that must be respected by school authorities. Since teachers enter the profession with constitutional rights and freedoms, boards of education must establish a compelling reason to restrict these freedoms. In these instances, the burden rests with school authorities to demonstrate that their actions are not arbitrary, capricious, or motivated by personal and political objectives.

The courts, in addressing conflicts involving constitutional freedoms of teachers, attempt to balance the public interest of the school district against the personal rights of each individual employee. Thus, teachers are subject to reasonable restraints only if a legitimate, defensible rationale is established by the school district.

Substantive and Procedural Considerations

As stated in Chapter 3, there are two types of due process, both of which apply to teachers: substantive and procedural. Procedural due process means that the state may not deprive any person of life, liberty, or property, without due process of law. Therefore, a teacher must be given proper notice that he or she is to be deprived of his or her personal rights. The teacher must be provided an opportunity to be heard, and the hearing must be conducted in a fair manner. Failure to follow procedural requirements will result in a violation of the teacher’s constitutional rights. Substantive due process means that the state must have a valid objective when it intends to deprive a teacher of life, liberty, or property, and the means used must be reasonably calculated to achieve its objective. Most importantly, both procedural and substantive requirements must be met in teacher dismissal proceedings. Many administrative decisions that were correct in substance have been overturned on appeal based simply on the grounds that procedural requirements were not met. Conversely, procedural requirements may be met by school officials when the evidence reveals that a valid reason did not exist that warranted depriving a teacher of his or her rights. The administrative decision in this case would be overturned as well.
Freedom of Expression

By virtue of the First Amendment to the Constitution, teachers are afforded rights to freedom of expression. Within limits, they enjoy the same rights and privileges regarding speech and expression as other citizens. Free speech by teachers, however, is limited to the requirement that such speech does not create material disruption to the educational interest of the school district. Material disruption, for example, may involve an interference with the rights of others or may involve speech that creates a negative impact on proper school discipline and decorum. The level of protection provided teachers is generally lower in cases where the teacher speaks on matters that are personal in nature, as opposed to those that are of interest to the community.

In either case, school officials may not justifiably prohibit or penalize the teacher in any manner for exercising a constitutionally protected right without showing that a legitimate state interest is affected by the teacher’s speech or expression. As usual, in cases where the teacher’s speech is restricted, the burden of proof justifying such restriction rests with school authorities. Districts have succeeded in their actions to restrict speech and to discipline teachers when there was evidence that the teacher’s personal speech undermined authority and adversely affected working relationships. In the absence of such showing, the teacher’s speech is protected.

In fact, the Supreme Court addressed the application of the First Amendment in employment situations by emphasizing in the Connick v. Myers case the distinction between speech involving public concern and grievances regarding internal personnel matters. Expressions regarding public concerns, according to the High Court, receive First Amendment protections, whereas ordinary employee grievances are to be handled by the appropriate administrative body without involvement of the court. In this case, the issue involved a petition, circulated within an office, that was related to the proper functioning of the office. This type of personal speech did not receive First Amendment protection.

Another example involved a sarcastic, unprofessional, and insulting memorandum written by a teacher to various school officials. The teacher found that expressing his private disagreement with school policies and procedures, which he refused to follow, was unprotected speech not related to a matter of public concern. Further, he was not speaking as a private citizen but rather as an employee of the district. Another court stated that “to hold for the teacher in private expressions would be to transform every personal grievance into protected speech when complaints are raised about classroom materials, teacher aids, laboratory equipment and other related issues.”

Speech Outside the School Environment

Teachers are afforded First Amendment rights outside the school environment. They may speak on issues that interest them and the community, even though their speech may not be deemed acceptable by school district officials. This, of course, has not always been the case.

In the past, there was a commonly held belief that public employees, including teachers, had only a limited right to freedom of expression. This restrictive posture stemmed from the commonly held view that public employment was a privilege. While the courts have failed to support this view, many teachers in the past were restricted in their rights to freedom of expression.
Freedom of speech outside the school environment is well established; however, when exercising such speech, a teacher should preface his or her comments by indicating that he or she is speaking as a private citizen rather than an employee of the board. This public disclosure is significant in establishing that the teacher’s speech is not the official position of the school district. This disclosure further reinforces the notion that a teacher possesses the same First Amendment privileges as regular citizens. Although teachers enjoy First Amendment rights, those rights are not without reasonable restrictions, based on the nature of the position held and the positive image teachers are expected to project. In all cases, the teacher’s speech should be professional in nature and not designed to harm or injure another’s reputation or render the teacher unfit, based on the content of the speech itself. These standards apply whether the speech is verbal or written.

A leading Supreme Court decision in the Pickering case established the limits on freedom of expression rights by school personnel. This case arose in Will County, Illinois, when Marvin Pickering, a teacher in the district, was dismissed from his position by the board of education in connection with sending to the local newspaper an editorial that was critical of the school’s administration and the allocation of tax funds raised by the school. Excerpts extracted from the Pickering letter are as follows:

The superintendent told the teachers, and I quote, “any teacher that opposes the referendum should be prepared for the consequences.” I think this gets at the reason we have problems passing bond issues. Threats take something away; these are insults to voters in a free society. We should try to sell a program on its merits, if it has any.

. . . to sod football fields on borrowed money and then not be able to pay teachers’ salaries is getting the cart before the horse.

If these things aren’t enough for you, look at East High. No doors on many of the classrooms, a plant room without any sunlight, no water in a first aid treatment room are just a few of many things. The taxpayers were really taken to the cleaners. A part of the sidewalk in the building has already collapsed. Maybe Mr. Hess would be interested to know that we need blinds in that building also.

As I see it, the bond issue is a fight between the Board of Education that is trying to push tax-supported athletics down our throats with education, and a public that has mixed emotions about both of these items because they feel they are already paying enough taxes, and simply don’t know whom to trust with any more tax money.

I must sign this letter as a citizen, taxpayer, and voter, not as a teacher, since that freedom has been taken from the teachers by the administration. Do you really know what goes on behind those stone walls at the high school?

Respectfully,

Marvin L. Pickering

Pickering’s dismissal resulted from a determination by the board, after a full hearing, that the publication was detrimental to the efficient operation and administration of the school. Hence, under relevant Illinois statutes, in the “interest of the school,” dismissal was required. Pickering’s claim that his speech was protected by the First and Fourteenth Amendments was rejected. He appealed the board’s ruling to the circuit court of Will County, which supported his dismissal on the grounds established by the school board. On appeal, the Supreme Court of Illinois affirmed the judgment of the circuit court.

Pickering’s letter criticized the school board’s handling of the 1961 bond issue proposals and the subsequent allocation of financial resources between the school’s educational
and athletic programs. The board dismissed Pickering for writing his editorial, charging that numerous statements contained in the letter were false and that the letter unjustifiably imputed the motives, honesty, integrity, truthfulness, responsibility, and competence of the board and school’s administration. The board further claimed that the false statements damaged the professional reputation of its members and the administration.

The U.S. Supreme Court reversed the Illinois State Supreme Court’s decision and held for Pickering. The High Court concluded, “The extent to which the State Supreme Court’s opinion may be read to suggest that teachers may constitutionally be compelled to relinquish First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public school in which they work, it proceeds on the premise that has been unequivocally rejected in numerous prior decisions of this court.”

Although some of Pickering’s statements proved to be untrue, the High Court held that teachers are afforded First Amendment rights, which Pickering had been denied. In responding to several incorrect statements contained in Pickering’s letter, the Supreme Court stated, “Absent proof of false statements knowingly or recklessly made by him, a teacher’s exercise of his rights to speak on issues of public importance may not furnish the basis for his dismissal from public employment.”

The Pickering ruling represented a significant victory for public school teachers. Prior to this ruling, it would not have been uncommon to find teachers seeking new employment if they publicly criticized their school district’s practices. Pickering also was significant in generating guidelines regarding freedom of expression issues involving teachers. If the teacher’s speech disrupted superior-subordinate relationships or resulted in a breach of loyalty or confidentiality, the teacher may be disciplined. Further, if the teacher’s speech created disruption of a material and substantial nature, affected the efficient operation of the school, or rendered the teacher unfit based on the content of the speech, appropriate action also may be taken against the teacher.

In addition to the Pickering guidelines, a Connecticut court generated the following guidelines involving freedom of expression issues regarding the operation of the public schools:

1. The impact on harmony, personal loyalty, and confidence among coworkers
2. The degree of falsity of statements
3. The place where speech or distribution of material occurred
4. The impact on the staff and students, and
5. The degree to which the teacher’s conduct lacked professionalism.

This case illustrates the level of protection afforded public school teachers by the court during the exercise of their First Amendment rights. The case arose in Mississippi when an art teacher, with 21 years of experience, criticized the superintendent for eliminating the art program at a historically African American junior high school while retaining the program at a historically white junior high school. The superintendent justified his action by stating that no instructors could be located for the African American school. The teacher subsequently located viable candidates for the position and joined in ongoing criticism of the superintendent by community supporters.
The teacher wrote an editorial in the local newspaper, spoke out during public forums, and sent a letter of no confidence to the superintendent. The superintendent then arranged for a demotion of the teacher to the African American junior high school. The teacher filed a suit against the superintendent and the board of education. The superintendent requested summary judgment, which was denied by the district court. The superintendent appealed to the Fifth Circuit Court of Appeals.

The appeals court, in holding for the teacher, noted that the teacher had joined in public criticism of the superintendent and was not merely expressing a personal grievance regarding his demotion. His actions were regarded as protected public speech, and the district court’s ruling denying summary judgment was appropriate. Because the superintendent’s actions in demoting the teacher may have been motivated by personal reasons, the teacher’s First Amendment right was properly retained. The superintendent’s appeal was dismissed.6

In a slightly different case, a teacher did not prevail based solely on First Amendment protection. In the Mt. Healthy case, a nontenured teacher who previously had been involved in several altercations with other teachers, employees, and students—including an incident in which he made obscene gestures to female students—phoned into a radio station the contents of the principal’s memorandum to faculty regarding the dress code for teachers.7 The radio station announced the adoption of the dress code. The board, on the recommendation of the superintendent, informed the teacher that he would not be rehired based on a lack of tact in handling professional matters and specifically referenced the obscene gesture and radio station incident. The teacher challenged the validity of the termination. The court held that in order to prevail in a First Amendment case, an employee must show that his expression is protected and that it was the motivating factor in the board’s action. Also, the board must fail to show that it would have taken the same action in the absence of the employee’s conduct.

Since the teacher’s conduct did not disrupt the orderly operation of the school, it was constitutionally protected and could not serve as the basis for employment termination. However, by engaging in constitutionally protected conduct, a teacher should not be able to prevent an employer from assessing his or her entire performance record and reaching a decision not to rehire on the basis of the record.

As one can see, the teacher’s freedom of expression rights are protected. They are, however, subject to reasonable considerations regarding order, loyalty, professionalism, and overall impact on the operation of the school. If prudence is exercised by the teacher in expressing views of public interest, he or she should not be subject to disciplinary measures or retaliation by the school district. However, if his or her overall performance record does not meet the school’s expectation, dismissal may occur in spite of First Amendment privileges.

A case involving retaliation and First Amendment speech arose in Oklahoma when the U.S. Court of Appeals for the Tenth Circuit held that a school board engaged in a retaliatory employment action in violation of a teacher’s First Amendment speech rights when it terminated him for making a false, but good faith, accusation and then reinstated him in a less desirable position.8 After students discovered pornographic materials in a dumpster at Frontier Public Schools (OK), Owen Hawzipita, a high school art teacher, was told by the shipping company that the materials had been ordered by the high school’s principal. Hawzipita reported his concerns to the superintendent and demanded an investigation. The local newspapers picked up the story. Eventually, the elementary school principal
came forward and admitted that he, not the high school principal, had ordered the materials. The school board terminated Hawzipita, who appealed to state court and won reinstatement. When he returned to work, he was assigned to the in-school suspension program rather than to his previous position as art teacher. The Tenth Circuit concluded that Hawzipita presented sufficient evidence to establish a valid retaliation claim. Specifically, his speech was on a matter of public concern because it not only informed, but created, the public debate. Hawzipita’s reassignment was sufficiently onerous to constitute a detrimental employment action, because it deprived him of the ability to utilize his specialized skills and experience and limited his interaction with members of the school community.

**Academic Freedom**

Public school teachers are afforded a judicially recognized academic interest in their classrooms, based on the teacher’s right to teach and the students’ right to learn. Academic freedom, as a concept, originated in the German universities during the nineteenth century with the expressed purpose of allowing professors to teach any subject they deemed educationally appropriate.

Public school teachers, of course, are not provided the same broad latitude extended to professors in higher education. Academic freedom is a very limited concept in public schools. It supports the belief that the classroom should be a marketplace of ideas and that teachers should be provided freedom of inquiry, research, and discussion of various ideas and issues. Since public school teachers teach children of tender years who are impressionable, their freedom of expression in the classroom is limited by factors such as grade level, age, experience, and readiness of students to handle the content under discussion.

The teacher should also be certain that the subject matter introduced into classroom discussion is within the scope of students’ intellectual and social maturity levels. Public school teachers are further restrained by the requirement that content introduced into classroom discussion be related to and consistent with the teacher’s certification and teaching assignment. Controversial material unrelated to the subject taught and inappropriate, based on content, will not be supported by the courts.

The point was clearly illustrated in the *Fowler* case, which arose when a tenured teacher was discharged for insubordination and conduct unbecoming of a teacher. The basis for her dismissal was that she had a R-rated movie, Pink Floyd’s *The Wall*, shown to a high school class on the last day of school. A group of students requested that Fowler allow the movie to be shown while she completed grade reports. Fowler was not familiar with the movie and asked students whether the movie was appropriate for viewing at school. One student who had seen the movie indicated that it had one bad spot in it. She instructed the student who had seen the movie to edit out any parts that were not suitable for viewing by the class. He attempted to do so by covering a 25-inch screen with an 8½-inch by 11-inch letter-sized folder. The facts revealed that there was nudity and a good bit of violence contained in the movie. Fowler testified that in spite of the fact she had not seen the movie and left the classroom several times during its viewing, it had significant value. Furthermore, she would show an edited version again if given an opportunity. The board viewed the edited version of the movie during an executive session and voted unanimously in an open session to terminate Fowler for insubordination and conduct unbecoming of a teacher. The court recognized that Fowler was entitled to First Amendment protection.
under certain circumstances and that a motion picture is a form of expression that may be entitled to First Amendment protection. However, it ruled that Fowler’s conduct in having the movie shown under the circumstances presented did not constitute expression protected by the First Amendment. The board was upheld in the discharge of Fowler.

Much of what is taught in public schools is influenced by state and local board curriculum policies and guidelines, as well as statutory provisions. Public school teachers must always be mindful of these considerations. Teachers may not use their classrooms to promote a personal or political agenda. The classroom may not be used to indoctrinate or to encourage students to accept beliefs, attend meetings, or disregard parent wishes regarding involvement with religious groups.10

In light of certain restrictions, the concept of the classroom as a marketplace of ideas does apply to elementary and secondary schools. This point was well expressed in a ruling by a district court:

Most writings on academic freedom have dealt with the universities where the courts supported the essentiality of freedom in the community of American universities. Yet, the effects of procedures which smother grade school teachers cannot be ignored. An environment of free inquiry is necessary for the majority of students who do not go on to college; even those who go on to higher education will have acquired most of their working and thinking habits in grade school and high school. Moreover, much of what was formerly taught in many colleges in the first year or so of undergraduate studies is now covered in upper grades of good high schools. . . .

The considerations which militate in favor of academic freedom—our historical commitment to free speech for all, the peculiar importance of academic inquiry to the progress of society in an atmosphere of open inquiry, feeling always free to challenge and improve established ideas—are relevant to elementary and secondary schools, as well as to institutions of higher learning.11

This passage adequately summarizes the importance of the recognized academic interests of elementary and secondary teachers. These privileges may not be abridged without evidence by the district that a legitimate state interest is threatened by the teacher’s actions in the classroom.

The following summaries of cases reflect the court’s position on various issues regarding academic freedom in public schools. One case dealt with the question of whether a teacher could, for educational purposes, assign and discuss in class an article containing a term for an incestuous son that was offensive to many. The article was written by a highly respected psychiatrist and appeared in a high-quality publication. Any student who felt the assignment to be personally offensive was permitted to choose an alternative one. The teacher would not agree, based on the district’s demand, never to use the word again in the classroom. The court found the district’s rule to be unenforceable. It observed that the word in question appeared in at least five books in the library, but the court did not rest its decision on this ground.12

In another case, the teacher had discussed the meaning of “taboo” words by using another word, deemed highly offensive to many, for sexual intercourse. The First Circuit Court affirmed the teacher’s right, but did indicate that teachers do not have a license to say or write whatever they choose in the classroom. The court was not in total agreement as to whether the First Amendment protected the teacher’s actions, but it held for the teacher on
the grounds of due process, because school officials had enforced a vague rule after the inci-
dent had occurred.\footnote{13}

Teachers may not claim First Amendment protection when they make damaging and inap-
propriate statements in the classroom as illustrated by the following case. A Missouri ap-
pellate court ruled that a school district did not violate a teacher’s First Amendment free
speech rights when it terminated her for making disparaging comments about interracial
marriages and biracial children.\footnote{14} Jendra Loeffelman taught eighth-grade English at Crys-
tal City Elementary School. When a student asked her view on interracial relationships, Lo-
effelman responded that she opposed them. She added that interracial couples should be
“fixed” so they cannot have children, who are “racially confused.” Her class included bira-
cial children. The school board concluded that it had the authority to terminate her contract
on the ground that she had willfully violated board policy by engaging in discriminatory
conduct and making disparaging racial comments. Loeffelman sued, alleging that the
school board had erred in two ways: It lacked the authority to dismiss her because it had
failed to prove she had willfully violated the board’s policies, and it violated her free speech
rights by terminating her for speaking on a matter of public concern. The appellate court
concluded that the evidence was sufficient to show willful violation because it supported
findings that Loeffelman was aware of the board policies and that she spoke with the
knowledge that her comments were disparaging of interracial relationships and biracial
children. The court next found that the teacher’s comments did not qualify for First Amend-
ment protection, because her speech concerned private opinion rather than a matter of pub-
lic concern. Even if her speech were a matter of public concern, the school board’s interest
in maintaining harmony and efficiency in the workplace outweighed the teacher’s right to
make racially insensitive and disruptive remarks.

\textbf{Freedom of Association}

The First Amendment guarantees citizens the right to peacefully assemble. Freedom of asso-
ciation is included within this right of assembly, since teachers, as citizens, are entitled to
the same rights and privileges provided other citizens. \textit{Freedom of association} grants peo-
ple the right to associate with other individuals of their choice without threat of punishment.
Although teachers enjoy these rights, they should exercise them in light of the nature and
importance of their positions as public employees. Further, they should be concerned with
the “role-model image” they project and the impact of their actions on impressionable
young children. The Supreme Court stated, “A teacher serves as a role model for his stu-
dents, exerting a subtle but important influence over their perceptions and values.”\footnote{15}

The High Court’s view was further expressed in a case in which two unsuccessful ap-
plicants for teaching certification in New York filed suit enjoining the enforcement of a
state statute that forbids aliens from obtaining public school teacher certification. Both
teachers were married to U.S. citizens, had been in the country for more than ten years, and
had earned degrees at U.S. colleges. The New York statute allowed the commissioner of
education to determine a special need for the person’s skills and competencies. The Court
held for the state of New York, ruling that a statute that generally prohibits, with some ex-
ceptions, aliens from obtaining teacher certification is constitutional. The court further
stated that a citizenship requirement for teaching bears a rational relationship to the legiti-
mate state interest in public education, because the people of New York, through their lawmakers, have determined that people who are citizens are better qualified than those who have rejected the open invitation extended to qualify for eligibility to teach by applying for citizenship in this country.\textsuperscript{16}

Freedom of association has not always been recognized as a constitutional freedom by school districts, as there were countless restrictions placed on teachers by their districts. In the early to mid-1900s, African American and white teachers were forbidden to socialize with one another. In some districts, membership in the NAACP or the Ku Klux Klan was fatal to the teacher if there was public awareness of such affiliation.

In some instances, school personnel who had been involved in organized labor organizations or educational associations received questionable treatment by their school districts. This treatment was oftentimes reflected in the form of demotions, unwarranted transfers, nonrenewals, and even terminations. An example of such treatment is illustrated by the following case. A Missouri school board voted not to renew the contracts of three probationary teachers. These three teachers had publicly advocated higher teacher salaries and affiliation with the Missouri National Education Association. They alleged that their contracts were not renewed in retaliation for these activities in violation of their First Amendment rights to free speech and association. The court held for the teachers by awarding $7,500 in damages and reinstatement to their teaching positions. The district appealed. On appeal, the U.S. Court of Appeals for the Eighth Circuit agreed that despite the probationary or non-tenured status of these teachers, the school board could not constitutionally refuse to renew their contracts in retaliation for the exercise of their First Amendment rights. The court remanded the issue of damages to the lower court regarding the awarding of back pay and attorney fees.\textsuperscript{17} As illustrated by this case, school districts will not succeed when they retaliate against school personnel for the proper exercise of their rights regarding their involvement in union-related activities. They may not be legally penalized for such involvement.

Since the late 1960s, there has been a discernible trend by the court toward providing teachers more freedom regarding their personal lives than was true in the past. Courts now hold that teachers, including administrators, are free to join their professional organizations, assume a leadership role, campaign for membership, and negotiate with the school board on behalf of the organization without fear of reprisal. School personnel must ensure that their participation in external organizations does not, in any manner, reduce their effectiveness as district employees or create material or substantial disruption to the operation of the district.

School personnel may also engage in various types of political activities. They may become a candidate for public office or campaign for their favorite candidate. However, school personnel may be requested to take personal leave when they run for public office. These are permissible activities, as long as these occur after school hours and do not interfere with job effectiveness.

\textit{Membership in Subversive Organizations}

There has been controversy in the past regarding membership in subversive organizations by school personnel that resulted in threats of dismissal. The Supreme Court has held that \textit{mere membership in subversive organizations is not sufficient within itself to justify dismissal}. The teacher must have demonstrated that he or she actually participated in an unlawful activity or intended to achieve an unlawful objective before punishment may be meted.
In a leading case, the Supreme Court in *Elfbrandt v. Russel* indicated, “Those who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities surely pose no threat, either as a citizen or as a public employee.”

This case involved an Arizona act that required an oath by employees of the state. A teacher challenged the act, refusing to take the oath based on good conscience. She further claimed that the oath was unclear in its meaning, and she was unable to secure a hearing to have the meaning clarified. The oath read as follows: “I do solemnly swear . . . that I will support the Constitution of the United States and . . . of the State of Arizona; that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office (name of office).”

Anyone taking the oath was subject to prosecution for perjury and discharge from office if he or she knowingly or willfully became or remained a member of the Communist Party or any other organization that advocated an overthrow of the government.

The High Court ruled that a loyalty oath statute that carries sanction to membership without requiring specific intent to further the illegal objectives of the organizations is unconstitutional. The court stated further that the due process provision of the Fourteenth Amendment requires that a statute that infringes on protected constitutional rights, in this case freedom of association, “be narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state.”

Another significant Supreme Court decision was rendered in the *Keyishian v. Board of Regents of University of State of N.Y.* This case emerged, based on a complex set of laws in New York, calling for the discharge of employees of the state education system who utter treasonable or seditious words, perform the same acts, advocate or distribute material supporting an overthrow of the government, or belong to subversive organizations. Keyishian and a number of faculty and staff at the University of New York who refused to certify that they were not and had not been members of subversive organizations were faced with dismissal from their jobs. They sought declaratory relief from the statute and sought to have it declared unconstitutional. The High Court held for the plaintiffs, stating that loyalty oaths that make membership in an organization sufficient for termination of employment are constitutionally impermissible. To be valid, a loyalty statute must be confined to knowing active members who aid in pursuing the illegal goals of the organization.

Without exception, public school employees are protected from arbitrary loyalty oaths and undue intrusion with respect to their rights of association. There must be defensible evidence of the employee’s actual participation or planned participation in unlawful activities to mete any form of discipline. Mere association without an unlawful intent is not sufficient cause to penalize employees and is in violation of their First and Fourteenth Amendment rights.

**Political Rights**

Based on the State Interest Test, state laws prohibiting public employees from participating in all types of political activities have been deemed unconstitutional. Public school teachers have the same political rights and freedoms enjoyed by all citizens. These include, but are not limited to, running for public office, campaigning for themselves or others, developing and expounding political ideologies, and engaging in political debate.
rights, however, should be exercised with a degree of restraint inasmuch as they are not unlimited. There has to be at all times an awareness on the teacher’s part of the effect of his or her actions on others, especially children. Teachers should also ensure that engaging in political activities does not have an adverse effect on classroom performance. Teachers must limit their political activity to acts away from the classroom and outside of the normal school day. They must further ensure that their political activity in no way interferes with or infringes on their duties and responsibilities in the classroom.

Right to Hold Office

State laws vary regarding the extent to which school personnel may legally participate in political activities and hold public office. Generally speaking, any public official (which may include a teacher) is prohibited from using his or her office or position for personal gain. The board of education may require a teacher to take a leave of absence when he or she becomes a candidate for public office. Generally, this requirement has been upheld by a number of courts. In no case, however, should a teacher’s contract be canceled because he or she becomes a candidate for public office. This would be arbitrarily unjust and an indefensible act by a school board.

In recent years, however, courts tend to be somewhat divided on the teacher’s right to run for political office. As stated previously, some courts support the requirement that the teacher should resign before actively campaigning for public office. Other courts view the prohibition against running for a political office as a violation of the teacher’s constitutional right. For example, in the Minielly v. State case in Oregon, the district court held to be invalid a state law that prohibited public employees from running for political office. The court ruled that the state had no authority to limit the First Amendment rights of teachers.21

In an interesting ruling, a Kentucky court held that a requirement calling for mandatory leaves for all teachers who pursued a part-time public office violated the teacher’s right to equal protection, since no such requirements applied to teachers who were engaged in other types of time-consuming activities.22 However, there seems to be a trend toward greater political freedom for teachers by the courts, so long as the teacher exhibits prudent professional behavior, does not neglect his or her professional duties, and does not use the classroom as a political forum. School boards do have the capacity to ensure that political activity does not create material or substantial disruption to the educational process, which would constitute a legitimate state interest.

Participation in Political Campaigns

The right to campaign is afforded teachers and other employees. However, they should understand that their professional role transcends their roles as citizens. Teachers and other employees must understand the time commitment required and be certain that it does not present any conflict of interest regarding job responsibilities. Additionally, school district facilities, equipment, or supplies should not be used for campaign purposes. Districts normally adopt policies and procedures pertaining to employees who wish to run for public office. These policies generally will establish the terms and conditions that the employee must meet with respect to employment status regarding leave or continuing employment.
The teacher’s or employee’s employment status should not be impaired by the exercise of his or her political rights. Teachers’ political rights should not be exercised in the school or district’s name. It should be very clearly established that the teacher or employee is exercising political rights as a citizen and not as a representative of the school district. The school district may not prevent, threaten, harass, or discriminate against any employee who elects to run for public office. Additionally, the district should grant a leave of absence if requested by the employee based on the individual merits of each case presented for its consideration.

**Dress and Grooming**

Numerous cases regarding personal appearance issues involving teachers have been litigated by the courts. School authorities generally contend that proper dress and decorum create a professional image of teachers that has a positive impact on students. Teachers, on the other hand, contend that dress code regulations governing their appearance invade their rights to free expression. Teachers further believe that they should enjoy freedom without undue restrictions on their personal appearance.

The courts generally have not been in disagreement regarding the authority of school officials to regulate teacher appearance that may disrupt the educational process. What has not been settled, however, is the degree of constitutional protection teachers are entitled to receive in disputes regarding dress and the type of evidence needed to invalidate restrictions on dress. To further complicate the issue, community standards and mores are also factors considered in dress and grooming rulings. School districts have traditionally restricted dress that is contrary to acceptable community norms.

Litigation involving dress and grooming issues reached its peak in the late 1960s and early to mid-1970s, as numerous challenges were raised by teachers and students regarding these issues. The courts established the position that school dress codes must be reasonably related to a legitimate educational purpose, which must be justified by standards of reasonableness.

Rules that restrict dress based on health, safety, material and substantial disruption, or community values have been generally supported by the courts. Rules that extend beyond these areas generally have not been supported. It seems evident that the courts recognize that teachers should be free of unreasonable restrictions governing their appearance. However, the difficulty comes with variations in standards by different communities, as well as changing societal norms. Community standards, values, and expectations play an important role in determining the legality of local school dress code regulations when considered in conjunction with these other factors.

The courts will not support restrictive dress and grooming codes that are unrelated to the state’s interest. When challenged, the district must demonstrate that the code is related to a legitimate educational purpose, and not designed to place undue and unnecessary restrictions on teachers’ dress. The burden of proof rests with the school district.

On the other hand, courts have assumed the posture that dress is a generalized liberty interest and is only entitled to minimal constitutional protection. One example of the court’s posture is illustrated in *East Hartford Education Association v. Board of Education of Town of East Hartford.* In this case, Richard Brimley, a public school teacher, was repri-
manded for failure to wear a necktie while teaching his English class. With the support of
the teacher’s union, he filed suit against the board of education, claiming that the reprimand
deprived him of his rights of free speech and privacy. Brimley further claimed that his refus-
al to wear a tie made a statement on current affairs, which aids him in his teaching by
presenting himself as one who is not tied to the establishment, thus enabling him to estab-
lish greater rapport with his students. Brimley concluded by claiming that his refusal to
wear a tie is symbolic speech and is protected by the First Amendment.

Brimley had appealed earlier to the principal and was told that he must wear the tie
while teaching English but could dress more casually during film-making classes. He later
appealed to the superintendent and the board without success.

The appeals court was faced with the issue of balancing the alleged interest in free ex-
pression against the goals of the school board in requiring its teachers to dress somewhat
more formally than they might wish. The court, in balancing the two issues, indicated that
the school board’s position must prevail. The court concluded that balancing against the
teacher’s claim of free expression is the school board’s interest in promoting respect for au-
thority and traditional values, as well as discipline in the classroom by requiring teachers
to dress in an appropriate and professional manner.24

The appellate court did not discern in this case that basic constitutional rights were vi-
olated by the dress code, and consequently did not weigh the matter heavily on the consti-
tutional scale. The court presumed that the dress code was constitutional and within the
scope of local authorities to decide.

In a later case, the Louisiana School Board extended its dress code to forbid school
personnel from wearing beards. The board’s policy was unsuccessfully challenged. The
Fifth Circuit Court of Appeals, while recognizing the liberty interest of the individual in de-
ciding how to wear his hair, held for the board. The court stated that the board had made a
prudent decision in establishing the rule as a reasonable means of achieving the school
board’s undeniable interest in teaching hygiene, instilling discipline, and requiring unifor-
mity in application of policy.25

The following case demonstrates the negative effects that result from a teacher’s fail-
ure to comply with district dress code policy. McGlothin, a high school teacher, began
wearing berets and African-style head wraps to school. The principal warned her on each
occasion in which these items were worn, indicating that head wraps were inappropriate for
the classroom. McGlothin continued to wear occasional head wraps for roughly three years,
which resulted again in warnings by the principal. The district subsequently adopted a
multicultural policy, which McGlothin claimed justified her head wraps. After a memo-
randum and lengthy discussion, McGlothin’s employment was terminated. She followed
the district’s grievance procedure, claiming for the very first time that her head covering
was in conformity with her religious beliefs. The school district did not support her griev-
ance. She then appealed to the U.S. District Court.

The court found that McGlothin had sincere religious beliefs; however, she did not
convey those to the school administration at any earlier time, but instead in the final stage
of her grievance. Since she failed to convey her religious beliefs to the district in a timely
fashion, the district was under no obligation to accommodate her beliefs under the First
Amendment or Title VII of the Civil Rights Act. The facts revealed that the district had of-
fered McGlothin an opportunity for reemployment following denial of her grievance, if she
would agree to remove her head wraps. McGlothin refused to accept the district’s offer. On
the basis of those facts, the court held for the district by granting a motion to dismiss the lawsuit.26

Unwed Pregnant Teachers

Courts tend to vary in rulings regarding unwed pregnant teachers. During the early 1960s and 1970s, courts were more inclined to rule against single teachers who were dismissed by school boards when they reported their pregnancy. However, during the mid-1970s and early 1980s, with increased attention focused on individual rights of teachers, courts became less inclined to rule against unwed pregnant teachers without carefully weighing all aspects of each case. In doing so, the courts considered the teacher’s overall performance record, the impact of the teacher’s actions on students, and, more important, the extent to which the teacher’s actions adversely affect her effectiveness as a teacher. Courts may also consider community standards and the degree to which the teacher’s conduct violates the ethics of the community and renders the teacher unfit to teach. The following summary of cases shows the variance among courts in addressing pregnancy among unwed teachers:

1. In 1975, a federal appeals court ruled against a school board policy in Mississippi that automatically disqualified school employees who were parents of illegitimate children on the grounds that unwed parents do not necessarily represent improper models for students.27

2. In 1976, a district court upheld Omaha, Nebraska, officials in dismissing an unwed junior high school teacher because of her pregnancy on the grounds that permitting the teacher to remain in the classroom would be viewed by students as condoning pregnancy out of wedlock.28

3. In 1982, the Fifth Circuit Court of Appeals ruled against officials in Homewood, Alabama, for dismissal of a pregnant unwed teacher on the basis that her discharge was in violation of the Fourteenth Amendment. The school board could not demonstrate that the teacher’s failure to report her pregnancy in a timely fashion would have resulted in dismissal had she been married.29

4. In 1986, a district court in Illinois upheld a teacher who was dismissed for being a pregnant unwed mother on the grounds that the teacher had a substantive due process right to conceive and raise her child out of wedlock without undue intrusion by the school board.30

5. In 1979, a federal appeals court struck down a school board practice of not renewing teachers’ contracts where a foreseeable period of absence could be predicted for the next school year.31

Right to Privacy

It is commonly held that teachers enjoy a measure of privacy in their personal lives. These rights should be respected to the extent that they do not violate the integrity of the community or render the teacher ineffective in performing professional duties. Within the context of privacy rights, teachers are afforded an opportunity to exercise personal choices, which
may range from living with a person of the opposite sex, giving birth to a child out of wedlock, or other lifestyle choices. In many instances, school boards cite privacy issues involving teachers as the basis to dismiss them from their employment positions or recommend revocation of the teaching certificate. While there does not appear to be a clear distinction drawn between protected and unprotected lifestyle choices, the burden of proof resides with school officials to demonstrate that lifestyle choice adversely affects the integrity of the district or that the teacher’s conduct has a detrimental affect on his or her relations with students.

Teachers, in exercising lifestyle choices, must also be reminded of the professional nature of their position and the impact that their behavior has on children, who often view them as role models. For example, when a teacher engages in a private adulterous activity, it does not necessarily follow that this act, within itself, forms grounds for action to be taken against the teacher. Teachers are entitled to rights to privacy, as are other citizens, and these rights must be respected. Whether a school district is successful in penalizing a teacher for private conduct would again be based on a district’s capacity to demonstrate that the teacher’s effectiveness is impaired by his or her conduct. The burden of proof clearly resides with school officials.

When a teacher has demonstrated a strong record of teaching, has been effective in relationships with students, and is respected in the community by his or her peers, it is unlikely that school officials will succeed in bringing serious actions against the teacher, such as removal from an employment position or revocation of certificate. On the other hand, if private conduct becomes highly publicized to the point that the teacher’s reputation and relationships with parents and students have been impaired, rendering the teacher ineffective in executing his or her duties, appropriate actions may be taken by school officials and supported by the courts.

A leading case involving private, adulterous activity arose in Iowa involving Erb, a native Iowan and a high school fine arts teacher. He was married with two children. A complaint against Erb was filed by Robert M. Johnson, a farmer whose wife, Margaret, taught home economics at another school in the district. Johnson’s goal was to have Erb removed from the school but not to revoke his certificate. Johnson read an extensive statement in which he detailed observations regarding an adulterous relationship between Erb and his wife, Margaret, which began and ended in the spring of 1970.

Johnson became suspicious of his wife’s frequent, late-night absences from home. He suspected that Erb and Margaret were meeting secretly and engaging in an illicit activity in Margaret’s automobile. One night in May, Johnson hid in the trunk of the car. Margaret drove the car to school, worked there for a while, and later drove to a secluded area in the country where she met Erb. They had sexual intercourse in the back seat of the car, while Johnson remained hidden in the trunk.

When Johnson consulted his lawyer with a view toward divorcing Margaret, he was advised that his interest in a divorce would be better served if he had other witnesses to his wife’s conduct. After several days of fruitless efforts, he finally located them in a compromising situation. He and his raiding party surrounded the car and took pictures of Margaret and Erb, who were partially disrobed in the back seat. Erb and Margaret terminated their affair, and Erb offered his resignation, but the local school board unanimously decided not to accept it. The board president testified that Erb’s teaching was highly rated by his principal...
and superintendent. He had been forgiven by his wife and the student body, and he had
maintained the respect of the community. Witnesses before the board included Erb, past
and present principals, his minister, parents of children in the school, and a substitute
teacher.

The state board voted 5–4 to revoke Erb’s teaching certificate, and without making
any findings of fact or conclusions of law, ordered it revoked. Revocation was stayed by the
trial court. The trial court held that Erb’s admitted adultery was sufficient basis for revoca-
tion of his certificate. Erb appealed the trial court’s ruling, charging that the board acted il-
legally in revoking his certificate without substantial evidence. This case reached the state
supreme court, which ruled for Erb. The court, in ruling for Erb, stated that the private con-
duct of a man, who is also a teacher, is a proper concern to those who employ him only to
the extent it mars him as a teacher. When his professional achievement is unaffected, when
the school community is placed in no jeopardy, his private acts are his own business and
may not be the basis of discipline. The court further concluded by stating, “Surely incidents
of extramarital heterosexual conduct against a background of years of satisfactory teaching
would not constitute immoral conduct sufficient to justify revocation of a life diploma
without any showing of an adverse effect on fitness to teach.”

The outcome of the Erb case should not be interpreted to convey that adulterous acts
may not result in dismissal by school boards. One such case involving dismissal occurred
in Delaware when a highly successful school district administrator developed an amorous
affair with another person who was married. The administrator also was married. Their re-
lationship grew in intensity, involving school time. The administrator took nude pictures of
his lover and used them to threaten her husband by suggesting that he would disclose them
to the husband’s employer if the husband did not consent to allow the relationship to con-
tinue. The school district, on being informed of the situation and gathering the facts, dis-
missed the administrator. The administrator alleged that his acts were private and bore no
relationship to his effectiveness as an administrator. He further alleged that he was not fore-
warned that his private conduct would lead to dismissal.

A U.S. District Court rejected the administrator’s claims based on the evidence that
his affair resulted in gross neglect of duty. The district court held that it should have been
obvious that his behavior would lead to dismissal due to the public impact of such conduct
on the profession and finally that such conduct does not receive the protection of the right
to privacy.

As can be seen from two contrasting cases, the courts will not support teacher con-
duct that has an adverse impact on one’s effectiveness or performance and will support dis-
missal if professional conduct and community standards are violated. The fact that school
time was abused during the affair in this case and that unprofessional and illegal tactics
were used to coerce the husband into support the adulterous affair were also pivotal in the
court’s ruling. Private adulterous acts that become public and create serious community
and professional concerns will not likely be supported by the courts.

In a rather unusual ruling regarding rights to privacy, the District Court of Appeals of
Florida reversed the findings of the state’s Education Practice Commission (EPC) when it
supported a 48-year-old assistant principal who married a 16-year-old former student. The
EPC disciplined the administrator by suspending his teaching license for two years and de-
nied him employment as an administrator. The assistant principal appealed the commis-
sion’s ruling. The court of appeals did not challenge the EPC’s power to take disciplinary action, but disagreed with the findings of the hearing officer in the case.

Based on the court’s assessment, there was no clear or convincing evidence of an inappropriate personal relationship between the two prior to marriage. Although both had been seen together by other individuals, it only gave rise to suspicion, which could not form the basis for disciplinary action. There was no credible evidence of sexual engagement prior to marriage or any other inappropriate activity. The EPC had taken action without the benefit of firsthand knowledge and based its ruling on inconclusive evidence alone.34

Although there is a certain aura of protection afforded school personnel regarding their private lives, involvement with a former student who has not reached majority age is, at best, very risky and not advisable. Privacy acts that do not involve former students will likely receive greater support by the courts than acts in which former students are implicated. In all cases, the privacy rights of teachers must be balanced against the district’s need to maintain professional integrity of its employees and the moral values of the community.

**ADMINISTRATIVE GUIDE**

**Teacher Freedoms**

1. Teachers and administrators do not lose their constitutional rights when they enter the educational profession. Within limits, they possess the same constitutional rights as do other citizens.
2. School personnel should avoid personal attacks or libelous or slanderous statements when exercising freedom of expression rights or expressing concerns of interest to the community.
3. School personnel should not knowingly report false information, when criticizing a district’s decision or actions.
4. School officials may not penalize or otherwise discriminate against teachers for the proper execution of their First Amendment rights, especially regarding issues of public concern.
5. Academic freedom is not a right. It is a judicially recognized academic interest for elementary and secondary teachers. Teachers should introduce appropriate material in the classroom that is related to their assigned subject matter. The classroom should never be used as a forum to advance the teacher’s political or religious views.
6. Teachers and administrators may associate with whomever they wish, as long as their association does not involve illegal activity or their behavior does not render them unfit to perform their job functions effectively.
7. Dress, grooming, and appearance may be regulated by school boards, if a compelling educational interest is demonstrated or if such codes are supported by community standards.
8. Teachers and administrators are entitled to rights of privacy and cannot be legally penalized for private noncriminal acts.
9. Pregnant unwed teachers may not be automatically dismissed unless there is a definite reason for doing so.
Religious Freedoms

The First Amendment guarantees religious freedom to all citizens. Title VII of the Civil Rights Act of 1964 further prohibits any forms of discrimination based on religion. Therefore, it is unlawful for a school district to deny employment, dismiss, or fail to renew a teacher’s contract based on religious grounds. Teachers, like all citizens, possess religious rights that must be respected. As with all rights, religious rights are not without limits. Since teachers are public employees and schools must remain neutral in all matters regarding religion, there are reasonable restraints that affect the exercise of religious rights in the school setting. However, teachers are completely free to fully exercise their religious rights outside of normal school activities.

For example, teachers may not refuse to teach certain aspects of the state-approved curriculum based on religious objections or beliefs. Although the courts recognize the existence of the teacher’s religious rights, they also recognize the compelling state interest in educating all children. One court held that education “cannot be left to individual teachers to teach the way they please.” Teachers have no constitutional right to require others to submit to their views and to forgo a portion of their education they would otherwise be entitled to enjoy. Teachers generally should have a right to express themselves to other teachers while on school property during noninstructional times so long as students are not involved and the expression only involves willing teachers. Teachers should be cautious that their speech is not construed as harassment of another teacher who does not wish to be involved in these discussions. Therefore, willing parties would be important in this instance. As previously stated, this issue has not been decided by courts; however, it appears that the First Amendment should provide some degree of protection to teachers regarding

Religious Rights of Teachers in the School Environment

Based on the free exercise of religion, teachers should be afforded the right to meet with other teachers for religious speech, including prayer or Bible study, at times when teachers are allowed to meet with their colleagues for other forms of expression. These should be activities protected by the free speech clause so long as they occur in a private area where students cannot observe them or participate in such activities. Such activities should ideally occur before or after school. It is difficult to determine precisely how the courts would view these activities, since this issue has very rarely been presented to the courts.

In one of the rare cases involving the use of school facilities by teachers for religious meetings, a teacher brought suit against the school board, its members, and the superintendent, seeking an injunction against banning religious meetings by teachers on school property. The U.S. District Court for the Southern District of Indiana granted the school district a motion for summary judgment. The teacher appealed. The court of appeals held that teachers had no right under the First Amendment free speech clause to hold prayer meetings on school property before the school day began and students arrived. The court observed further that school officials had consistently applied a policy prohibiting the use of school facilities for religious activity. The teacher contended that the school was an open forum in that it was used for meetings on other subjects. The court found her claim to be clearly erroneous. Teachers generally should have a right to express themselves to other teachers while on school property during noninstructional times so long as students are not involved and the expression only involves willing teachers. Teachers should be cautious that their speech is not construed as harassment of another teacher who does not wish to be involved in these discussions. Therefore, willing parties would be important in this instance. As previously stated, this issue has not been decided by courts; however, it appears that the First Amendment should provide some degree of protection to teachers regarding
their right to express personal views on religion in conversation with their peers, just as they
would on other topics. Until these issues are addressed by the courts, it is difficult to deter-
mine precisely how the courts might rule.

Use of Religious Garb by School Personnel

The wearing of religious garb by public school teachers has created legal questions regarding
freedom of expression rights versus religious violations based on dress. It has been well es-

tablished that public school districts may not legally deny employment opportunities to teach-
ers based on their religious beliefs or affiliation. However, the wearing of religious garb by
public school teachers raises the issue as to whether such dress creates a sectarian influence
in the classroom. Many state statutes prohibit public teachers from wearing religious garb in
the classroom. Some legal experts believe that the mere presence of religious dress serves as
a constant reminder of the teacher’s religious orientation and could have a proselytizing af-
flect on children, since they are impressionable, particularly those in the lower grades.

Conversely, public school teachers advance the argument that religious dress is a pro-
tected right regarding freedom of expression. The courts, however, have clearly established
the position that the exercise of one person’s rights may not infringe on the rights of others
and that public interest supersedes individual interests. Further, prohibiting a teacher from
wearing religious dress does not adversely affect the teacher’s belief. It merely means that
teachers cannot exercise their beliefs through dress during the period of the day in which
they are employed. There is no interference outside of the school day. Thus, a teacher is free
to exercise full religious rights and freedoms outside normal hours of employment. The
courts have not reached total consensus on this issue, as can be discerned through the fol-
lowing analysis.

In a significant case, the Supreme Court of Pennsylvania supported the authority of
a local board of education to employ nuns as teachers and to permit them to dress in the cus-
tom of their order.37 Subsequent to the Pennsylvania decision, the legislature enacted a
statute prohibiting the wearing of any religious dress as insignia by public school teachers
representing any religious order. The constitutional validity of this statute was upheld by
the Pennsylvania Supreme Court, noting that the law was not passed against belief but
rather against acts as teachers in performing their duties.38

Another court disqualified all nuns from teaching in public schools on the grounds
that their lives were dedicated to teaching religion.39 Recent court interpretations seem to
suggest that religious dress that creates a reverent atmosphere and may have the potential
to proselytize, thereby creating a sufficient sectarian influence, violates the First Amend-
ment neutrality clause.

A related case involving free speech and religion arose in Pennsylvania. A teacher at
an intermediate school was suspended for wearing a necklace with a cross to school. The
Pennsylvania legislature passed a “religious garb law” that prohibited teachers from wear-
ing religious clothing to public schools. Brenda Nichol was suspended after being informed
by her principal that wearing the cross in a visible manner violated school policy. She sub-
sequently filed a suit claiming that the policy violated her rights because jewelry contain-
ing religious symbols was banned while other jewelry was not.40

The district court agreed and held that the district had engaged in viewpoint discrim-
ination that could not be justified as serving a compelling state interest. The court relied on
the U.S. Supreme Court’s reasoning in Good News Club v. Milford Central School\textsuperscript{11} that religious-based restrictions on expression of speech demonstrate hostility toward religion and violate the principle of neutrality. The court rejected the district’s claim that impressionable young children would be indoctrinated by the presence of the religious necklace. The court held that Ms. Nichol’s subdued expression of her religious faith outweighed the district’s concern.

**Religious Discrimination in Public Schools**

Title VII addresses any forms of religious discrimination regarding employment. Religion is defined under Title VII to include “all aspects of religious observances, practices and beliefs.”\textsuperscript{42} This section also requires that an employer, including a school board, make reasonable accommodations to the employee’s religion, unless the employer can demonstrate the inability to do so based on undue hardship. Consequently, school officials must respect and, where possible, make allowances for teachers’ religious observances if such observances do not create substantial disruption to the educational process. Accommodations may include personal leave to attend a religious convention or to observe a religious holiday. Unless there is a showing of undue hardship, reasonable accommodation must be provided. If such requests are deemed excessive, resulting in considerable disruption to children’s education, a denial would be appropriate.

In a 1986 case, a teacher was absent for approximately six school days per year because his religion, the Worldwide Church of God, required him to miss employment during designated holidays. Under the collective bargaining agreement between the school board and the teacher’s union, teachers were permitted to use three days’ leave each year for observance of religious holidays, but they were not permitted to use any accumulated sick leave or personal leave for religious holidays. The teacher requested that the school board adopt a policy allowing the use of three personal leave days for religious observance or to allow the teacher to pay the cost of a substitute and receive full pay for the holidays he was absent. The board rejected both proposals.

The teacher filed suit, alleging that the board had violated his rights under Title VII’s prohibition against religious discrimination. The court held that the school board must make a reasonable accommodation for an employee’s religious beliefs, as long as an undue hardship is not present. However, the board is not required to provide the employee preferred alternatives when more than one reasonable accommodation is possible. The alternative of unpaid leave is a reasonable accommodation, if personal or other paid leave is provided without discrimination against religious purposes.\textsuperscript{43}

In a slightly different case, a Chicago public school teacher filed suit against the superintendent, board of education, and other school officials in the U.S. District Court, claiming that a 1941 Illinois statute designating Good Friday as a school holiday violated the First Amendment to the U.S. Constitution. The district filed a motion for summary judgment. The court, in its review of the case, noted that Christians observed Good Friday as one of their holiest days. However, members of other religions were required to request accommodations for special treatment on their holy days. Unlike Christmas and Thanksgiving, which have both secular and religious aspects, Good Friday has no secular aspect and is associated only with Christianity. The recognition of Good Friday was more than a
mere accommodation to Christian religion. Recognition of the holiday conveyed an impermissible message that Christianity was a favored religion in the state. The court held for the teacher by ruling that the holiday designation violated the Constitution.44

In cases where school officials deny excessive leaves for religious purposes, the burden of proof rests with the teacher to show that the officials’ decision involved the denial of certain religious freedoms. If the teacher is able to demonstrate discriminatory intent, then the burden shifts to school officials to show a legitimate state interest, such as a disruption of educational services to children. The Equal Education Opportunity Commission (EEOC) or a court would be hard-pressed to challenge a legitimate state interest involving the proper education of children. (See Chapter 2 for a more comprehensive discussion of religion involving teachers in public schools.)

ADMINISTRATIVE GUIDE

Religious Discrimination

1. Wearing of religious garb by teachers may be disallowed if their dress creates a reverent atmosphere or has a proselytizing impact on students.
2. The religious rights of teachers must be respected, so long as they do not violate the establishment clause of the First Amendment by creating excessive entanglement in the school.
3. School officials must make reasonable accommodations for teachers regarding observance of special religious holidays, so long as such accommodations are not deemed excessive or disruptive to the educational process.
4. Teachers should not be coerced to participate in nonacademic ceremonies or activities that violate their religious beliefs or convictions.
5. In cases involving the performance of their nonacademic duties, teachers may be requested to present documentable evidence that a religious belief or right is violated.
6. No form of religious discrimination may be used to influence decisions regarding employment, promotion, salary increments, transfers, demotions, or dismissals.

Case Studies

Teacher Rights—Unwed Teacher and Girlfriend Living Together

Tom Davis is a newly appointed principal in a small conservative community. He has just been assigned Mark Scott, a dynamic, energetic seventh-grade math teacher. Davis later learns that Scott and his girlfriend are living together. The principal is informed of this by a group of parents who are outraged that Scott is setting a poor example for young children. They are upset and are calling for action. Davis talks with Scott, who does not deny that he and his girlfriend are living together. He further informs Scott in a very professional manner that what he does in his private life is his business.
Discussion Questions

1. Is Tom justified in approaching Mark on personal and private matter? Why or why not?
2. How does Davis handle this situation with Scott?
3. Does the principal have a right to infringe on a teacher’s private life? Why or why not?
4. Outline a plan to resolve this situation.
5. Would the courts likely support your plan of resolution?

Teacher’s Freedom of Speech—Racial Content

Freddie Watts, principal, and Jimmy Brothers, assistant principal, are African American administrators assigned to administer a predominantly black high school. Ann Griffin, a white tenured teacher, during a heated conversation with the two administrators stated that she “hated all black folks.” When word leaked on her statement, it caused negative reactions among colleagues both black and white. The principal recommended dismissal based on concerns regarding her ability to treat students fairly and her judgment and competency as a teacher.

Discussion Questions

1. Is Watts justified in his recommending Ann’s dismissal? Why or why not?
2. Is the principal overreacting to Ann’s statement? Why or why not?
3. Does Ann’s statement establish a basis for dismissal? Why or why not?
4. Can Ann make the case that her statement was a private statement that does not give rise to serious disciplinary action? Why or why not?
5. As principal, would you have made a similar recommendation for dismissal? Why or why not?
6. How do you feel the court would rule in this case? Provide a rationale for your response.

Flag Salute—A Nonconforming Teacher

As principal of Rockville Elementary, Steve Jones finds that his community is extremely patriotic and the school has had a long-standing practice of reciting the Pledge of Allegiance and saluting the flag every morning. He is informed by students and other teachers that Sarah Allen does not recite the pledge with her class or salute the flag. Steve Jones is obviously upset because he feels that Ms. Allen is setting a poor example for students and not conforming to community sentiments. He calls her into his office.
Teacher Freedoms

Discussion Questions

1. Does Steve have a justifiable reason to challenge Sarah’s failure to recite the pledge? Why or why not?
2. Does Sarah Allen have a right not to participate in the morning ritual? Why or why not?
3. Are there legitimate grounds on which she may refuse to participate? If so, identify them.
4. If she fails to participate at the principal’s request, could her refusal amount to insubordination? Why or why not?
5. As principal, how would you handle this situation?
6. How would the court likely rule in this case?
7. What are the administrative implications?

Religion and Teacher Freedom

Karen White, a kindergarten teacher, informed her parents and students that she could no longer lead certain activities or participate in certain projects because they were religious in nature, according to her newly acquired affiliation with Jehovah’s Witnesses. This meant that she could no longer decorate the classroom for holidays or plan for gift exchanges during the Christmas season. She also could not sing “Happy Birthday” or recite the Pledge of Allegiance. Parents protested, and Bill Ward, the school principal, recommended her dismissal based on her ineffectively meeting the needs of her students.

Discussion Questions

1. Now what?
2. What grounds does Bill Ward have to recommend dismissal?
3. Are these valid grounds? Is so, why? If not, why not?
4. If Karen White is an otherwise competent and effective teacher, how defensible can the principal’s charges be?
5. Is the school in violation of Karen’s religious rights? Why? Why not?
6. How do you think the courts would rule in this case?
7. Provide a rationale for your response to question 6.

Endnotes

2 Daniels v. Quinn, 801 F. 2d 687 (4th Cir. 1986).
4 Ibid.
6 Tomkins v. Vickers, 26 F. 3d 603 (5th Cir. 1994).
Chapter 8

9 Fowler v. Board of Education of Lincoln County, Kentucky, U.S. Court of Appeals, 6th Cir. 817 F. 2d 657 (1987).
12 Keefe v. Geanakos, 418 F. 2d 359 (1st Cir. 1969).
13 Mailloux v. Kiley, 448 F. 2d 1242 (1st Cir. 1971).
16 Ibid.
17 Greminger v. Seaborne, 584 F. 2d (8th Cir. 1978).
19 Ibid., 18.
25 Domico v. Rapides Parish School Board, 675 F. 2d 100 (5th Cir. 1982).
29 Avery v. Homewood City Board of Education, 674 F. 2d 337 (5th Cir. 1982).
31 Mitchell v. Board of Trustees of Pickens County School District, A. 599 F. 2d 582 (4th Cir. 1979).
32 Erh v. Iowa State Board of Public Instruction, 216 N.W. 2d 339 (Sup. Ct. Iowa 1974).
34 Tenbroeck v. Castor, 640 So. 2d 164 (Fla. App. 1st Dist. 1994).
35 Palmer v. Board of Education of the City of Chicago, 603 F. 2d 1271, 1274 (7th Cir. 1979), cert. denied, 444 U.S. 1026, 100 S.Ct. 689 (1980).
36 May v. Evansville, 787 F. 2d 1105 (7th Cir. 1986).
39 Harfet v. Hoegen, 349 Mo. 808, 163 S.W. 3d 609.
41 Good News Club v. Milford Central School, 202 F. 3d 502 (2nd Cir. 1999).