

In recent years public school teachers have been made painfully aware that the law defines, limits, and prescribes many aspects of a teacher's daily life. Schools are no longer protected domains where teachers rule with impunity; ours is an age of litigation. Not only are parents and students ready to use the courts for all manner of grievances against school and teacher, the growing legislation itself regulates more and more of school life. In addition to an unprecedented number of laws at all levels of government, the mind-boggling array of complex case law principles (often vague and contradictory) adds to the confusion for the educator.

The Ten Commandments of School Law described below are designed to provide the concerned and bewildered teacher with some significant general guidelines in the classroom. While statutes and case law principles may vary from state to state or judicial circuit to judicial circuit, these school law principles have wide applicability in the United States today.

### **Commandment I: Thou Shalt Not Worship in the Classroom**

This may seem something of a parody of the Biblical First Commandment—and many teachers hold that indeed their religious freedom and that of the majority of students has been limited by the court cases prohibiting prayer and Bible reading—but the case law principles here have been designed to keep public schools *neutral* in religious matters. The First Amendment to the Constitution, made applicable by the Fourteenth Amendment to state government (and hence to public schools, which are agencies of state government), requires that there be no law "respecting the establishment of religion or prohibiting the free exercise thereof." As the Supreme Court declared in the *Everson* decision of 1947, "Neither [a state nor the federal government] can pass laws which aid one religion, aid all religions, or prefer one religion over another." Such rules, said the Court, would violate the separation of church and state principle of the First Amendment. Further, the Court argued in the later *Schempp* and *Murray* decision (1963), the

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## *The Teacher's Ten Commandments: School Law in the Classroom*

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free exercise clause of the First Amendment "has never meant that a majority could use the machinery of the state to practice its beliefs." Finally, in that same decision about prescribed Bible reading and prayer, the Court said that "what our Constitution indispensably protects is the freedom of each of us, be he Jew or agnostic, Christian or atheist, Buddhist or freethinker, to believe or disbelieve, to worship or not to worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government."

The application of this neutrality principle to education has resulted in some of the following guidelines for public schools:

1. Students may not be required to salute the flag nor to stand for the flag salute, if this conflicts with their religious beliefs.
2. Bible reading, even without comment, may not be practiced in a public school when the intent is to promote worship.

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3. Prayer is an act of worship and as such cannot be a regular part of opening exercises or other aspects of the regular school day.

4. Worship services (e.g., prayer and Bible reading) are not constitutional even if voluntary rather than compulsory. Not consensus, nor majority vote, nor excusing objectors from class or participation makes these practices legal.

On the other hand, public schools *may* offer courses in comparative religion, history of religion, the Bible as literature, etc., since these would be academic experiences rather than religious ones. "Released-time" programs during school hours for outside-of-school religious instruction have been held to be constitutional by the Supreme Court (*Zorach v. Clauson*, 1952). The constitutionality of such "gray area" practices as religious holidays and pageants (e.g., Christmas programs), silent meditation, and teaching the Genesis concept of "special creation" of man in science classes as an alternative to evolution<sup>1</sup> have not been clearly determined by the courts to date, but any religious program or practice is suspect in a public school.

### Commandment II: Thou Shalt Not Abuse Academic Freedom

Under First Amendment protection, teachers are given the necessary freedom and security to use the classroom as a forum for the examination and discussion of ideas. Freedom of expression is a prerequisite for education in a democracy—and the schools, among other responsibilities, are agents of democracy. Students are citizens too, and they are also entitled to freedom of speech. As Justice Abe Fortas, who delivered the Supreme Court's majority opinion in the famous *Tinker* decision (1969), put it:

It can hardly be argued that either students or teachers shed their constitutional rights at the schoolhouse gate. . . . In our system state-operated schools may not be enclaves of totalitarianism. . . . [and] students may not be regarded as closed-circuit recipients of only that which the state chooses to communicate.

Case law has developed over the years to define the parameters of free expression for both teachers and students:

1. Teachers may discuss controversial issues in the classroom if they are relevant to the curriculum, although good judgment is required. Issues that disrupt the educational process, are demonstrably inappropriate to the legitimate objectives of the curriculum, or are unreasonable for the age and maturity of the students may be prohibited by school officials.

2. Teachers may discuss current events, political issues, and candidates so long as neutrality and balanced consideration prevail. When teachers become advocates and partisans, supporters of a single position rather than examiners of all positions, they run the risk of censure.

3. A teacher may use controversial literature containing "rough" language but must "take care not to transcend his legitimate professional purpose" (*Mailoux v. Kiley*, 1971, U.S. District Court, Massachusetts). Again, courts will attempt to determine curriculum relevance, disruption of the educational process, and appropriateness to the age and maturity of the students. Reaction of parents is less important than the reaction of students. As one decision said, "With the greatest respect to such parents, their sensibilities are not the full measure of what is proper education" (*Keefe v. Geanakos*, 1969, First Circuit Court).

4. Teachers and students are increasingly (but not yet universally) guaranteed *symbolic* free speech, including hair length and beards, arm-bands, and buttons. Courts generally determine such issues in terms of the "substantial disruption" that occurs or is clearly threatened. Male teachers may, in any event, wear beards, although school policies may require these to be neat and well-groomed (see for example, *Finot v. Pasadena City Board of Education*, 1967, U.S. District Court, California). Dress codes for students are generally allowable when they are intended to provide for health, safety, and "decency." When they exist merely to promote the "tastes" of the teacher or administration, they have usually been struck down by the courts.

5. Teachers, in short, are free to deal with controversial issues (including politics and sex) and to use controversial methods and materials if these are educationally defensible, appropriate to the students, and not "materially and substantially" disruptive. Courts use a balancing test to determine when students' and teachers' rights to academic freedom must give way to the competing need of society to have reasonable school discipline.

### **Commandment III: Thou Shalt Not Engage in Private Activities that Impair Teaching Effectiveness**

Of all the principles of school law, this commandment is probably the most difficult to delineate with precision. The private and professional areas of a teacher's life have been, for the most part, separated by recent court decisions. A mere 60 years ago teachers signed contracts with provisions prohibiting marriage, falling in love, leaving town without permission of the school board, smoking cigarettes, loitering in ice-cream stores, and wearing lipstick. But now a teacher's private life is considered his own business. Thus, for example, many court cases have established that teachers have the same citizenship rights outside the classroom as any other person does.

Teachers, however, have always been expected by society to abide by high standards of personal conduct. Whenever a teacher's private life undermines effective instruction in the class, there is a possibility that the courts will uphold his dismissal from his job. To guard against this possibility, the teacher should consider some of the following principles:

1. A teacher may belong to any organization or association—but if he participates in illegal activities of that organization he may be dismissed from his job.

2. A teacher may write letters to newspapers criticizing school policies and his superiors—unless it can be shown that such criticism impairs morale or working relationships. In the landmark *Pickering* decision (1968), the Supreme

Court upheld a teacher who had written such a letter but pointed out that there was in this case "no question of maintaining either discipline by immediate supervisors or harmony among co-workers. . . ."

3. A teacher's private affairs do not normally disqualify him from teaching except to the extent that it can be shown that such affairs, as one court put it, "mar him as a teacher." If a teacher is immoral in public or voluntarily (or through indiscretion) makes known in public a private act of immorality, he may indeed be dismissed. Courts are still debating the rights of homosexual teachers, with decisions falling on both sides of this issue.

4. Laws which say that teachers may be dismissed for "unprofessional conduct" or "moral turpitude" are interpreted narrowly, with the burden of proof on the employer to show that the particular circumstances in a case constitute "unfitness to teach."

5. Whenever a teacher's private affairs include sexual involvement with students, it may be presumed that courts will declare that such conduct constitutes immorality indicating unfitness to teach.

### **Commandment IV: Thou Shalt Not Deny Students Due Process**

The Fourteenth Amendment guarantees citizens "due process of law" whenever the loss of a right is at stake. Since education has come to be considered such a right (a "property" right), and since students are considered to be citizens, case law in recent years has defined certain procedures to be necessary (see the Supreme Court's 1967 *In re Gault* case for rights of juveniles in the justice system) in providing due process in particular situations:

1. A rule that is patently or demonstrably unfair or a punishment that is excessive may be found by a court to violate the "substantive" due process of a student (see, for example, the Supreme Court's 1969 *Tinker* decision). At the heart of due process is the concept of fair play, and teachers should examine the substance of their

rules and the procedures for enforcing them to see if both are reasonable, nonarbitrary, and equitable.

2. The extent to which due process rights should be observed depends on the gravity of the offense and the severity of punishment that follows. The Supreme Court's *Goss v. Lopez* decision (1975) established minimal due process for suspensions of 10 days or less, including oral or written notice of charges and an opportunity for the student to present his side of the story.

3. When a student is expelled from school, he should be given a statement of the *specific* charges and the grounds for expulsion, a formal hearing, names of witnesses against him, and a report of the facts to which each witness testifies (see the leading case, *Dixon v. Alabama State Board of Education*, 1961). Furthermore, it is probable that procedural due process for an expelled student gives him the right to challenge the evidence, cross-examine witnesses, and be represented by counsel. (See, for example, the New York Supreme Court's 1967 *Goldwyn v. Allen* decision.) Finally, such a student may appeal the decision to an impartial body for review.

It is advisable for schools to develop written regulations governing procedures for such areas as suspension, expulsion, discipline, publications, and placement of the handicapped. The teacher should be aware of these regulations and should provide his administration with specific, factual evidence whenever one of his students faces a serious disciplinary decision. The teacher is also advised to be guided by the spirit of due process—fairness and evenhanded justice—when dealing with less serious incidents in the classroom.

#### **Commandment V: Thou Shalt Not Punish Behavior Through Academic Penalties**

It is easy for teachers to lose sight of the distinction between punishing and rewarding academic *performance*, on the one hand, and disciplinary *conduct* on the other. Grades, for example, are frequently employed as motivation for both study behavior and paying-attention behavior. There is a great temptation for teachers to use

one of the few weapons still in their arsenal (i.e., grades) as an instrument of justice for social infractions in the classroom. While it may indeed be the case that a student who misbehaves will not perform well academically *because* of his conduct, courts are requiring schools and teachers to keep those two domains separate.

In particular, teachers are advised to heed the following general applications of this principle:

1. Denial of a diploma to a student who has met all the academic requirements for it but who has broken a rule of discipline is not permitted. Several cases (going back at least as far as the 1921 Iowa *Valentine* case) are on record to support this guideline. It is also probable that exclusion from a graduation ceremony as a punishment for behavior will not be allowed by the courts.

2. Grades should not be reduced to serve disciplinary purposes. In the *Wermuth* case (1965) in New Jersey, the ruling against such a practice included this observation by the state's commissioner of education: "Whatever system of marks and grades a school may devise will have serious inherent limitations at best, and it must not be further handicapped by attempting to serve disciplinary purposes too."

3. Lowering grades—or awarding zeros—for absences is a questionable legal practice. In the recent Kentucky case of *Dorsey v. Bale* (1975), a student had his grades reduced for unexcused absences and, under the school's regulation, was not allowed to make up the work; five points were deducted from his nine weeks' grade for each unexcused absence. A state circuit court and the Kentucky Court of Appeals declared the regulation to be invalid. The courts are particularly likely to invalidate regulations that constitute "double jeopardy"—e.g., suspending a student for disciplinary reasons and giving him zeros while he is suspended.

In general, teachers who base academic evaluation on academic performance have little to fear in this area. Courts do not presume to challenge a teacher's grades *per se* when the consideration rests only on the teacher's right or ability to make valid *academic* judgments. There