57

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

Thomas R. McDaniel

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 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.

Thomas R. McDaniel is a professor of education at Converse College and a specialist in school law. "The Teacher's Ten Commandments: School Law in the Classroom," by Thomas R. McDaniel, *Phi Delta Kappan*, June 1979, pp. 703–708.

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[1] 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, armbands, 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.