

Russo
Education Law
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ALL THREE QUESTIONS ARE WEIGHTED EQUALLY

Question 1

As two students were about to begin fighting in a crowded hallway of a public high school one Thursday morning, over whether Pete Rose should be admitted to the Baseball Hall of Fame, a teacher was able to intervene before any punches were thrown. And, as an assistant principal for discipline happened to be walking the same way, the educators accompanied the students to the principal's office. As the four walked toward the principal's office, one of the students, an outstanding senior with an excellent reputation (he was, in fact, President of the National Honor Society) who had never been in trouble before turned to the other student and said: "I ought to get a hockey stick and beat your brains out --to put some sense into you for supporting Pete Rose --if I could find them, you brain dead cretin." The special education student responded, "Oh, yeah, well then I'll come after you with one of my father's shot guns if he lets me use it when he gets back from his hunting trip later on today."

Upon reaching the principal's office, the principal listened to the version of events as presented by the teacher and assistant principal but did not ask the students to explain what happened. In fact, when the Honor student tried, on several occasions, to explain his behavior, and to apologize for what he had said and done, the principal refused to let him speak. Instead, based on his interpretation of the school's zero tolerance policy, the principal immediately suspended the Honors student for 15 days and sent him home with a letter to his parents. (The principal also sent a copy of the letter to the parents via an overnight delivery service). In part, the letter indicated that since the student was being suspended due for a disciplinary/ weapons- type violation that would have him out of school for more than 5 days, he could not return to class until he passed a urinalysis drug test. (Note that, among other specified infractions, the policy required such testing of students who were excluded from school for disciplinary infractions more than 5 days).

However, as the second student was in a special education placement with an Individualized Education Program due to a slight learning disability in reading and mathematics, the principal feared that disciplining him, even though he had never been in trouble before either, would have violated the stay-put provision of the Individuals with Disabilities Education Act. Thus, the principal just issued this student a stem verbal warning and sent him back to class.

The next morning, Friday, the principal received an irate call from the parents of the Honor student, both of whom were practicing attorneys, demanding to know what was going on and threatening immediate legal action. Badly shaken by the call, the principal immediately agrees to meet with them early Monday morning.

A little later on Friday morning, the superintendent of the school system, after receiving a call from the principal contacts the managing partner of the law firm, your employer, that has only recently signed a retainer to represent it in such matters, to arrange a meeting to discuss its options. The partner, who does not yet have much of a background in Education Law, asks you to sit in on the meeting and assigns you to address the key legal issues presented by all parties in this scenario. More specifically,

- a) Evaluate whether the principal acted properly in suspending the Honor student for 15 days.
- b) Evaluate whether the drug testing policy at the heart of the board's zero tolerance policy is likely to withstand judicial scrutiny.
- c) Evaluate whether the principal behaved properly with regard to the special education student.

Question 2

In an attempt to better serve students in religiously affiliated nonpublic schools, a state with a sizeable population of such schools has relied upon a combination of state and federal laws to increase the aid that it provides to children in these schools. As this case heads to the Supreme Court, two major issues must be resolved.

The first issue involves a state statute that pennits the on-site delivery of special education for children with disabilities who attend religiously affiliated nonpublic schools. This the statute was upheld on appeal.

The second issue examines the constitutionality of a broad based federal statute, and a similar state law, which permits the loan of instructional materials such as library books and periodicals as well as computers, printers, video cassette recorders, video camcorders, television sets, filmstrip projectors, overhead projectors, slide projectors, maps, and globes to religiously affiliated nonpublic schools. The federal and state statutes at issue were struck down on appeal.

Assume that you are a law clerk for a member of the United States Supreme Court who is undecided how to rule on this important case. Based on your knowledge of the Court's First Amendment jurisprudence, especially as it relates to the Establishment Clause, in

addressing both sides of both of these issues, provide the Justice with the following:

- a) A rationale in favor of upholding the delivery of either or both of these programs in the religiously affiliated nonpublic schools.
- b) A rationale that prohibits the delivery of either or both of these programs in the religiously affiliated nonpublic schools.
- c) As part of your answer, justify to the Justice which approach s/he should adopt. (You may, if you wish, incorporate this part of your answer into sections a) or b) as appropriate.

Question 3

A tenured English Drama teacher with more than twenty years of experience at a high school divided one of his classes into small groups and directed his students to write short plays that would be videotaped while they performed them for their classmates. The teacher also hoped to have the plays performed for the entire student body. When the plays, which lasted about ninety minutes, were taped, they contained in excess of 150 instances of profanity, primarily consisting of stereotypical racial and sexual epithets. The teacher, who knew of the content of the plays, since he reviewed the scripts and attended rehearsals, admitted that there was an unusual amount of profanity. Yet, the teacher did not punish or reprimand the students even though the board had a Policy which "requires teachers to enforce the section of the Student Handbook which prohibits profanity." Following complaints by a student in the class, the principal became aware of the existence of the tapes.

Upon viewing the tapes, the principal took steps against the students and the English teacher. First, the principal viewed, and confiscated, the tapes. Second, she met with the students and informed them that, based on a meeting with the superintendent and the board's attorney, they would not be able to perform their plays because of their offensive content. However, the principal did not take any other disciplinary action against the students. Subsequently, several of the students and their parents filed suit claiming that the principal infringed upon their First Amendment right to freedom of expression.

At the same time, the principal met with the teacher and his union representative. The investigation led to the discovery that the teacher also permitted a student in another class to read aloud poems that contained profanity and graphic descriptions of sexual activity. Thus, the principal suspended the teacher with pay pending a hearing at which the superintendent would charge the teacher with "wilful or persistent violation of and failure to obey board policies" and recommended the termination of his employment contract. Then, the day before the board was scheduled to meet, the board president received an anonymous, unsubstantiated, telephone call which claimed that the teacher was an active member, on his

own time, and away from school, of the North American Man-Boy Love Association, a group that supposedly advocates free love between men and boys. The president promised to bring this accusation up at the board meeting. The teacher was not informed of this accusation. Meeting in executive session at its next scheduled session, which, coincidentally occurred less than a week after the teacher was suspended, the board voted unanimously to accept the superintendent's recommendation to terminate the teacher's contract. Based on its finding that the teacher was aware of, yet failed to enforce, the policy against profanity, the board terminated his contract for willful and persistent violations of the policy. ...

The teacher subsequently filed suit seeking reinstatement with back pay on two grounds. First, he claimed that he did not wilfully violate the policy because he believed that students could use profanity in the context of creative expression in class. Second, he charged that the board violated his state statutory [for this issue follow the general rule discussed in class] and federal constitutional right to due process.

Once again, assume that the superintendent of the school system contacts the managing partner of your law firm to arrange a meeting to discuss its options. The partner asks you to sit in on the meeting and assigns you to anticipate and address the key legal issues presented by all parties in this scenario. More specifically,

- a) Evaluate whether the principal acted properly in prohibiting the students from performing the play.
- b) Evaluate whether the board acted properly in terminating the tenured teacher's contract.
- c) Explain whether your answer to b) would be different if the teacher had not been tenured.