

## Russo Education Law

Assume that all questions refer to public, as opposed to non-public, schools.

Part I Total Value: 40 points

**Mark each of the statements in this section as either true or false.**

**If an answer is false, briefly correct it into a true statement in the space provided.**

Each correct answer in Part I is worth 2 points.

1. School officials can completely prohibit students from distributing an "underground" newspaper.

**Answer: False (can place "time/manner/place" restrictions)**

2. A social studies teacher is **prohibited** from speaking about the role of religion in the development of the United States on the basis that this violates the First Amendment.

**Answer: False (OK as long as curriculum-related)**

3. A high school principal can probably act **unilaterally** and **indefinitely** suspend a high school senior, a member of the National Honor Society who has never been in trouble before for allegedly violating a school policy that prohibits students from copying someone else's homework.

**Answer: False (Goss)**

4. A tenured teacher who violates a school board policy against corporal punishment and causes serious bodily injury to a student **may** be subject to dismissal for insubordination.

**Answer: True**

5. School officials have the constitutional authority to conduct strip searches of students.

**Answer: True (per 3 Circuit Courts)**

6. A long-standing policy in a public school prohibiting students from wearing buttons, shirts, hats, and other clothing expressing political, religious, and philosophical messages that has been fairly and uniformly applied is unlikely to be upheld in court since it infringes on

students' rights to free expression.

**Answer: False (OK per Guzik)**

7. A limited contract teacher in Ohio whose contract is not renewed is **automatically** entitled to a written explanation of the school board's decision.

**Answer: False (Must request)**

8. School officials, at the request of team coaches, can probably order a member of a women's high school swimming team to undergo a pregnancy test before permitting her to compete in a meet.

**Answer: False (held illegal)**

9. A non-tenured teacher who, after being warned, continually violates a school board policy by starting class with a prayer risks having his contract terminated.

**Answer: True**

10. The answer to the previous question would be the same if the teacher were tenured.

**Answer: True**

11. The faculty moderator of a high school newspaper in the Miami Valley, a staunch Neo-Libertarian, can properly exclude an otherwise well written, and researched, article that is part of a part of a series on politics by different student reporters because he disagrees with the author's opinion that Paleo-Liberalism a better political philosophy than Neo-Libertarianism is.

**Answer: False (Hazelwood)**

12. High school teachers have about the same degree of academic freedom as a faculty members in higher education.

**Answer: False (Just not the case)**

13. A school district with an limited open form that permits other clubs to do so can prohibit students from organizing a prayer club during non-instructional hours on the basis that such an activity would violate the Establishment Clause.

**Answer: False (Equal Access Act)**

14. Teaching colleagues who have an extra-marital affair that no one other than their spouses have found out about are **likely** to have their employment terminated on the ground of immorality or conduct unbecoming an educator if one of their spouses complained to the school board.

**Answer: False (Mostly Not)**

15. A tenured teacher in Ohio with a continuing contract can lose her job as part of a reduction-in-force.

**Answer: True**

16. Deciding whether to purchase a plot of land on which to construct a new school building is an example of a school board's **discretionary** duty.

**Answer: False (Mandatory / Ministerial)**

17. If a school district in Ohio were to institute a residency requirement that former residents of New York State had to **wait one year** before enrolling their children in public schools but parents who moved in from **California** could do so immediately, the statute would likely pass constitution muster.

**Answer: False (Equal Protection)**

18. If challenged, a court is **likely** to permit a public high school to offer a course on the Bible as literature.

**Answer: True (But Results Are Mixed)**

19. A student-athlete who is undoubtedly the best cheerleader on the team but who, in the opinion of the coaches, lacks sufficient leadership skills and concern for the good of the team, has a protectable constitutional property right at stake that would probably result in a court order directing school officials to name her captain if she filed suit seeking such a result.

**Answer: False (Extra-curricular a privilege)**

20. A school board that affirmed a superintendent's decision to suspend a student pending the completion of a police investigation of his allegedly selling drugs in school to peers would exceed its quasi-judicial authority in later voting to expel the same student.

**Answer: False (Within its Authority)**

**Part II: Total Value: 60 points**

**Question 1**

The Reverend HT (Holier Than) Thou, well known televangelist, dismayed at what he perceives as the ongoing moral decay in American society, has decided to open up a national religious school system. However, as construction of his new home and church requires too much of his donors' money to devote to such a project, he is seeking to prevail upon several key friends in his state's legislature to fund the initial establishment of these schools, with public funds, as charter schools, under the guise of school choice. In addition to being able to lease public school buildings at below fair market value and have daily prayer and religious instruction and bible reading in the schools, he seeks a state subsidy for the salaries of all of the educational staff (i.e., teachers and administrators) and for all school instructional materials, including text books used in the sectarian study of religion.

As a first year associate in a large firm that represents the school district where Rev. Thou hopes to locate his first, and flagship, school, your firm's managing partner is aware that you have recently completed a course in Education Law. The partner, who does not yet have much of a background in Education Law, seeks your counsel in preparing a brief on the constitutionality of such proposed litigation.

Based on relevant United States Supreme Court precedent (case names are not necessary), prepare a brief for the partner, explaining to her whether a statute permitting all of the goals that the Revered Thou wishes may be constitutional. (25 points)

## Question 2

Gabe Kotter had been the principal of Podunk Upper High School (PUHS) for 20 years. On Friday, November 8, a student at PUHS informed Mr. Kotter that Slobodan Corleone, fourteen-year-old son of university professors, was planning, on the following Monday, to protest what he perceived to be the school board's unfair treatment of "Deflate-em," "a synergistic association of liked-minded individuals dedicated to letting the air out of the footballs in order to end this barbaric display of inappropriate violent macho, testosterone driven behavior and sexist treatment of female cheerleaders," by wearing a rainbow-striped arm band to school.

Mr. Kotter also learned that one of his second-year social studies teachers, the very popular, effective, and idealistic Clark Kent, intended to support the protest as a means of emphasizing his solidarity with students in pursuit of "freedom, justice and the American Way." Mr. Kotter informed Kent that if he joined in the protest during school time, by wearing an arm band, he would recommend that the school board not renew his contract later that school year.

Insofar as about 10% of the students at PUHS supported "Deflate-em," Mr. Kotter feared trouble and contacted Ms. Noblesse Oblige, chairperson of the school board. That afternoon Ms. Oblige phoned the other four board members and scheduled an emergency board meeting for September 9, Saturday morning, at 9:00 a.m. Only the five board members were present at the emergency meeting. After 15 minutes, the board unanimously adopted the following regulation:

## STUDENT PROTESTS

Students will be permitted to utilize reasonable means of free expression within school buildings. This expression includes, but is not limited to, placards, armbands, and symbols, provided that there is no school disruption and further provided that notice of such expression is served on the school principal by the person or persons involved not later than 24 hours prior to the scheduled beginning of the expression. Violations of this regulation will be

punishable by suspension from the school by the principal for a period of time not to exceed fifteen consecutive school days; this punishment shall be assessed for each violation.

A representative of the local newspaper, anonymously tipped off by a board member, appeared at the meeting just as it was adjourning. The regulation was widely disseminated in the local newspaper and over the local radio station, and did come to the attention of Drs. Corleone and their son, Slobodon, on Saturday evening.

On Sunday, Mr. Kotter received ten phone calls from irate "Smash-em," parents, the football booster club that represented the vast majority of the school population. The callers essentially declared that if that "miscreant Slobodon" can protest, they were going to send their children to school "to protest the special favor shown to "Deflate-em" and children of university professors." At 6:00 p.m. on Sunday, September 10, Mr. Kotter phoned Drs. Corleone, both of whom were on the phone, to try to persuade them to call off Slobodon's protest, or he would be suspended. Their vitriolic reply in effect was that, "If you suspend Slobod, we'll exercise the full scope of our constitutional rights, and stir up this community like its never been stirred up before."

At 8:20 a.m. on Monday, November 11, Slobodon entered PURS wearing a rainbow colored ann band and carrying a four-foot square sign showing a "Smash-em," labeled as Gabe Kotter, trampling underfoot a smaller "Deflate-em" and containing large stenciled letters reading "Arise Deflate-em: Overthrow the fascist tyrants of Po dunk Upper High School." Most of the 100 or so students who saw the sign laughed and jeered, except for the loud, menacing threats made by two PURS football players, M. T. Head, the star quarterback and Neander Thall, a star linebacker. They screamed at Slobodon to "either destroy the sign or we'll tear your \$%&#\$@ head off when you least expect it." At this point, Mr. Kotter intervened and took Slobodon to his office and suspended him for five days for creating a disruption. Nothing was said, or done, to the football players.

While Slobodon was in the office, another administrator, B.A. Lackey, at Kotter's direction, searched his locker for other ann bands. Although a thorough search failed to turn up ann bands, Lackey discovered a small vial contained containing white pills that he identified as crack cocaine. Based on his actions in wearing the ann band, coupled with the discovery of the "drugs," Kotter immediately upped Slobodon suspension to 15 days and called the police, threatening to have Slobodon arrested. When the police came, they looked at the white pills and pointed out that they were the over-the-counter pain killer, Motrin, that Slobodon had a doctor's note to have with him since he was nursing a knee injury that he received playing ice hockey. Thus, Kotter sent Slobodon home without even calling his parents.

Later, at about 2 PM, Mr. Kotter noticed that Clark Kent also wore a rainbowed armband to school. When Mr. Kotter noticed the annband, he notified Kent that he would ultimately seek the non-renewal of his contract for his part in the school disruption. At its next

regularly scheduled meeting, in December, the board, after a hearing at which Kent's attorney was permitted to call and cross-examine witnesses, voted, by a 3-2 margin to place a reprimand in Kent's personnel file. The board tabled any further action on Mr. Kotter's threat.

For the purposes of this question, confine your answers to the following: (i.e., do not be concerned about the propriety of the special board meeting with regard to the policy).

- a) As attorney for Drs. Corleone and their son, discuss all possible causes of action and remedies available to your clients, explaining who should prevail and why. (20 points)
  - b) As attorney for Clark Kent, discuss all possible causes of action and remedies available to him, explaining who should prevail and why. (10 points)
  - c) Evaluate principal Kotter's overall handling of the situation, making certain to consider any and legal issues not addressed in parts a) and b) of your answer, how he might have acted to avoid a problem, and how they might be resolved by a court. (5 points)
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