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PUBLIC TRUST AND THE ROLE OF CLASSROOM TEACHERS

Overview

From time-to-time stories appear in the media involving public school teachers whose professional positions were either placed in serious jeopardy or terminated because of something that occurred in their off-school grounds, private, non-teaching life. In 2005, is it possible for a public school teacher (especially a tenured teacher) to be fired for something done in his/her private life? Is it the legal prerogative of today's public school officials to censure a member of the teaching staff for private life behavior occurring off school grounds? If this happens, on what grounds (usually enumerated in state statutory law) are these adverse employment actions taken? Is the teacher charged with "incompetency," or "immorality," or "unprofessional conduct," or "conduct unbecoming a teacher," or "behavior detrimental to the best interests of the school district," or do school officials simply claim "sufficient cause," or "good and just cause?" The purpose of this commentary is to probe this area of education law and identify implications for policy.

Privacy. Of all the rights and privileges that we have as citizens, privacy is one of the most valued and cherished. In recent years decisions from the United States Supreme Court and the courts below it, along with the passage of several federal and state statutes, have created privacy protections for citizens. As one legal source summarizes, "[c]itizens can expect to be free from the intrusive acts of others, including government," Boshier, Kaminski, and Vacca (2003)

Expressed as a "right to personal autonomy" Black's Law Dictionary (1999), citizens can expect that they as individuals and their personal property will not be encroached upon without their consent. As mentioned above, this expectation includes a protection from unauthorized and unwarranted governmental interference in personal, intimate affairs. Vacca and Boshier (2003) It must be emphasized, however, that a person's expectation of privacy changes according to context (sometimes characterized as "zones of privacy"). For example, an employee's expectation of privacy in the workplace is not the same as his/her expectation at home. As a general rule remedy for invasion of privacy is actionable in court under tort law, where defamation (injury to reputation and good name) is alleged. Boshier, Kaminski, and Vacca (2004)

Teacher Privacy Rights. Are public school teachers more vulnerable than workers in other employment settings to disciplinary action by their employer for private life behavior? If so, why?

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Thirty-five years ago, in a published article, I stated my belief that public school teachers possess the same rights to act and behave in a manner practiced by all other citizens; and, that they do not relinquish their basic civil rights simply because they occupy the position “public school teacher.” However, I cautioned, that public school teachers must recognize that they exert great influence on their students over and above academics. As such, it is vital that teachers recognize that a relationship of “public trust” exists between them and the community. In essence, this means that the community holds certain “behavioral expectations for its teachers” one of which depicts teachers as “role models” for students. Vacca (1970)

More recently, an expert in school law expressed a similar belief when he stated, “[p]ublic school teachers serve in highly visible and significant positions. In many instances, they exert important influences on the views of students and the formation of their values. Based on their roles, there is an expectation that a teacher’s character and personal conduct be elevated above the conduct of the average citizen who does not interact with children on a daily basis.” Essex (2002)

In his treatise, Russo adds that most courts expect educators’ character and conduct “to be above that of persons not working in sensitive relationships with children.” As such, “[w]hile there has been a discernible trend toward affording teachers more freedom in their personal lives than in the more distant past, it is difficult to draw a line between their rights as private citizens and the obligations they accept as educators.” The bottom line, Russo emphasizes, is that “the private lives of educators are their own business unless or until their actions impact on their professional lives.” Russo (2004)

Alexander and Alexander concur. In their view, “[t]eachers must be of good moral character, and statutory requirements pertaining to the morality of teachers are constitutional.” Defining immorality as a “course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate,” these experts demonstrate through case law analysis that immorality, while often challenged as a vague and overbroad charge, has been consistently upheld by courts “especially when it relates to fitness to teach and there is a rational nexus between the prohibited activity and the individual’s conduct and decorum as a teacher.” (2005)

As Fischer, Schimmel, and Kelly have observed, “many educators believe that their personal behavior away from school is their own business and should be protected by their right to privacy. Yet many administrators argue that educators teach by example and thus should be role models for their students....” (1999)

McCarthy and her colleagues emphasize a need to strike a balance between the rights of teachers and the prerogatives of school officials. As such, since the “[c]onstitutional protection afforded to teacher’s privacy rights is determined not only by the location of the conduct but also the nature of the activity,” the courts have, as a general rule, “attempted to balance the teacher’s privacy interests against the school board’s legitimate interests in safeguarding the welfare of the students and the effective management of the school.” McCarthy, Cambron-McCabe, and Thomas (1998) Mawdsley agrees, but cautions that “the question whether an employee has a reasonable expectation of privacy must be addressed on a case-by-case basis in balancing that expectation of privacy with the employer’s ‘interest in ensuring that their agencies operate in an effective and efficient manner’” Mawdsley (2004)

School Board Authority and Teacher Dismissal. In 2005, local boards of education continue to assign, reassign, reprimand, discipline, and discharge classroom teachers for a wide variety of reasons. The courts, both federal and state, consistently hold that when evaluating teacher competency and fitness local school officials are not restricted to consider in-school and in-classroom behavior only. As the United States Supreme Court established

when speaking about public school teachers, “context does not limit the meaning of the word (competency) to lack of substantive knowledge of subjects to be taught. Common and approved usage of the term give a much wider meaning....” Beilan v Board of Education (1958)

It is an established tenet of school law that a teacher’s competence and fitness for his/her job are not measured solely on the basis of professional, on-the-job performance. Vacca and Boshier (2003) However, a “link between action and evident unfitness to teach must be clearly established. Where such a link is not made...the court will not sustain a dismissal or revocation of a certificate.” Wood, et al. (2000)

To accurately determine the scope of authority granted to school officials in deciding the employment status of classroom teachers and other school employees, the researcher must turn to state law. In Virginia, for example, local school boards have wide discretion in deciding whether or not to continue employment of all personnel. Defined as an “exercise of judgment,” state law requires that such decisions be based on fact and supported by reasoned analysis, and must be free of bias and capriciousness. 22.1-307 Code of Virginia (Cum. Supp. 2004)

Emerging Issues and Court Cases

Over the years, public school teachers have been suspended, placed on probation, or dismissed from employment for a variety of private life behaviors. Some examples of situations that have resulted in court cases are: engaging in sexual behavior with current and former students, public lewdness, fornication and adulterous behavior, public intoxication, drug possession, downloading child pornography from the Internet, and numerous other involvements. It should be obvious to the reader that the preceding list contains charges that are generally categorized in most states as either misdemeanors, or felonies, or crimes of moral turpitude.

In a 1965 Alaska case, the court made it clear that a teacher’s private life behavior can be judged as “immoral” if the acts of the individual teacher have a tendency “to impair the overall effectiveness of the school system.” This is especially true when the behavior brings “the teacher involved and the teaching profession as well into public disgrace and disrespect.” Watts v Seward (1965)

The Court of Appeals of Arizona made it clear in a 1966 decision, that the position of “public trust” occupied by teachers not only involves a teacher’s personal conduct, but also the interaction of the entire community. “Education is not effective,” said the court, “when these relationships do not operate in a friendly, cooperative, and constructive manner.” Williams v School District (1966)

In Gish v Board of Education (1976), a New Jersey court held that when evaluating “teacher effectiveness” local school boards are not restricted in considering teachers’ in-school and in-class behavior only. Local school boards have a duty to determine the general issue of “teacher fitness.” Said the court, “A teacher’s fitness may not be measured ‘solely by his or her ability to perform the teaching function and ignore the fact that the teacher’s presence in the classroom might, nevertheless, pose a danger of harm to the students for a reason not related to academic proficiency.’ ”

Flaskamp v Dearborn Public Schools (2002) is a Michigan case involving a female teacher who was denied tenure by her employing school system. The school board’s tenure denial was based on a relationship that existed between the teacher and a former student. The board said that the relationship was “inappropriate,” and the school principal said that he could no longer “trust the teacher.” In the opinion of the court, since the relationship began while the student was enrolled in the teacher’s class it did not fall within the scope of the

teacher's privacy expectation. In other words her relationship with a former student could not be described as falling within the teacher's "right of intimate association."

Melzer v Board of Education (2003) is a New York case involving the termination from employment of male secondary school teacher. The teacher was dismissed from his job after his membership in the North American Man/Boy Love Association (NAMBLA) was exposed in a television broadcast. Subsequently, the teacher challenged his dismissal on First Amendment free speech and association grounds. The Second Circuit affirmed a district court decision in the school board's favor. Convinced that because the teacher's membership had become the center of community discussion, the appellate court held that his continued employment would have a disruptive effect on the efficient operation of the school system. Moreover, the trust of parents and students had been compromised and parental cooperation is essential to the operation of a school.

Policy Implications

In 2005, public school teachers must recognize that they have both ethical and legal responsibilities to their employer (the local school board) to work to protect and maintain the relationship of public trust and reliance that exists between their school system and the community; especially parents. Moreover, and as a part of this public trust, that they are: (1) obligated to conduct themselves in public in ways that do not offend the community, and (2) expected to function as role models for the student they teach. At the same time, however, local public school officials must recognize and protect the rights of their teachers to live private and personal lives free from interference and encroachment by their employer. What both teachers and school officials must realize is that courts of law will not interfere in employment decisions unless such actions are arbitrary, capricious, discriminatory, or in some other way egregious in nature.

Based on this author's more than thirty-years of tracking the case law on this subject, the following suggestions are made for consideration by today's local school boards as employment policies are drafted and implemented. Local school system policies must make it clear that:

- The school system and its employees (especially classroom teachers) have a responsibility to teach students the basic values of civility and civic responsibility.
- Evaluations and determinations of teacher competence are based on more than academic performance and proficiency in the classroom.
- Classroom teachers are expected to comply with board and administrative requirements for professional performance and personal behavior associated with and required as a part of their contractual (i.e., formal) position "teacher."
- Classroom teachers have, by virtue of their employment contract, responsibilities to the community, parents, and students to teach by example the responsibilities of good and productive citizenship.
- A teacher's behavior (both professional and personal) has a direct bearing on the relationship of public trust that exists between the school system and the community, especially parents.
- Classroom teachers who engage in conduct (whether on-the-job, or personal behavior in the community) that either threatens the safety and security of students, or interferes with the efficient and effective management of the school, or is in some other way detrimental to the best interests of the school system and its students will be immediately terminated from employment.

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