

CHAPTER 12

Student Teachers' Diversity Rights

THE CASE LAW

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ABSTRACT

This chapter provides a concise and up-to-date synthesis of the published case law where a student teacher was the plaintiff, the defendant was an institution of higher education or cooperating local school district, and the issues in dispute were related to diversity. The number of such court decisions was surprisingly small, and the outcomes generally favored the defendant institutions. The court cases fall under three categories: 1) student teachers' diverse views on religion, 2) student teachers' diverse forms of free speech, and 3) student teachers with special needs. Constitutional claims were the predominant avenue of litigation against school districts and those institutions of higher education that were public, whereas breach

of contract was the primary claim against private higher education institutions. Helping to fill a gap in the professional literature for both students and educational institutions, this chapter serves as a step forward for institutional policies and practices of preventive law and provides case study material based on published precedents for teacher preparation programs. Additionally, it provides an opportunity for renaissance in the field of education.

In recent years, the preparation of teachers has become a central subject of attention. Educational reform efforts, including the No Child Left Behind Act, have recognized the importance of preparing highly qualified teachers. Thus far, such attention has focused on content mastery and teaching methods. Yet, despite the increasing impact of education legislation, regulations, and litigation generally and the particular vulnerability of teacher education candidates during the culminating, student-teaching phase of their preparation, legal knowledge has been largely neglected (Schimmel, *in press*; Zirkel, 2006) in preservice programs. The need includes issues specific to not only teachers in general but also—amounting to a glaring gap in the professional literature—student teachers in particular. This, in our view, maps a possible renaissance in the field of education.

In this chapter, we first provide a quick overview of the published research, showing the need for both legal literacy among teachers as well as more systematic information about student teaching case law. Second, the chapter provides a synthesis of court decisions specific to student teachers' diversity suits. Combined, we illustrate how the inclusion of this special set of knowledge assists prospective teachers, thus contributing in a needed renaissance in teacher education.

Background

Survey studies have confirmed the importance of legal literacy in teacher preparation programs. For example, Traynelis-Yurek and Giacobbe (1992) surveyed teachers in Virginia to determine the relative significance of 20 issues for preservice teacher training programs. They found that "laws and litigation" ranked third overall among the respondents, only surpassed by classroom management and reading preparation. Various other survey studies have found a prevailing perception that preservice teacher education programs lacked sufficient study of education law (Gullat & Tollet, 1997; Paterson & Gibbs, 1999, Pell, 1994).

Yet, as Garner (2000) more recently observed, few teacher preparation pro-

grams provide coverage of education law. For example, Patterson and Rossow's (1996) survey of 700 teacher preparation institutions found that only 18 offered an undergraduate course in education law. Moreover, our informal review of a sampling of textbooks used in basic teacher preparation courses revealed that most contained negligible, if any, information on legal issues specific to student teachers.

As a start toward filling the gap in the literature, Johnson and Yates (1981) conducted a survey of the directors of 902 teacher education programs in the country concerning student teaching. Only 1 of the 21 items in their questionnaire asked directors whether either their programs or their student teachers had ever been "involved in a law suit growing out of any aspect of student teaching" (p. 26). Although 46 directors responded "yes," the tabulated "circumstances and outcome" comments did not yield sufficiently specific details.

Only two studies came closer to identifying the published court decisions pertinent to student teachers, but neither one was recent or sufficient. In their separate studies Swalls (1976) and Hall (1991) identified 14 and 26 published court decisions respectively, but the boundaries for relevance were not clear, and the coverage was far from up-to-date.

Method

The boundaries in this chapter for pertinent court decisions were specific to the parties, the subject matter, and publication. The criterion for including a case in terms of the parties was that the plaintiff, or suing party, was a student teacher, and the defendant was an institution of higher education or a school district. The criterion for subject matter was that the case concerned diversity, which for the purposes of this chapter meant an issue of a legally protected group or activity, such as race, disability, religion, or freedom of expression. Finally, "published" in this context refers broadly to the court opinions not only in the official reports, such as the Federal Supplement, but also those available in the two major legal databases, LEXIS and WESTLAW.

Results

The overall search yielded 24 published court decisions that met the first and third criteria but only 7 that also met the second criterion. We divided them into three categories: a) issues of diverse views on religion, b) issues of other diverse forms of free speech, and c) student teachers with disabilities.

STUDENT TEACHERS' DIVERSE VIEWS ON RELIGION

Of the seven pertinent court cases, three fit in this category—two featuring student teachers who expressed atheistic views and, in polar opposition, one initiated by a student teacher who advocated strong Christian views.

In the first decision in this category—*Robinson v. University of Miami* (1958)—a private university “withdrew its acceptance” (p. 443) of a student teaching candidate after the principal of the cooperating school called the university’s attention to a letter the student had written on atheism in a local newspaper. The university’s committee on student teaching subsequently met with the student, concluding that he was so fanatical in his views in favor of atheism that he would seek to express and impose them on the students he would be assigned to teach. He sued, claiming the university violated its contract of enrollment with the student. The appellate court affirmed the trial court’s rejection of his contractual claim, ruling that the university had not acted arbitrarily or with malice and that it had a right to withdraw a student at any time after his acceptance on the implicit grounds of suitability. Additionally, the court reasoned that the university has an “obligation” not to graduate and thereby place “the stamp of its academic approval” on a new teacher “having fanatical ideas” (p. 444) on atheism.

In the second case, a dismissed student teacher prevailed on a constitutional claim, which only applies against a public institution (*Moore v. Gaston*, 1973). The student teacher had been performing his duties well, but trouble arose one day when he substituted for one of the teachers. He had no problem until a class on the history of religion in the Middle East. During the discussion, he gave “unorthodox” (i.e., atheistic) answers to students’ questions about creation, evolution, immortality, and the nature and existence of God. After receiving heated complaints from parents, the superintendent arranged a quick meeting with the student teacher, inquired about the previous day’s statements, and dismissed him. The student teacher filed suit in federal court on various constitutional grounds, including First Amendment expression and Fourteenth Amendment due process. The federal trial judge sided with the student teacher on the First Amendment claim of overbreadth, which overlaps with the Fourteenth Amendment safeguard against vagueness, concluding that the balance between the plaintiff’s interest in academic freedom and the public school’s interest in protecting impressionable minds lies in school officials’ providing the educator with adequate notice of the boundaries between permissible and impermissible expression. Here, the court reasoned that “we are concerned not merely with vague standards, but with the total absence of standards” (p. 1041) that would unconstitutionally result in the unfettered discretion of school officials to censor or censure expression. Additionally, the court reasoned that to

discharge a teacher without warning because “his answers to scientific and theological questions do not fit the notions of the local parents and teachers” (p. 1043) is a violation of the First Amendment’s establishment clause, which prohibits the government from promoting religion. Finally, the court also vindicated the student teacher’s Fourteenth Amendment procedural due process claim, finding that he had a reasonable expectation, i.e., property right, to continue his student teaching. Interpreting student teachers as having the same protection as certified teachers regardless of compensation or tenure, the court concluded that the school district had deprived the plaintiff of this property right via a “hearing with twenty minutes notice before a hostile ad hoc committee without eyewitness testimony” and with the questioning focused on a few “unorthodox statements” (p. 1042). The relatively early date and limited jurisdiction for this decision, however, cautions against over-generalizing its applicability in light of more defendant-friendly constitutional precedents.

In contrast, the third court case deals with a very religious student teacher and provides a more representative view of modern constitutional jurisprudence. In *Hennessy v. City of Melrose* (1999), the court rejected this student teacher’s constitutional claims. He had started his student teaching and was doing well until three incidents revealed that his strong Christian beliefs superseded his responsibilities as a student teacher. The fourth and final incident occurred when the principal called him to inquire about the previous events. During the meeting, the student teacher called the principal “the devil” (p. 243) and persisted in arguing against the alleged denigration of religion in the school curriculum. Citing the four incidents, the principal informed the college official that she would not allow the student teacher to continue at her school. The college temporarily suspended the student teacher and notified him that he was entitled to an immediate hearing. Upon learning that the principal would not testify at the hearing, the college officials dropped the disciplinary proceedings and rescinded the temporary suspension. The student teacher received a failing grade in his teaching practicum based on four of the basic teaching competencies—communication skills, self-evaluation, equity, and professionalism—that the state required for teaching certification. The student teacher filed suit against both the college and the district, claiming a violation of his First Amendment and Fourteenth Amendment rights. The federal trial court granted the defendants’ motion for summary judgment. The student teacher appealed. The First Circuit Court of Appeals affirmed for each of his constitutional claims.

First, the appellate court rejected the student teacher’s First Amendment freedom of speech claim. Finding the “apprentice-type” relationship to more closely approximate the employee than the student relationship, the court used the modern three-step test for public employment expression rather than the school-sponsored versus substantial-disruption framework that applies to public

school student expression. At the first step, the court determined that student teacher's expression during the four incidents was at least partially a comprehensive message of public concern, thus warranting a balancing of interests. Doing so, the court concluded that, "the school's strong interest in preserving a collegial atmosphere, harmonious relations among teachers, and respect for the curriculum while in the classroom outweighed the [student teacher's] interest in proselytizing for his chosen cause" (p. 247), thus disposing of his speech claim. Next, the court made short shrift of the student teacher's overlapping First Amendment free exercise of religion claim, concluding that, "to whatever extent religious beliefs dictated the student teacher's actions critical of the curriculum, those beliefs did not excuse him as an apprentice teacher in the public school system from complying with legislatively mandated curriculum and implementing that curriculum" (p. 244). As for procedural due process under the Fourteenth Amendment, the court questioned whether the plaintiff had been deprived of a property or liberty interest and concluded, in any event, that the college's action was academic, rather than disciplinary, and thus did not require a hearing. The court explained that, in light of state's requirement for certification, the plaintiff's inability to communicate effectively with his colleagues and his unwillingness to work "reasonably" within the prescribed curriculum were as important, "from an academic standpoint, as his ability to prepare a lesson plan" (p. 250). Finally, the court summarily disposed of his substantive due process claim, ruling that—in light of the pertinent precedents that afforded wide latitude to public institutions of higher education—the college's decision making was "reasonable" within the boundaries of academic decision-making (p. 252).

STUDENT TEACHERS' OTHER DIVERSE FORMS OF FREE SPEECH

A limited triad of court decisions also fit within this overlapping category, where the expression was not connected to religion. The plaintiff in each case was one or more student teachers terminated from student teaching after participating in demonstrations on campus.

In the earliest case in this category, a federal trial court dismissed the constitutional claims of a group of approximately 50 college students, including student teachers, who had participated in a demonstration that resulted in the closing of the defendant state college (*Scott v. Alabama*, 1969). The college had sent notice, listing the charges, and had subsequently held a hearing for the students. At the hearing, the students' attorney objected to the charges as being unconstitutionally vague, but the hearing committee denied his request to make

the charges more definite. The students declined further participation in the hearings, and the college suspended or expelled each of them. They filed suit in federal court, relying not only on Fourteenth Amendment procedural due process but also First Amendment freedom of expression. The court rejected the Fourteenth Amendment claim, concluding that even if one of the charges was vague, the rest were sufficiently specific to satisfy the “rudimentary element of fair play” (p. 166) of constitutional due process. The court also summarily disposed of their First Amendment claim because their disruptive conduct, beyond their expressions of protest, was not protected speech. The judge explained, Freedom of Speech does not mean that just because someone believes “strongly enough that his cause is right, then one may use in advancing that cause any means that seem effective at the moment, whether they are lawful or unlawful and whether or not they are consistent with the interests of others” (p. 168). Instead, people who do so “must expect to be punished when they violate laws and college regulations which are part of a system designed to protect the rights and interests of all” (p. 168).

In *James v. West Virginia Board of Regents* (1971), the defendant public college failed to place the student teacher in a public school of his choice after the college had suspended him from his original student teaching location, which was a local high school. The suspension had arisen in the wake of the bombing of the college’s physical education building; the police arrested him along with several other students who had participated in racial demonstrations, charging them with felonious conspiracy to bomb said building, and the resulting media coverage branded him as a militant. Following the dismissal of the charges, the student teacher requested readmission to the college and a student teaching assignment in one of public schools in the immediate county. Due to the student’s militant reputation, the college was unable to arrange a placement of his choice but succeeded in assigning him to a school in another county. Refusing the assignment, he sued the state board of regents, college officials, and the local county school board in federal court, claiming violations of his First Amendment and his Fourteenth Amendment rights.

First, the federal district court in West Virginia summarily rejected James’ constitutional claims against the state board and college defendants, concluding that they had fulfilled their “duty of making a good faith effort to place those of its students majoring in education in an accredited school [for student teaching]” despite “much provocation from him” (p. 227). Specific to the First Amendment, the court concluded that his threatening conduct went beyond the protection of the speech and assembly clauses. Second, the court similarly denied his constitutional claims against the school district. Specific to Fourteenth Amendment substantive due process and equal protection, the court concluded that the refusal of the school officials to accept the student teacher was solely

predicated on his reputation as a militant on and off campus, which was reasonable and not racial. More specifically, the court found that the public school officials had applied to him “relevant . . . and proper” (p. 228) selection criterion for student teachers and that he had received the same treatment as white applicants. The Fourth Circuit Court of Appeals subsequently affirmed the district court’s decision without further opinion.

Much more recently and similarly, the Ninth Circuit Court of Appeals affirmed the federal trial court’s summary rejection of a former student’s claim that one of the California state universities violated his First Amendment freedom of expression by not letting him start his student teaching assignment (*Holt v. Munitz*, 1996). Assuming without deciding that his participation in a press conference in response to a controversial racial incident—specifically, the police beating of Rodney King—was protected expression, the court pointed to undisputed evidence that the reason for his removal was his failure to complete a final examination that was a prerequisite to commence one’s assignment to student teaching. Thus, the university proved that it would have disallowed him from participating in student teaching regardless of any protected expression, defeating his claim. However, in using the framework for First Amendment litigation concerning public employees, the court did not address the potential counterargument based on his student status, probably because he proceeded in court *pro se*, i.e., without a lawyer, and thus did not raise such distinctions.

SPECIAL NEEDS STUDENT TEACHERS

In the only court case in this category, a federal appellate court upheld the rejection, based on untimeliness, of a former student teacher’s claim of disability discrimination under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (*Everett v. Cobb County*, 1998). The plaintiff had multiple sclerosis and bilateral joint dysfunction, which required her reliance on an electrically-powered scooter for mobility. She alleged that the supervising teacher had refused to allow her to use the scooter in the classroom and had made various disparaging comments about her disability. After the supervising teacher recommended a grade of Unsatisfactory, and the college faculty decided to give her an Incomplete, she sued both the college and the school district under these interrelated federal civil rights statutes. The fatal problem was that she did not file her suit on time. The court concluded that the applicable limitations period was two years, commencing when she first received notification of the Incomplete. She filed suit exactly two years after receiving the letter confirming the faculty’s decision, but that letter was one week after she received the grade. Applying the timeline strictly, the court denied hearing her claim.

Conclusions and Implications

A systematic search uncovered a paucity of published court decisions on student teaching generally and connected to diversity in particular. More specifically, we found only seven court decisions pertaining to the three criteria i.e., 1) the student teacher was the plaintiff, 2) a higher education institution and/or school district was the defendant, and 3) issues of legally protected group or activity, such as race, disability, religion, or freedom of expression. This number is surprisingly small in the context of our litigious society and in light of the high stakes of professional certification and the vulnerable nature of student teachers. The obvious explanation that universities or school districts settled student teachers' lawsuits before they reached the courts is too simplistic; the same factors that lead to settlement apply to other areas of higher education litigation, yet they continue to yield a robust amount of published case law (Zirkel, 1998b).

The outcomes of these court decisions, i.e., which party ultimately won, are not as surprising and may help explain their limited frequency. Specifically, in six (84 %) of the seven cases the ultimate decision, whether at the trial or appellate level, was in favor of the defendant education entities. The pro-institution trend was especially evident for the constitutional claims, which amounted to the main highway for litigation against public institutions of higher education and school districts. The general doctrine of deference to administrative officials, which favors the institutional defendants, is even more powerful for educational matters, often referred to as the doctrine of academic abstention (Kaplin & Lee, 2006). The one decision in favor of plaintiff-student teacher was at least partially an outlier because the plaintiff was substituting for a regular teacher and, thus, was within the employee role rather than in the marginal neither-fish-nor-fowl position of student teacher.

More specifically, in the majority of the cases where the defendant was a college or university, the institution was public, thus providing the avenue of the individual Bill of Rights in the Constitution, which is a dead-end in relation to private colleges or universities. However, this route was unsuccessful in light of 1) the deference and academic abstention doctrines, 2) the flexible and broad lenses in constitutional claims, and 3) the modern trend in student cases generally (Zirkel, 1998a). In the minority of the cases where the defendant was a private institution of higher education, the courts have similarly construed the limited available avenues, primarily breach of contract and torts, with wide latitude for the "ivory tower."

Student teachers face many challenges in their student teaching experiences at both the sponsoring higher education institution and the host school district,

with the potential of filing a lawsuit lurking in the background in the mind of both the student teacher and the institutional officials. This chapter helps fill a gap in the professional literature for both audiences. It serves as a step forward for institutional policies and practices of preventive law and for study material in teacher preparation programs, including case studies based on these published precedents.

On the institutional side, public universities and school districts must pay particular attention to the First Amendment freedom of speech rights of student teachers, which accounts for the bulk of litigation to date. However, both the student teachers and those who select and supervise them must recognize that this freedom is not absolute, and it does not prevent public institutions from disciplining those who abuse it. The basic rights of the First Amendment in terms of free exercise of religion and free exercise of other expression are subject to the special interests specific to student teaching, which include those of the children to whom they are assigned and the profession to which they seek entrance. The secondary alternatives of Fourteenth Amendment rather simply mean that public institutions should apply rules and procedures similarly in comparable situations—i.e., equal protection—and provide procedural safeguards, such a notice of specific charges, and substantive grounds in accordance with fair play—i.e., due process. For student teaching programs in private institutions, the primary legal foci are the student handbook and other institutional policies that form the contract that is the primary analog for the Constitution.

Even though there is only one case directly related to students with disabilities thus far, which was decided on technical procedural grounds, both public and private institutions may expect more litigation within the student teaching context, as they are experiencing more generally (Zirkel, 2004; Zirkel & McMenamin, 1999), under Section 504 and the ADA. The key issues concern whether the plaintiff qualifies under these statute's definition of disability and, if so, whether the defendant institution—whether a college or university or the cooperating school district—has engaged in discrimination, which includes applying the concepts of causation and reasonable accommodation.

Because this chapter only represents one step, additional research on legal issues for student teachers is warranted. We recommend research that includes surveys of legal knowledge and prevailing practice as well as qualitative studies of cases of potential and ongoing litigation, including the perceptions of the participants and the propensity for settlement. Such qualitative research should include an exploration of the reasons for the paucity of published litigation where student teachers are plaintiffs, during a period when published court decisions in both basic and higher education remains at a relatively high level (Zirkel, 1996, 1998b).

Finally, a truly reformed teacher education program should include in its

curriculum education law in general as well as preparation of student teachers of the legal issues they face while conducting their field experiences. Student teachers and teacher preparation programs more generally at the preservice and inservice level need more specific and accurate information about the law, particularly in light of the American penchant for litigation and the accompanying misconceptions among teachers and the public (Zirkel, 2006). A true renaissance of teacher education must include adequate preparation of future teachers to deal with legal issues so they do not become deterrents to entering, remaining in, and succeeding in the profession.

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