EDUCATION LAW NOTES

Federal and Virginia Developments in School Law

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Fourth Circuit Emphasizes Administrators' Authority in Personnel Matters

On November 28, 2017, a panel of the United States Court of Appeals for the Fourth Circuit issued an opinion in *Penley v. McDowell County Board of Education, et al.*, No. 16-2034, 2017 WL 5711227, supporting the investigatory and disciplinary authority of school administrators in personnel matters. This case began after a North Carolina principal investigated and recommended the discipline of a teacher following unwise teacher-student conversations and inappropriate social media posts. The teacher alleged his proposed discipline violated his civil rights, including the First Amendment to the United States Constitution. The case was dismissed by a trial court; a decision that was upheld by the Fourth Circuit. With its opinion, the Fourth Circuit unequivocally made clear that balancing employment and educational needs in this context is properly done by school district officials – not reviewing federal courts.

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>
> *United States Court of Appeals, Fourth Circuit*

Prior to the case, the plaintiff had a good reputation teaching high school civics for more than seven years; however, in April 2013 during his AP government class he told his students: "There is a study out there that says men think about sex every six seconds, unless you happen to be sitting next to your girlfriend, and it might be more like four seconds." A female student, sitting next to a male student, became upset believing the comment was directed at her. The teacher later confronted her in an attempt to prevent her from going to the school principal.

The principal conducted an investigation, in which she confirmed the teacher's classroom comment and learned about an inappropriate exchange the teacher had on Facebook: he commented on a shirtless picture of a male student, in part asking the student if he was trying to join the North American Man-Boy Love Association (what the Court recognized as an advocacy group for pedophilia and pederasty). Further investigation revealed additional inappropriate classroom comments and social media activity made by the teacher during and after school hours. The teacher admitted to much of the misconduct.

The newly hired school superintendent recommended that the teacher be terminated. An independent administrative hearing found that the evidence did not warrant the teacher's dismissal, and he was consequently reinstated at another institution. The teacher then asserted that his recommended discipline had been the result of his political campaigning for opponents of a North Carolina House of Representatives member. Following this, the teacher brought the following claims against the school board, the superintendent, the principal and the representative: (1) First Amendment retaliation; (2) civil conspiracy; (3) North Carolina constitutional violations; (4) intentional infliction of emotional distress; (5) tortious interference with contract; and (6) malicious prosecution. The trial court dismissed all counts.

On appeal a Fourth Circuit panel unanimously affirmed the trial court's decision analyzing each claim in detail under the appropriate legal doctrines. While discussing the First Amendment claim, the Court wrote: "Ultimately, [the teacher] asks this court to invade the realm of local administration of school systems reserved to the states by the Tenth Amendment. We decline to do so. It is difficult to fathom how a school and its administrators could be liable for investigating and taking disciplinary action for the legitimately inappropriate behavior to which [the teacher] has admitted in this case."

Significantly for public education administrators, Judge J. Harvie Wilkinson, III wrote a concurring opinion which both supported his colleague's reasoning on the legal issues and eloquently described the challenges faced by public education administrators in dealing with delicate personnel matters in the social media era:

"I am pleased to concur in Judge Thacker's fine opinion. This case presents a school system personnel problem of the sort that occurs in hundreds, if not thousands, of school systems across the country every day. Here the plaintiff, a teacher, allegedly singled out two students' sexual proclivities in front of their entire AP Government class, driving the young woman involved to tears and the woman's mother to complain to school administrators.

Of course school administrators looked into it. It would have been a dereliction of duty not to do so. Their investigation revealed further inappropriate statements the teacher made to a student on Facebook, speculating about the student's possible membership in the North American Man-Boy Love Association. Whether all this conduct merited a reprimand, suspension, or termination is well within the administrators' discretion. For their efforts, they were hit with this litigation, which has been going on for over three years and in which the joint appendix alone has swelled to over 1200 pages.

"It is high time that the federal-state balance in this area be restored...Federal judges otherwise risk becoming unnecessary chefs in an overcrowded kitchen..."

J. Harvie Wilkinson, III, United States Court of Appeals, Fourth Circuit

I am unable to detect the slightest scintilla of educational benefit from all the churning in this lawsuit. In fact, it has drained the time of educators and the resources of a school district already burdened, as most districts are, with the steep compliance costs of federal regulation. Far be it from me to entertain the quaint notion that the efforts of educators should be spent on education, but that was assuredly not where this lawsuit directed them.

I do not think any section 1983 suit should evince such a profound lack of faith in the ability of local school systems to address their own personnel issues. There are teachers, parents, principals, superintendents, school boards, and state courts and legislatures all engaged in that task. By and large, they do a fine job and draw upon community input, not just courtroom arguments.

Education has long been a matter of paramount state and local concern. While federal authority has sometimes played a crucial role, school systems have come a long way since the unlawful and immoral practice of racial segregation left federal courts with no choice but to intervene. It is high time that the federal-state balance in this area be restored, and that litigation be viewed through the prism of the progress states have made and their rightful role in our constitutional structure. Federal judges otherwise risk becoming unnecessary chefs in an overcrowded kitchen, without the educational understanding or the community involvement required to achieve a palatable outcome."

Arguably, Judge Wilkinson's recognition of the challenges faced by educators is rarely conferred. It is a reminder of the important role principals play in the lives of students by managing those who interact with and instruct them daily.