

Outline

I. Four Levels of Law

A. Federal Level –

1. Constitution 10th Amendment (aka the Reserve Clause) means that education is a State responsibility
BUT States can not
2. Violate Due Process (Constitution 14th Amendment)
3. Engage in Hiring Discrimination (Title IX of Education Amendment and Title VII of the Civil Rights Act). These federal measures prohibit discrimination in interview questions related to race, creed, marital status, sex, religion, age, national origin, physical or other handicaps

B. State Level –

1. Ohio Code – example provisions; Teacher Licensure Standards, Good Moral Character, Coaches can be non-certified personnel
2. Fair Employment Laws – accurate application by applicant

C. Local Level –

1. Your Teaching Contract and/or Union Collective Bargaining Agreement
2. School Board Policy Statements

D. Court Decisions

II. Learners' Rights and Responsibilities (from in loco parentis to student as citizen)

A. Education is a Right, not a Privilege – students must

- 1. attend school (not a PUBLIC school)**
- 2. behave (i.e. follow the rules) or be they can be removed**

B. If/when removed, students must be given Due Process (Goss vs. Lopez, 1975). This applies if the student is deprived of a fundamental liberty or property right (example – suspension)

- 1. Substantive Component – rule broken must not be vague; impartial tribunal hearing; know identity of witnesses; evidence based decision.**
- 2. Procedural Component – rules distributed (start of year, enrollment); written charges; sufficient time allowed for defense; student represented by legal counsel; decision made in timely manner; right of appeal.**

C. Basic Rights

1. Freedom of Speech/Expression – armbands Tinker vs. Des Moines 1969 Vietnam War; no vulgarity; no threats; How about personal appearance and dress codes (consider health, safety, discipline)

2. Freedom of Conscience – flag, religion (students may pray), ideas in class; is the content or activity (e.g., dancing, sex education) are these subjects essential for citizenship and/or ensure effective school operation

3. Freedom from Unreasonable Search and Seizure – (not probable cause, but reasonable suspicion has been the guideline in schools); consider privacy and intrusiveness (locker, desk, purse, strip; consider potential danger; consider reliability of information; consider age/gender of student

4. Freedom from Harassment – administrator to student, teacher to student, and student to student

5. Rights Related to School Records – Family Educational Rights and Privacy Act – parents and guardians have access; students 18 and over

6. Special Rights for Learners with Disabilities – legal requirement that school districts pay for “related services that help support the education of learners with disabilities” (special equipment, personnel)

III. Teachers' Rights and Responsibilities

A. Initial Teacher Certification or Licensure. Each State sets the regulations concerning the qualifications of those who will be allowed to teach in its schools. For example, states usually have requirements in these areas:

- i. Degree**
- ii. Completion of an approved program**
- iii. Pass a licensing exam or series of exams**
- iv. Be of good moral character**

B. Continued Employment involves maintaining licensure. For example, states usually have requirements in these areas:

- i. Renewal**
- ii. Upgrading**
- iii. Adding Endorsements**

C. Licensed Teachers may be dismissed for cause. Having Tenure does not protect you from dismissal; Having Tenure means you may request a process to determine if you are to be dismissed. Major reasons for being dismissed include:

- 1. Incompetence (failure to teach);**
- 2. Incapacity (heath, age);**
- 3. Insubordination**
- 4. Immoral Conduct**
- 5. Criminal Conduct**

D. Legal Obligations. You may or may not be dismissed for failure to meet a legal obligation, but you can certainly be sued. (see next section on Legal Obligations)

E. Legal Obligations continued

1. Legal responsibility to Report Child Abuse – failure to do so can lead to both criminal and civil penalties; a high level of suspicion is not necessary before reporting it; check your Board Policy to see to whom you are to report your suspicion.

2. Legal responsibility to act in a Professional Manner – failure to do so is called negligence;

i. Three types of negligence:

1. *Malfeasance* – You act with the intent to harm someone. (Example: excessive discipline – by the way, corporal punishment is legal, Ingraham vs. Wright 1977) – You make statements of slander (spoken) or libel (written)

2. *Misfeasance* – You act unwisely or without proper safeguards when there is foreseeable harm (Examples: failure to warn; dangers objects in room – i.e., scissors)

3. *Nonfeasance* – You fail to act when there is a duty to do so. Examples: failure to discipline (you fail to stop a fight) or failure to supervise (you send a child into the hallway)

3. Legal responsibility to Not Engage in Sexual Harassment

F. General Teacher Rights

1. Academic Freedom To Teach

- i. To be didactic, but teaching must be within the course of study**
- ii. To give grades (clear standards, keep records, learner privacy)**
- iii. To bring in outside materials within the copyright law (tests of brevity, spontaneity, cumulative effect)**

2. Exercising Person Freedom Within Schools guaranteed by Constitution – freedom of association, freedom of conscience, freedom of speech, freedom of religion (but these freedoms can be limited if by practicing them you are interfering with the state’s interest in educating children – wearing religious dress, for example implies the school supports that religion). – teachers have a right to their beliefs, but they have no right to require others to submit to their view

3. Lifestyle and Conduct Outside School – courts have generally held dismissal is justified if the conduct of a teacher poses a danger to learners or in some way interferes with their effectiveness in the classroom (teacher poses nude in Playboy - publicity is a factor) – charges involving a minor are especially likely to result in dismissal decisions

4. Professional Issues – right to collectively bargain, right to strike (the rules vary from State to State)

5. Final Thought –

Be sure to carry liability insurance (through teachers union)