Basic Principles of Education Law
Topics To Be Discussed

- Student rights:
  - 1st Amendment (Speech & Religion)
  - 4th Amendment (Privacy Rights)
  - 5th and 14th Amendments (Due Process Rights)
  - Mandatory Reporting
  - School Liability (Law of Negligence)
  - Teacher Rights
  - SEED
  - Teacher Tenure/Collective Bargaining
  - Student Records
  - School Funding/Districting
  - General/Miscellaneous Provisions
Disclaimer

- This presentation is not intended as a substitute for legal advice, and does not constitute the creation of an attorney-client relationship between the speaker and anyone else who is present or who reads it.
- This presentation covers introductory concepts only. It is educational, and not intended to address any actual dispute or cause of action. Consult an attorney for advice related to real world problems as they arise.
- The law can change. When in doubt about any issue, check with a union rep, administrator or attorney to protect your legal rights.
Background

- Education Law is fundamentally a creature of local (state law) under general principles of American Federalism.

- What about IDEA and FERPA? Sometimes, Congress makes federal law to regulate issues that touch on concepts of civil rights.

- What about NCLB? This is done pursuant to the Congressional power to tax and spend.

- State authority over the educational process derives from the common law notions of parens patriae, meaning that the state is legal parent to all persons and can legislate for the common welfare, and *in loco parentis*.

- So why are so many of these cases from the U.S. Supreme Court? *In loco parentis* vs. *Bill of Rights*. 
do you know my rights?
Student Rights

- In 1943, the Supreme Court first addressed the issue of student rights.
Right To Attend School

- All people who reside in the district are entitled to a FAPE.

- This applies to undocumented children of aliens and homeless persons.  
Student Free Speech Rights

- **Student generated speech:** is permissible unless it disrupts the educational process. This is the famous “black armband case-” students wear black armbands to protest war in Viet Nam. (*Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)).

- **Exception to Tinker:** speech that is patently vulgar. *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986).

- **School Sponsored Speech:** If the speech occurs in a forum or on a platform sponsored by the school (newspaper, school play, student council elections, etc.), then the school has very broad discretion to regulate the speech based upon “legitimate pedagogical concerns.” *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260
Tension Between Free Speech and Educational Objectives

- Disentangling legitimate free speech concerns from the valid educational mission of the school could be tricky. What if a student wore a t-shirt to school that says “Legalize Marijuana?”
Does the speech disrupt the learning environment?

No

Is the speech patently vulgar on its face?

Yes

Speech can be regulated by the school (*Tinker*).

No.

Does the speech occur in a school sponsored forum?

No

Speech is protected by the 1st Amendment (*Tinker*).

Yes

Speech can be regulated to achieve any valid educational purpose. (*Hazelwood*)
Small Group Discussion Opportunity

Consider the following hypothetical: a student creates a website, maintained on a private server in his basement. It lampoons his school district, saying that his assistant principal “supports book burning, is a spokesman for Viagra and engages in sex with livestock.” The student is suspended. He files a lawsuit for violation of his 1st Amendment rights. Predict how the court will decide the case, and explain your rationale.
Answer:
Off Campus/Internet Speech

“school authorities ought to be accorded some latitude to regulate student activity that affects matters of legitimate concern to the school community, and territoriality is not necessarily a useful concept in determining the limit of their authority.” (2nd Circuit).
Student Internet Speech In CT

- When will Courts allow schools to discipline students for offensive internet postings? Two conditions must be satisfied:
  - Must be reasonably foreseeable that an administrator could see the posting;
  - Must create a risk of substantial disruption to the school’s operation or mission.
- Posts that threaten a teacher’s life or invite people to “call the Superintendent and piss him of some more” have been held, by CT Courts, to create such risk. Doninger v. Niehoff, 527 F.3d 41 (2d Cir. 2008).
- Electronic bullying, student to student, can be regulated.
Discussion Opportunity

- Student creates fake profile for her principal on MySpace, containing extreme vulgarity suggesting the principal wanted sex with children. The school suspended her. Student sues for violation of the first amendment. What is the result?
Result
When can a teacher sue for Defamation?

High standard to meet. Teachers in CT are “public officials.” Teacher must prove:
- False statement of fact (not opinion)
- Harmful to reputation
- With malice on the part of the speaker.
Qualified Immunity

- Free Speech Law is complicated.

- School officials have qualified immunity with respect to all decisions that were not reckless or arbitrary.
Free Exercise of Religion

- **Wisconsin v. Yoder**

- Amish children do not have to attend school beyond the 8th grade.

- The Court’s ruling is narrowly tailored to the special circumstances of the Amish.
Religion in the Schools

- Basic rule is the “Lemon Test.” Gov’t action with respect to religion in schools is permissible if: a) it has a secular purpose, b) does not advance or inhibit religion, and c) avoids excessive entanglement between gov’t and religion. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).
Survivors of the *Lemon* Test

- Gov’t reimbursement of transportation expenses for public and private school students.
- Gov’t pays for textbooks to be used in parochial schools.
- Tax deductions for tuition paid to any private school.
- Voucher programs
- (But no reimbursement of actual tuition to parents who pay tuition to parochial schools).
Practical Concerns

- Use of school facilities outside of school hours: cannot treat a religious group differently than a non-religious group. If you rent to the Rotary Club, must rent to the church. *Lamb’s Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993)

- School clubs: don’t have to be accommodated, but if one is, then all must be. Equal Access Act, 20 U.S.C. Sec. 4071-4074.

- Religious symbols: ok if they don’t proselytize or advance any one religion (i.e., multiple religious songs at holiday concert ok). *Florey v. Sioux Falls School District*, 619 F. 2d 1311 (8th Cir. 1980), cert. denied, 449 U.S. 987 (1980).

The Law Of Search and Seizure In Schools

- Students have 4th Amendment rights in schools, but these rights are not as robust as they would be elsewhere.
Standards

- “Probable Cause-” facts make it likely that relevant evidence will be obtained.

- “Reasonable Suspicion-” facts support a reasonable, proportional exercise of authority to keep community safe.
Searches Conducted By School Officials

School officials can conduct a warrantless search of a student or a locker based upon “reasonable suspicion.” This is a lower threshold than the “probable cause” standard. But:

- The search must be reasonable at its inception

**Note:** if the police act on their own, then a warrant is required.
Safford Unified School District v. Redding

- Principal conducts strip search of a 13 year old female student after finding contraband (knives, painkillers) on her person and effects.
- Court says search was invalid. Extraordinary conditions were not present. *SAFFORD UNIFIED SCHOOL DISTRICT #1 et al. v. REDDING, Slip Opinion No. 08-479 (2009).*
When is a search valid?

- Administrator should be able to identify WHAT she is searching for
- Must be a link between the observed behavior and the suspected infraction (suspicious in the “right way.”)
- Tips from students are valid if based upon first person knowledge; anonymous tips are not.
- “Unexpected finds” can be used to discipline the student.
- Search must be minimally invasive and logical. Same standards apply to student’s effects (lockers, bags, cars, etc.) as the Student’s person.
- Conn. Gen. Stat. Sec. 54-33n allows school officials and police to search lockers when TLO standard has been met.
Remedies

- “Exclusionary Rule” not strictly applied to school disciplinary proceedings.

- But violations of the 14th Amendment can lead to a suit for money damages under 42 U.S.C. Sec. 1983.
Drug Testing and Related Concerns

- Drug tests are considered to be “searches” of one’s person. Any requirement that a student submit to a drug test must satisfy the TLO “reasonable suspicion standard.”


- And all students can be required to take a breathalyzer test on the way into the prom.

- Drug sniffing dogs can be used on lockers, but not people (unless and until reasonable suspicion accrues).

- Metal detectors are ok, if the circumstances in the particular district would justify them.

- Electronic surveillance of public areas is allowed.
Can You Search A Student’s Cell Phone?

- Unsettled area of caselaw.

- Never good to search cell phone without reasonable suspicion.

- Some jurisdictions have held that you can never search a cell without a warrant.
Use of Force?

- Teacher may use reasonable physical force upon a minor entrusted to his/her care when he/she reasonably believes it necessary to:
  - Protect anyone from immediate physical injury
  - Obtain possession of a dangerous instrument or substance
  - Protect property from physical damage
  - Restrain said minor or remove said minor to another area to maintain order
- C.G.S. Sec. 53a-18
Records of Threats/Assaults on Teachers

- If student assaults teacher in performance of school duties, and teacher files written report with principal, principal MUST notify the police.

- Admin. Cannot interfere with a teacher’s right to report threats of violence or actual assaults to police. C.G.S. Sec. 10-233g.
Discussion Opportunity

- You are in the hallway and you see two students engaging in a suspicious transaction (exchanging a tin foil packet for cash). You should:
  - A. Detain them and search them
  - B. Ask them to identify themselves and accompany you to the office. If they refuse, take their picture with your cell and follow them, trying to gain the attention of administration on the way
  - C. Ignore them
  - D. Lecture them about the Confucian ideals that they should follow.
Law On Bullying

- Schools must develop prevention and intervention strategies;

- Requires schools to investigate written reports of suspected bullying

- Requires schools to identify the appropriate school personnel responsible for taking a bullying report and investigating the complaint.

- Specifies that each school must invite all parents of students who commit bullying acts and all parents of bullied students to attend at least one meeting.
Bullying

“Bullying” is:

- An overt act by a student or a group of students directed against another student;
- that causes the victim to feel harassed, humiliated or intimidated;
- while on school grounds, at a school-sponsored activity or on a school bus,
- *more than once against any student during the school year.*
Cyber-Bullying?

- Any act of bullying through the use of the Internet, interactive and digital and digital technologies, cellular mobile telephone or other electronic device.

- Schools must investigate and respond to this.
Schools Must Actively Respond

- Must adopt a “safe school climate plan.”

- Must respond to any act of bullying, wherever it occurs, if it creates a hostile school environment, infringes on student rights or disrupts the educational process.
Mandatory Reporting

- Children have a right to be protected against abuse or neglect.
- CT law requires certain people to report cases of abuse or neglect to DCF (Department of Children and Families).
Specific Rules on Mandatory Reporting

- School employees (teachers, principals, social workers, guidance counselors, psychologists, paraprofessionals) are “mandated reporters.”
- Each school district must adopt a policy concerning reporting of suspected abuse or neglect. Conn. Gen. Stat. Section 17a-101i(e).
- Check your handbook for this policy, or ask an administrator.
- It is legally impermissible for such policies to impede the statutory reporting requirements that are discussed on the following slides (i.e. not allowed to require an “internal review process) prior to reporting.
Reporting Rules

- Are triggered by a “reasonable cause to suspect or believe” that a child is being abused or neglected.
- Mandate an oral report, by telephone or in person, to DCF or the police, within 24 hours of the onset of the reasonable cause.
- Mandate a written report to DCF or the police, with a copy to the Superintendent of Schools, within 48 hours of making the oral report.
- DO NOT require an independent investigation by the reporter to verify the reasonable cause – that responsibility belongs to DCF.
- Confer immunity from liability, if abuse did not actually occur, as long as the reporter acted in good faith.
- Confer immunity from penalty if failure to report was in good faith.
- Impose a fine for failing to report.
Contents of Report

- Name & address of child and parents/guardians
- Age and gender of child
- Nature, extent, approximate date and time of alleged misconduct
- Information about any known examples of prior misconduct (to the child or the child’s siblings)
- How the reporter came to learn about the alleged misconduct
- Name of alleged malefactor
- Actions taken, if any, to treat the child.
Anonymity for Reporter?

- Unless and until required to do so by subpoena during litigation, your name will not be disclosed to anyone.
DCF Contact Info

◆ 1-800-842-2288, or the police.

◆ Written report = DCF Form 136, which can be accessed at:

◆ www.state.ct.us/dcf/HOTLINE.htm
Student Discipline

◆ General principle: Rules must be reasonably related to legitimate interest (deference).

◆ Special case: If a rule infringes upon a constitutional right, it must be justified by a compelling state interest and it must be tailored narrowly to achieve that interest (strict scrutiny).

◆ Discipline: Can be imposed for conduct that (1) violates a publicized rule of the board of education, (2) endangers persons or property, (3) is seriously disruptive of the educational process.

◆ Suspension: Exclusion up to ten days. Informal hearing before administrator required: (1) notice of charge(s); (2) opportunity to explain.

◆ Expulsion: Exclusion over ten days up to one calendar year. Requires formal hearing before the board of education, with three affirmative votes to expel.
Student Discipline

- Alternative educational program: Required for students to age 18. Not required for students 16 and older if (1) they have previously been expelled, or (2) conduct on school property involved sale or distribution of drugs or possession of a deadly weapon, dangerous instruction or martial arts weapon.

- Mandatory Expulsion: Superintendent is required to recommend and board is required to expel if conduct (1) on campus (or at school-sponsored activity) involves possession of firearm, deadly weapon, dangerous instrument or martial arts weapon, (2) off-campus involves possession of a firearm (under federal law), or possession of and use in a crime of a deadly weapon, dangerous instrument or martial arts, or (3) on or off campus engaged in sale or distribution of controlled drugs.
Student Discipline

- Off-campus: Suspension or expulsion permitted for off-campus conduct only if (1) conduct violates publicized rule of board and (2) it is seriously disruptive of the educational process, i.e., severely interrupts or impedes the day-to-day operation of the school.

- Special education: Expulsion is a change in placement. Manifestation determination required before expulsion is permitted. Even if expelled, student remains entitled to free, appropriate public education.
School Board Liability

- When can a school board, or you, be sued?
General Rules On School Board Liability

- Connecticut Statutes allow lawsuits against schools for *negligence*. Negligence may constitute a *tort*. Schools are *not automatically responsible* for every bad thing that happens to people on school grounds. Schools are only liable when they commit negligence. Negligence consists of 4 legal elements: duty, breach, injury and causation.
Establishing Negligence

- **Duty:** Schools have a basic duty to care for the safety of students while on school grounds, or when on their way to school. The duty includes physical supervision of students (the younger they are, the greater the duty). Schools have an over-arching duty to all on school property to keep them safe from unreasonable hazards.

- **Breach:** School (or employees) must behave in a way that is unreasonable (a jury would define this standard). This means failure to behave in the way that a reasonable person would behave given the same or similar circumstances. It is unreasonable to leave slick spills on staircases; it is unreasonable to allow a student to play with matches.
Establishing Negligence

**Harm:** The plaintiff must have suffered an actual injury.

**Causation:** The school’s actions must be the *direct* and *proximate* causes of the harm that was suffered. In other words, the plaintiff must prove that the school’s actions are the actual cause of the injury. In addition, the plaintiff must show that the injury was a reasonably foreseeable result of the conduct in question.
Other Causes of Action

- Schools or teachers can also be sued for:
  > Intentional or malicious acts;
  > Lawsuits Authorized by Statute
  > Circumstances in which failure to act will subject an identifiable person to imminent harm.
Statutes Enabling Claims

- CT Statutes allow lawsuits for personal injury that occurs on school grounds during school hours, or on a motor vehicle owned or leased by the school.

- Other relevant law – FERPA, IDEA, ADA, 42 U.S.C. Sec. 1983, etc.
What About “Student To Student” Misconduct?

- The “imminent harm” exception to sovereign immunity (number 3 above) has been liberally construed by the CT Supreme Court.

- One elementary school child tripped another in the hallway during recess. The two were unsupervised. The Court held that the injured student could sue for damages. *Purzycki v. Town of Fairfield*, 244 Conn. 101 (1998).

- Waivers cannot defeat claims for liability. But permission slips may operate to establish “assumption of risk.”

- Cannot sue for mere negligence between student athletes in sporting contest or gym class.
Indemnification

- School Boards are required to indemnify employees against civil liability, as long as the alleged conduct took place within the valid scope of the employee’s duties, and is not “wanton, reckless or malicious.”

- Even if the conduct is alleged to be “wanton, reckless or malicious, the School Board must defend the employee, but can recover attorneys’ fees if the allegations are proven true. Vibert v. Regional School District No. 10, 5 Conn, Ops. 302 (Superior Court, 1999).
Discussion Opportunity

- A teacher is engaged in a lesson on the Pythagorean Theorem. The Principal appears at the door and asks him to step into the hall for a moment to discuss the well being of a student. While the teacher is in the hallway, one student throws a paper glider. The sharp edge of the glider hits another student in the eye. Can the student who was hit make a viable claim for damages?
Answer
Discussion Opportunity

- Student walks out of school at end of school day and stands in the street in front of the building. It is a neighborhood with a strong history of gang violence, and gang members frequent the area. School prohibited wearing hats or gang colors and provided anti-gang counseling. Five minutes later he is shot by a gang member. Student was mistaken for a member of a rival gang. Teachers were standing just inside the front door of the school directing students to buses. Teachers usually stand outside but it was raining. There had been no indication, during the school day, of impending violence. Student sues for negligent supervision. What is the result?
Answer
Exemption for Administering Meds

- Teachers cannot be sued for ordinary negligence while administering a necessary prescription to a child during course of school activities.

- C.G.S. Sec. 10-212a.
Teacher Tenure

- **Teacher:** (1) Certified employee, (2) employed for at least 90 calendar days, (3) in a position requiring certification.

- **Tenure:** Status giving teacher right to hearing and obligating employer to establish cause for termination of contract.

- **Non-tenure:** Status for first 40 school months (excludes July and August) unless subject to “fast track tenure.”

- **“Fast track” tenure** Teachers who previously had tenure in Connecticut within preceding five years achieve tenure after 20 school months.

- **Leave:** Leave > 90 school days interrupts tenure accrual.
Tenure Continued

- Layoff: Laid-off teachers resume tenure accrual if reemployed by same district within succeeding 5 years.
- Non-renewal: Right of school district to notify non-tenure teacher in writing prior to April in any year that contract will not be renewed for the following year.
- Contract termination: Grounds are (1) inefficiency or incompetence (as shown through evaluation plan), (2) insubordination against reasonable rules of the board, (3) moral misconduct, (4) disability as shown by competent medical evidence, (5) reduction in force, and (6) other due and sufficient cause.
- Impartial panel: Tenure teachers may elect hearing by impartial panel; non-teachers may do so only if superintendent agrees.
- Findings of fact: Panel’s findings of fact are binding; recommendation on contract termination is not (if reasonable person could find grounds for termination based on facts found).
Evaluations Plans

- Must include, at a minimum, observed strengths, areas needing improvement and strategies for improvement. Must be based on CCT.

- Tenured faculty usually get a “remediation plan” to improve deficiencies in instructional competence.

- Right of access: You have a right to see your file. The public does not.
New Evaluation Law – “SEED”

- Based on Danielson, Marzano, etc.

- 50% of teacher rating comes from student achievement outcomes
- 50% comes from observed classroom practices
- Teacher goals set in collaboration with administration
- 10-15% of total rating may factor in parent/student feedback (but district can elect “whole school” feedback).
What Does Tenure Confer On You?

- The right to due process before termination. Due process means the right to be:
  - Fully aware of the evaluation process
  - Fully aware of the observation criteria
  - The right to a post-observation conference
  - Follow-up observation visits
  - Time for remediation
  - Follow-up reports
Moral Misconduct?

- What does this mean?
- Superintendent has a heavy burden to satisfy if this is the reason for termination.
- Dismissal for moral misconduct is specifically allowed by CT Statutes and the CT Supreme Court.
- A clear cut definition is not available.
- The CT Supreme Court has held that criminal conduct (and especially felonies) would trigger this provision, as would child abuse.
Suspension

- Teachers can be suspended with or without pay for insubordination. As long as due process is allowed, the decision cannot be challenged in Court.

- In cases of serious allegations, Teachers can be suspended with or without pay pending an investigation.
Revocation of Certification

- Child abuse committed by a teacher results in automatic revocation of the teacher’s license.
- Abuse includes inappropriate physical contact or inappropriate relationships.
- Other statutory grounds for revocation:
  - Obtained through fraud
  - Consistent dereliction of duty
  - Professionally unfit
  - Conviction of a crime involving moral turpitude, or a crime that, in the opinion of the State Board, would undermine public confidence in the teaching profession
  - Cheating on state exams
  - Other due and sufficient cause
Other Due and Sufficient Cause?

◆ A residual, catch all category.

◆ Generally means failure to adhere to established professional standards (i.e., Code of Professional Responsibility for CT Teachers).
What Should You Do If You Are Disciplined?

- Inform your local union President.
- Ask to speak to a building rep; ask them to accompany you to any meetings with administration.
- You have certain rights pursuant to the “Weingarten Rule.”
Understanding the Weingarten Rule

- Employee has right to be accompanied by union rep whenever he/she reasonably believes his/her job security is at issue. \textit{NLRB v. Weingarten} (1975).

- Teacher must request it.

- Employer may NOT: require the Rep. to remain silent at any point in the meeting
Weingarten

- Weingarten also applies to any meeting convened to review an unfavorable evaluation

- Does NOT apply to run of the ill meetings or meetings informing teacher of discipline to be imposed.
Collective Bargaining

- No right to bargain individually
- Must bargain in “good faith”
- Mandatory (wages, hours, employment conditions) vs. permissive (school calendar, evaluation plan) topics
- Past Practices – may bind either side, even if inadvertent
- Teacher Grievance Procedures
Student Records

- The Family Educational Rights and Privacy Act (FERPA) confers rights with respect to student records. FERPA is also called the “Buckley Amendment.”

- FERPA guarantees parent and student access to educational records, and also protects the student’s right to confidentiality with respect to those records.
FERPA

- An “educational record” is one that directly relates to a student and is maintained by a school. There is a “sole possession” exception. Any record that is in the “sole possession” of a teacher (i.e., a lesson plan or teacher notes) – and not ever filed with the school – is not discoverable pursuant to FERPA.
- Parents (including non-custodial parents) have a right to access educational records.
- Schools must protect the confidentiality of these records. Any educational record is privileged. Teachers must take care in processing student information, grades, or any narratives about student performance. E-mail is a special zone of concern – be prudent. (Exceptions: communications to other teachers who work with the student, parents, in health emergencies, with parental consent, upon transfer, in response to a subpoena).
Practical Considerations

- Keep grades confidential (hand back papers in a discrete fashion; don’t let students see your grade book).
- Shred confidential documents.
- Be sensible about the use of e-mail – consider using initials only on the subject line and in the communication. Remember that E-mail is itself a record.
- Do not discuss student information in any public place where you may be overheard.
- Verify (as best you can) the identity of callers before you discuss a student on the phone.
- Be sure to communicate with both parents in the event of divorce or separation.
- Do not answer inquiries about a student from reporters or other third parties.
Discussion Opportunity

- A teacher has designed a “peer review” activity in preparation for the CAPT test. Students work in pairs. They swap essays, evaluate each other’s work according to a state rubric, and provide each other with constructive criticism. The school feels that this practice represents sound pedagogy, and research shows that it is an effective teaching tool. A parent files a lawsuit, alleging violation of FERPA, since her son was forced to share his private work product with another pupil. What will the court decide, and why?
Answer
School Funding/Districting

- To what extent must the state provide equality of funding among school districts, and to what extent must demographic diversity within districts be engineered?
Funding Issues

- In 1977, plaintiffs in Hartford sued for alleged inequities in Connecticut’s formula for allocating money to the state’s school districts. As a result, the legislature modified the statutory scheme for apportioning money to school districts. The scheme has evolved several times. Today, “Educational Cost Sharing” (ECS) mandates that state aid is regulated based upon the financial ability of each municipality (poorest towns get the most state aid).  

School Segregation?

In 1989, plaintiffs in Hartford sued the state, alleging that the racial and ethnic composition of the schools in this state constituted *de facto* segregation (claim was brought pursuant to the CT. Constitution, as a federal claim would have required *de jure* segregation). This state of affairs, according to plaintiffs, violated their right to an equal educational opportunity.
Sheff v. O’Neill

- The Court held that racial and ethnic homogeneity violates the CT Constitution. In response to Sheff, the legislature enacted several remedial measures (inter-district magnet or charter schools; cultural diversity awareness programs; exchange programs).

In 2007, the U.S. Supreme Court prohibited assigning students to public schools solely for the purpose of achieving racial integration and declined to recognize racial balancing as a compelling state interest. Parents Involved in Community Schools v. Seattle School District No. 1, 127 S.Ct. 2738 (2007).
Discussion Opportunity

To what extent should race or ethnicity be considered when assigning students to public schools?
Teacher Rights

- Freedom of Speech: Protected if germane to a matter of public concern, and not excessively harmful to the operation of the school or the fulfillment of the school’s mission. *Connick v. Myers*, 461 U.S. 138 (1983). But NO protection for speech occurring in the performance of your job. (No right to your own curriculum or soapbox in the classroom.) Factors to be considered: need for harmony in workplace; time, place & manner of the speech; degree of public interest in the speech; whether the speech impedes other employees from performing their duties. *Roberts v. Van Buren Public Schools*, 773 F.2d 948 (8th Cir. 1985).

- Search and Seizure – same standard that applies to students (New Jersey v. TLO).

- Drug Testing: Conflicting Opinions. No clear national rule. Some courts say that the process is justified due to the important role that educators play in anti-drug policy. But one Connecticut Court upheld a teacher’s right to sue for a 4th Amendment violation after being forced to take a drug test. *Davis v. City of Hartford*, 4 Conn. Ops. 1321 (1998).

- CT Teachers are protected by the state’s “Whistle Blower Laws.”
Teacher Rights

Religious accommodations for teachers:

> Employers are required to reasonable accommodate an employee’s...religious observance or practice without undue hardship on the part of employees.” 42 U.S.C. Section 2000e(j).

> In general, being absent for a religious holiday is considered reasonable (but school may require unpaid leave). Ansonia Bd. Of Ed. V. Philbrook, 479 U.S. 60 (1986).
Free Exercise Rights for Teachers

- Can teachers wear religious garments or symbols, or exercise religious speech in school?
- Balancing test – rights or employee vs. rights of the school to avoid proselytizing.
- On the whole, the balance is struck in favor of the schools.
Relevant Cases

- A teacher in NY discussed his conversion with his class, mentioning “forgiveness, reconciliation and God.” The school can censure him, to avoid the impression that the schools promote religion.  

- A teacher in Oregon became a Sikh and started wearing white clothes and a turban. This violated a state ban on such conduct, and her license was revoked. The Court allowed it, under the *Marchi* rationale.  
  *Cooper v. Eugene School District No. 4J*, 723 P. 2d 298 (Or. 1986).
Legislative Responses


❖ But the Supreme Court struck down this law. Boerne, Texas v. Flores, 117 U.S. 2157 (1997).

❖ Connecticut’s legislature passed a similar law, Conn. Gen. Stat. Sec. 52-571b. (Bd. Of Ed. Can curtail religious speech only in compelling cases, in the least restrictive manner). In general, this supports teachers who wish to wear religious garb.

❖ But cases construing this statute have not really provided any great victories for employees.
A teacher writes to a local newspaper, criticizing the Superintendent and the School Board for the manner in which they pursue and implement fiscal policy. Then, he writes a letter to his colleagues, urging them to engage in a “sick-out” during final exams. The teacher is terminated for publishing speech that impedes the district’s ability to run the schools. The teacher sues for damages. What will the court decide, and why?
Answer
Discussion Opportunity

A history teacher discusses the war in Iraq in class after administration tells him not to. He is disciplined. Can he sue for violation of his first amendment rights?
Answer
General/Miscellaneous Provisions

◆ **School requirements**
  ◆ 180 days of actual school sessions
  ◆ 900 hours of actual instruction
  ◆ Students between the ages of 5 and 21, or until graduation

◆ **Parent/guardian requirements**
  ◆ Attendance required between 5 and 18
  ◆ Waiver possible for ages 5, 6, 16, 17
  ◆ Private school
  ◆ Home instruction
  ◆ Dual enrollment is allowed, but need not be permitted

◆ **Curriculum**
  ◆ School authority
  ◆ Excusal:
    ◆ HIV instruction
    ◆ Family life education
    ◆ Firearm safety

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