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Selecting Instructional Materials

By Charles J. Russo, J.D., Ed.D.

Educators must be consider appropriateness as they select instructional materials and subjects for their classes.

A recent dispute from Columbus, Ohio, that made some national headlines dramatically illustrates what can happen to teachers who fail to preview materials and consequently show inappropriate films or use other media unsuited for student instruction.

A long-term substitute teacher who was placed in a high school Spanish class showed *The ABC's of Death* to students on multiple occasions even though she failed to preview its content (Futty 2015). The movie depicted one method of death for each letter in the alphabet, along with graphic portrayals of sex and violence. In an unreported state trial court case, the substitute was convicted of disseminating material harmful to juveniles, sentenced to 90 days in jail, and had her Ohio teaching license revoked.

The outcome of that case was more dramatic and unusual than in similar cases. Even so, this incident demonstrates that educators in K–12 schools can lose their jobs if they fail to use their discretion and comply with board policies in selecting appropriate materials and subjects for their classes and previewing materials before using them in instructional settings.

Movies, Videos, and More

As evidenced by a well-known case from Kentucky, courts are generally unresponsive to claims that teachers have rights to academic freedom when they are dismissed for showing or using inappropriate materials.

The Sixth Circuit affirmed that a school board could dismiss a tenured high school teacher with 14 years of experience for insubordination and conduct unbecoming an educator for showing *Pink Floyd: The Wall* on the last day of the academic year—considered a noninstructional day (*Fowler v. Board of Education of Lincoln County, Ky.*

1987a, 1987b). The film includes violent and sexually suggestive content.

The teacher, whose subject area was not identified, did instruct a student who had seen the movie to edit out parts unsuitable for viewing at school by attempting to cover the screen with an 8½- by 11-inch file folder when she left the room. Noting that the teacher never previewed or discussed the film with students or administrators and that it lacked an educational purpose, the Sixth Circuit rejected her claims that she had academic freedom and that she engaged in protected First Amendment speech.

Conversely, in a later dispute from Kentucky, the Sixth Circuit refused to apply the case when a fifth-grade teacher was dismissed for inviting an actor and others to her classroom to give presentations on the environmental benefits of industrial hemp (*Cockrel v. Shelby County School District* 2001, 2002). Industrial hemp is an illegal substance in the commonwealth. The actor spoke with the students about his opposition to marijuana use and his support of the use of industrial hemp as an alternative to increased logging efforts. The court ruled that the school officials violated the teacher's First Amendment rights—that the teacher engaged in protected free speech by inviting the actor to speak with her class, and that her employment would not have been terminated but for having done so.

A federal trial court in Illinois rejected the claim of a nontenured English teacher who showed the R-rated movie *About Last Night* to her third-year high school students (*Krizek v. Board of Education of Cicero–Stickney Township High School District No. 201, Cook County* 1989). When the board chose not to renew the teacher's contract, the court agreed that insofar as education officials had the duty to ensure that

curricular content reflected community values, her claims were without merit.

The Fifth Circuit reached the same outcome in a case that year in Texas (*Kirkland v. Northside Independent School District* 1989). Reversing an earlier order in favor of the educator, the court upheld the nonrenewal of the contract of a probationary teacher because he used an unapproved reading list in his high school world history class. The court pointed out that although school officials provided the teacher with a supplemental reading list for his class along with guidelines to develop and amend it, he ignored those and failed to obtain the requisite administrative approval in selecting his own materials. The court concluded that the board had the authority not to renew the teacher's contract.

A case from Missouri addressed a controversial student-created video. The Eighth Circuit upheld the dismissal of an English teacher with more than 20 years of experience who permitted students to make a video that included more than 150 uses of profanity and racial slurs (*Lacks v. Ferguson Reorganized School District R-2* 1998a, 1988b, 1999). Recognizing the school board's interest in keeping profanity out of classrooms, the court deferred to the authority of education leaders to set appropriate instructional standards because the teacher persistently violated board policy that prohibited the behavior students engaged in.

The Fourth Circuit, in a case from North Carolina, upheld the transfer of an award-winning high school drama teacher-coach for directing a controversial play about a woman and her daughters after some members of the community complained that the subject matter was objectionable (*Boring v. Buncombe County Board of Education* 1998a, 1998b). The court acknowledged that the play had been edited

by the principal for content with the approval of the superintendent, and the students' performance won a prize at a statewide competition. Even so, insofar as students acted out the scenes in another class as part of the curriculum, the court decided that the teacher could be moved to a position in a middle school. The court reiterated the general rule: the teacher lacked academic freedom to act as she did.

Four years later an appellate court in Louisiana reached a like result in affirming that a school board had the authority to dismiss a tenured second-grade teacher for her use of poor judgment in allowing students to simulate sex acts in her classroom (*Spurlock v. East Feliciana Parish School Bd.*, 2004a, 2004b). The court explained that the board did not have to create a policy addressing every possible act of willful neglect of duty by teachers.

Instructional Methodology

A dispute arose in Pennsylvania over whether a school board could terminate the contract of a tenured teacher who disregarded directives from administrators to discontinue using a classroom management technique he developed (*Bradley v. Pittsburgh Board of Education* 1990). The Third Circuit agreed that the teacher lacked a constitutional right to use his own technique in the classroom, but he did have a First Amendment right to advocate the method and to criticize school officials. However, insofar as it was unclear whether the teacher was dismissed for creating his own methodology or in retaliation for his exercise of his First Amendment rights, the Third Circuit remanded the dispute to a trial court for further consideration.

In a case dealing broadly with classroom methodology, the Eighth Circuit resolved another employment case involving academic freedom (*Cowan v. Strafford R-VI School District* 1998). The court

affirmed an award of damages in the form of two years of pay, but not reinstatement, in favor of a second-grade teacher in Missouri whose contract was not renewed by a board that acted on its fear of the encroachment of New Ageism. The dispute arose after parents complained that the teacher presented each member of her second-grade class with a "magic rock" and a letter telling them that it would help them in whatever they did. The court observed that because the teacher was on a one-year contract, reinstatement was inappropriate because it was unclear whether she would have retained her position but for this incident.

Policy Recommendations

Local school boards, operating under the auspices of state education laws, not only have the authority to inform teachers about what curricula and subject matter they can teach but also can specify the instructional methodologies they may employ. Of course, teachers have some limited say in how they deliver instruction based on such differences as their teaching styles, personality differences, and educational backgrounds, but they must be careful in doing so.

Even if teachers have some degree of leeway in classroom performance, they must be aware of the delicate balance between following established curricula and veering off to instruct their students as they deem fit.

In seeking to ensure curricular control and uniformity in order to achieve district mandates, education leaders should develop policies about selecting instructional materials and methodologies and include them in teacher contracts, typically as a nonnegotiable topic of bargaining. Those policies should:

1. Make it clear that teachers who wish to depart from established curricula, instructional materials, or methodologies must obtain

prior written approval from the appropriate education leaders, typically at the building level. These types of provisions should include procedural safeguards that address how far in advance teachers must submit their written requests and whether they have rights to appeal if they are not permitted to employ the materials and strategies of their choice.

2. Specify that even if materials appear to conform to district and state curricular standards, teachers should never use them without first previewing them to ensure that they are age- and content-appropriate for their students.
3. Provide annual professional development sessions for teachers to discuss the limits of their ability to select and implement classroom methodologies.

Conclusion

As important as it is for teachers to do all that they can to challenge

their students intellectually, classroom educators must remember that their boards, and not they, have the final say in selecting appropriate instructional materials and methodologies.

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