Anson N. Carter

Senior Legal Seminar

Professor Donsky

Culmination Paper-First Draft

March 23, 2012

**The impact various forms of Freedom of Speech has on students and administrators in an Educational Setting**

The cases I have chosen for this assignment will provide you with a better understanding as to what a person would have to do in order to lose that right to their free expression. Additionally, I have chosen to diagnose this topic from two particular perspectives. The first set of cases that I review will deal with students’ rights and then I will follow that up with cases that approach this topic from a teacher/professors perspective. I will show that although a student and a teacher/professor are on separate levels in terms of the school structure, in the eyes of the law they are virtually treated the same in situations such as in the following.

The first case that I will use to analyze what our true level of freedom granted by the first amendment is *Board of Educ. of Monticello Cent. School Dist. v. Commissioner of Educ.*, 235 A.D.2d 734, 652 N.Y.S.2d 412 (3d Dept.1997). In this matter, a student named Josh Herzog was brought up on charges stemming from:

An obscenity-filled publication called the “Sub Station”. An article in the newspaper entitled “Jac of Hearts” called upon students, *inter alia,* to urinate on the floors, throw garbage in the courtyard, scrawl graffiti on school walls and smoke in the bathrooms. The article also noted that the student population at Monticello High School was almost 1,000 strong and that “[n]ot even the police can handle a crowd of this size.

 The publication “Sub Station” was not a school sanctioned paper. The student printed and distributed the paper despite any school policy that may have been in place to prevent students from acting in this way. Furthermore, based on the content of the article “Jac of Hearts” we can instantly tell that this article is more than just a student expressing a few ideas. Through his words he is hoping to incite several forms of behavior that would be detrimental to the well-being of the school. After a hearing on these occurrences took place, it was determined that the student should be suspended for five more days on top of the other five days that the Principal of his school had already proposed. The District Superintendent then upheld that ruling.

Josh was officially charged with conduct endangering the safety, health or welfare of others. Jeffrey and Miriam Herzog followed up with a lawsuit on behalf of their son. In their suit they stated that because the ruling was upheld by the District Superintendent, their sons’ First Amendment rights were violated. This is the ideal scenario to pose the question, “When exactly does a person’s speech go from being protected by federal law to then being subject to punishment from that same law?” The court held that the superintendents’ decision was the correct one and that Josh Herzog should be suspended for his actions the on school grounds. According to the ruling in this case, the court drew the line between free speech and unprotected speech when the language will “substantially interfere with the work of the school or impinge upon the rights of other students.”

 Similarly, the issue in the next case involved statements made in a newspaper distributed on school grounds. The main difference in this upcoming scenario was that the content being argued about was printed in the Staten Island Community College official newspaper. To shed some light on this point of view I researched the case *Panarella v. Birenbaum*, 37 A.D.2d 987, 327 N.Y.S.2d 755 (2nd 1971). This case is a consolidation of two cases where the main issue was the regulation of school papers in state funded colleges. The articles in question were named “The Catholic Church—Cancer of Society” and “From the Hart.” From the first article title alone, one can assume that its content would follow along those lines and you would be correct. That article went on to refer to the Catholic Church as a “holy mafia” and a “social leech” in terms of money. The “From the Hart” article took a more broad approach in attacking the Catholic Church and all that it represented. The issue in this case revolves around the nature of the publications in a school sanctioned paper and whether the author truly has full control over what they are allowed to say. Another key point considered was, did the papers stance on issues such as religion should be predetermined based on their funding. Since the states are funding the colleges and therefore funding the paper, should the paper be required to maintain the same level of neutrality that the government usually does in situations such as those. In coming to a decision the court considered this reasoning:

These newspapers have been established as a forum for the free expression of the ideas and opinions of the students who attend these institutions of higher learning. It has repeatedly been held that, once having established such a forum, the authorities may not then place limitations upon its use which infringe upon the rights of the students to free expression as protected by the First Amendment, unless it can be shown that the restrictions are necessary to avoid material and substantial interference with the requirements of appropriate discipline in the operation of the school.

This explanation is one that the courts seem to lean on a great deal when faced with these scenarios. As was proven by the ruling in the first case, harsh action is only taken when the expression of the individual causes some kind of disturbance within the school. In this situation the court ruled that the First Amendment protected the papers from censorship as it related to their articles on religion.

#  Now that I have shown you what truly constitutes free expression in printed form, the attention should be shifted now onto verbal statements. In the case of *Ansorian v.Zimmerman,* 215 A.D.2d 614, 627 N.Y.S.2d 706 (2nd Dept., 1995.), Rosette Ansorian brought a suit against one of her students because the student and her parents made some negative statements about her teaching ability. In addition to those statements, they also requested that she be removed as the teacher for their daughter. When deciding this case, the court said that the statements made by the respondents could be more classified as opinions rather than defamatory comments. Furthermore, they held that because their comments were accompanied by facts, the Zimmerman’s were not in violation of any law. The decision to dismiss the chargers was upheld.

#  Up this point, the cases that I have reviewed involved students’ rights to free expression while they are on school grounds. After those examples, we are now aware that a schools ability to limit a students’ expression is severely limited. That point was highlighted in the second casebecause of the extreme language used in the articles. It showed thateven though the language in the paper was controversial, it did not meet the standard for material that could be censored by law. At this point it is pretty clear how this law applies to students; now it is important to see how these same laws are applied to the instructors in an educational setting.

#  The first case referenced case to demonstrate the teacher/professors role in these situations is *In re Watt (East Greenbush Cent. School Dist.)*85 A.D.3d 1357, 925 N.Y.S.2d 681 (3 Dept., 2011.). In this case, a gym teacher named Bernard Watt was accused of inappropriate behavior involving two separate students. In the first instance, he was accused of making suggestive comments along with accompanying gestures towards a female student. He then followed that up by touching that individual in a sexual fashion. The second instance involved an additional statement that Mr. Watt made to a second student. The questionable statement came during a game of soccer when he said “hey, Hispanic kid, you run like you're running to the border,”

#  Naturally, you would say that his behavior towards the young female and his statement during the soccer game were unacceptable but the question here is: Are they legally protected statements? According to the courts’ following ruling, they were not. In order to determine whether these statements were legally protected, hearings were held to judge the actions taken by Mr. Watt. Ruling on his actions regarding both scenarios, the court said “Finding petitioner guilty of a charge of conduct unbecoming a teacher based upon this conclusion is rational, and is consistent with the state's public policy to protect minors from harmful sexualized conduct by teachers”. The hearings conclusion was that he was guilty of inappropriate sexual behavior as well as making inappropriate remarks about a student’s ethnicity. We can now see that teachers’ statements are judged harsher and are therefore subject to severe penalty in comparison to those made by a student. It is evident that the reasoning behind that idea stems from the thought that teachers are held to a higher standard due to their educational superiority. As a result of this case, petitioner was terminated from his employment.

#  Continuing down the path of teacher to student expression, we look at the case of *Rubino v. City of New York*, 34 Misc.3d 1220(A), Slip Copy, 2012 WL 373101(Table) (N.Y.Sup.,2012.). This case addresses the topic in a whole new way because of the integration of technology. We live in a time full of technological interaction and it is slowly making its way into the legal field. In this instance, Christine Rubino posted some negative comments on her Facebook related to taking her fifth grades class to beach a day after a child had drowned on their class fieldtrip to the beach. Those posts were done after the school day was over and while Ms. Rubino was at home. One of her Facebook friends who was also a teacher saw the post and informed the assistant principal of the school. As a result of a thorough investigation into this matter, it was recommended by a hearing officer that Ms. Rubino be fired from her job. The court held that although they did not condone the comments made by petitioner, there are several reasons why she should not be terminated from her position. The reasons they gave were as follows: She was employed for fifteen years with this department and had a clean record, the post were made after the school day was over therefore they did not directly affect her teaching and there was no evidence to prove that she would ever engage in conduct similar to this again.

#  In this paper, several different scenarios involving someone’s First Amendment rights within an educational setting were addressed. We see that students get the freedom to say what they want as long as it’s not detrimental to the schools well-being; while teachers have to walk a fine line when saying anything to a student. Our right of free expression is important to us and quite fittingly, the only thing that can stand in the way of that expression is the educational system that is was developed from.