

Secondary Lessons

The knot of legal issues can often be untangled by understanding a few common threads.

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Because you are a school leader, you already appreciate the legal concerns in the school environment, but given the morass of legal issues you may encounter, effectively applying school law is no easy feat. The following fundamental approaches and related commonsense principles, however, may help you meet the challenge.

Peel Back the Layers

Often in schools, administrators must contend with a seemingly endless stream of legal issues. Nevertheless, as an attorney, I have come to believe that most issues in school law can be categorized into a relatively manageable number of core legal areas: discipline, employment, harassment, privacy, and constitutional disputes (e.g., free speech, religion, etc.). Admittedly, this list is somewhat oversimplified and not all-inclusive. Even so, I have found that the massive knot of complicated legal issues can often be untangled by understanding the core areas of concern that persist in the school environment.

For example, a dispute over whether students can don Confederate flag T-shirts and a dispute over whether certain students can carry signs protesting war at school may seem different at first. At their core,

however, both situations stem from a key area of legal concern: constitutional issues—specifically, First Amendment guarantees of free speech and expression. Although the specific circumstances are likely to be different, the involved core issues are similar. If you recognize those connections, you can usually peel back the layers of a given situation to formulate an appropriate solution. (The next step is to learn as much as possible about the key areas of legal concern. This is much easier said than done. But learning the key doctrines that are associated with each area is a relatively easy way to begin.)

For example, some key legal tenets to know about the free speech and expression guaranteed by the First Amendment are:

- The US Constitution protects an individual's right to free speech and expression
- School officials cannot legally restrict speech merely because

it is unpopular or because they disagree with it

- In most cases, speech must substantially and materially interfere with the maintenance of an orderly school environment for it to be lawfully restricted by a school official.

Taking time to commit such tenets to memory will make it easier to later draw upon and apply necessary information and can help you devise legally sound approaches to deal with seemingly remarkable issues.

INSTINCT CAN TAKE YOU HALFWAY

Although I firmly believe that learning everything one can about relevant law is key to being an effective school leader, I also think that the main thrust of most laws derive from rational notions. Yes, the law is often complicated. But equally often, much of law jibes with the commonsense principles of right and wrong that most of us are familiar with. If a particular course of action doesn't seem right, it probably isn't.

That does not mean that your natural instinct will always be correct. There are portions of law that are completely counterintuitive. All the same, a sneaking suspicion that a certain decision could create legal trouble

Analyses in this column are intended to be informative, not definitive legal advice. School leaders should contact their districts' legal counsel for information about specific legal matters arising in their schools.

will usually be accurate. As a principal, you should trust your instincts to a reasonable extent and seek professional assistance when you are uncertain of exactly what the law requires.

SOME THINGS ARE NOT ABSOLUTE

Although most people are keenly aware of certain rights, they are not as aware of the qualified nature of some of those rights. For example, most people know that they have a right to free speech, but they do not know what kinds of reasonable time, place, and manner restrictions may limit that right within legitimate bounds of law. The reality is that there are limitations, caveats, and nuances related to almost all rights—and some obligations as well. Notably, the school environment is one in which it is especially common to see that legitimate government interests in educating and protecting children outweigh or otherwise trump rights that are, in fact, not absolute. Accordingly, it is important for you to know the various caveats associated with well-known rights.

For example, principals have an obligation to maintain a safe and secure school environment, but in doing so, they may not trample the legitimate rights of students and teachers. The due process requirements of giving notice and offering students (and their parents) the opportunity to be heard often come into play during discipline-related concerns. The same is true with similar controls, such as probable cause and reasonable suspicion in the case of a search and seizure.

In other circumstances, the legitimate interests of the school may outweigh the individual rights that belong to students and faculty members, such as the reasonable expectation of privacy. Nevertheless, circumstances often expose the limitations of such “reasonable” expectations, such as a school official’s suspicion that a student has a weapon in his or her possession and the legitimate interest in maintaining a safe and orderly environment.

Cut to the Core

Oddly, although things are not always absolute from a legal perspective, the core principles that underlie many rights and obligations frequently are. So when in doubt, focus on the base notional expectations of laws (e.g., ensuring fairness and equality) to lead you to a suitable end result. Particularly in situations that involve fundamental rights, the application of legal principles frequently requires balance. Justices and other adjudicators must balance opposing interests or weigh certain questions and concerns about the rights and interests of the parties involved to determine an appropriate course of action.

Accordingly, you should carefully weigh and balance legitimate interests in all situations and make a conscious effort to consider all legitimate sides of an issue. More often than not, failure to adequately consider an opposing viewpoint or rationale will lead to an inaccurate legal result or a lopsided policy.



Welcome the Usual Suspects

GOOD POLICY LIMITS LIABILITY

When you, as a school leader, rely in part on knowledge, common sense, fairness, and balance to guide your school toward a legally sound course of action, you are only part of the way there. The next step is to embrace the notion that a school that has good policies in place is a school in which legal liability is likely to be minimized.

To this end, develop sound policies with input from other administrators, teachers, and community members. Such policies must be made public, reviewed regularly, and adhered to consistently. For every policy have appropriate procedures in place to resolve problems in a fair, sensible, and orderly fashion. Students, parents, teachers, and your school district’s attorney will appreciate knowing that decisions are uniform, that investigations are prompt and thorough, and that actions follow established law.

DOCUMENTATION IS YOUR FRIEND

Documentation is essential, particularly when legal problems arise. If you have dotted every i and crossed every t on required paperwork, you will



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likely be ahead of the game. Developing the habit of jotting down your recollections of events immediately after they occur can also be beneficial. Most of the time, a principal will be glad to have a paper trail that represents diligence and compliance with established policies and procedures.

In addition, school leaders should be good listeners and try to ask thoughtful questions. If you do not have a good memory for details, written records (e.g., notes, memos, and other documents) may contain key information about actions taken or other problems that have occurred. The successful resolution of legal problems is often in the details.

Revisit the Big Picture

PERSONAL OPINION IS SOMETIMES BESIDE THE POINT

Legally speaking, the right thing is

not always the popular choice, the easy way, or even the action that most parallels your own point of view. The right thing is the course of action that is well-conceived; is in compliance with established law, policies, and procedures; and is administered even-handedly even in the face of unpopularity, difficulty, or personal disagreement.

US constitutional laws are precious not merely for their recognition of the traits that unify us, but for their respect and protection of individual differences in approach, belief, and expression. Therefore, you often must be prepared to protect an individual's right to disagree with you or your viewpoint or approach. Or you must protect an individual's right to engage in activities, speech, or expression with which you deeply disagree. All students should be able to feel equally protected regardless of the individual views of a teacher, a principal, or another school administrator. Consequently, your personal opinion will often be beside the appropriate legal point that is involved in a particular matter.

PRIVILEGE RESTORES PERSPECTIVE

When all is said and done, educating young people and opening their minds to new ideas is a privilege. It can help to remind yourself of that privilege—especially when the daily challenges of the job seem insurmountable. I hope that the fact that your school is entrusted with a captive audience of young people for a good portion of each day helps you navigate the often-rough legal waters of the education sea. **PL**

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