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AUTHOR Mack, Michael G.; Norwood, Elizabeth R.
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ABSTRACT

A student teacher has very limited authority in the classroom and his/her position with regard to the law remains obscure. Very few statutes concerning student teachers' legal status exist, and there are even fewer court cases involving student teachers. (Specific statutes and cases are cited.) There are, however, numerous legal problems that both teachers and student teachers may have. These problems generally fall into one of the following four categories: (a) classroom discipline, (b) pupil injury, (c) controversial matters, and (d) teachers' rights. This paper presents both actual and hypothetical cases within each of the above categories involving student teachers and the law. Measures should be taken by each state to seek legislation clearly setting forth the legal status of student teachers and to issue some type of "preliminary certificate" which would provide the student teacher with clear legal rights. Teaching training institutions should also provide students with a law course that would deal with problems he/she might face while student teaching. (PB)

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The Student Teacher and The Law

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Michael G. Mack
Graduate of SIU Speech Dept.
Now with Cicero Illinois Police Department

and

Elizabeth R. Norwood
Assistant Professor; Speech Department
Southern Illinois University

Speech 9251

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"STUDENT TEACHING AND THE LAW"

"Legally, the student teacher has no authority in the classroom. He should not punish a child; he does not promote or fail pupils. He has, however, the same responsibilities of a teacher, within the areas of his functioning without the authority or professional status."¹

"The student teacher should avoid creating any situation which might eventually involve legal entanglements. The courts would no doubt construe the student teacher's legal rights as very limited in a case concerning pupil discipline."²

Obviously, a student teacher has very little authority in the classroom. This may be a reasonable explanation of his limited legal powers; nevertheless his position with regard to the law remains obscure and tenuous at best. Only the relatively slim number of statutes which follow seem pertinent.

SECTION I THE LEGAL STATUS OF STUDENT TEACHERS.

1. All fifty states have some statutory provisions or implied authority for the setting up of teacher training institutions which provide students with teaching experience in the facilities of the states' various school districts.

For example, the Illinois statute 10-22.37 from the School Code of Illinois provides for:

"Agreements with teacher training institutions. To enter into agreements with those institutions to provide facilities for student teaching in the schools of the district. (Amended by law 1969, H.B. 833, approved Aug. 5, 1969."³

2. Only two states in the union, Oregon and Connecticut, have defined the legal status of a student teacher by law. The following is Oregon's legal definition:

"342.980 Student Teacher; Authority to Teach; Contract Requirements and Effect.

Any student of a standard teachers' educational institute approved by the state board under ORS 342.120, who is assigned to teach in a training school has full authority to teach during the time the student is so assigned and such assignment has the same effect as if the student were a holder of a valid teaching certificate."⁴

3. Only in four states, Hawaii, Alaska, Rhode Island, and California are student teachers required to hold a teaching certificate prior to entering their clinical experience. The following is the California Educational Code statute 13159 concerning the legal status of the student teacher:

"The holder (of a preliminary certificate) shall be deemed a certificated employee (emphasis supplied) of the district with respect to acts performed by him at the direction, suggestion, or consent of the

BEST COPY AVAILABLE certificated employees under whose supervision and control the holder performs his duties whether or not such duties are performed entirely in the presence of the employees of the district assigned to be supervising the holder."⁵

4. Although not what you would call a legal fact, point four summarizes what appears to be the only study completed which concerns a student teacher's legal rights. The information detailed below is from a 1966 study by Dr. Fred Swalls.

"Legal Aspects of Student Teaching" Indiana State University, Terre Haute, Ind. Cooperative Research Project S-075.

The study examined only four legal aspects of student teaching. These four were: (1) The student teacher's right and authority to regulate pupil conduct; (2) The liability of the student teacher for pupil injury; (3) The legal responsibility of the institution which conducts the student teaching program for the student teacher; (4) The legal responsibility of the school corporation which utilizes student teachers, for the actions and welfare of student teachers placed in its schools.

Swalls sought statutes, attorney generals' opinions, and case law of ten states. Due to a preliminary survey of various sources Swalls found that the following ten states yielded more information than any others: (1) California; (2) Connecticut; (3) Kentucky; (4) New Jersey; (5) New York; (6) Oregon; (7) Pennsylvania; (8) Washington; (9) West Virginia; and (10) Indiana.

The conclusions Swalls reached were as follows:

1. Authority to provide student teaching in the public schools - Six of the ten provided expressed statutory authority for student teaching in the public schools. The other four states appeared to have implied authority. It may be said that student teaching in the schools studied was legal.
2. Authority of the student teacher to regulate pupil conduct - Three categories were found: (1) no mention of this in the law; (2) authority implied by statutory language; and (3) authority was denied by court decision or attorney general's opinion.
 - A. In five states, Connecticut; Indiana; New Jersey; New York; and Pennsylvania the law was silent on this point.
 - B. A California state required the certification of student teachers, but only the supervising teacher appeared to possess the authority.
 - C. A Kentucky attorney general's opinion clearly stated that the student teacher had no authority.
 - D. An implication existed in the Oregon statute that a student teacher could regulate pupil conduct, while the Supreme Court of the state of Washington held that student teachers were not teachers within the meaning of the law.
 - E. The 1963 statute of West Virginia authorizing student teaching seemed to imply that the student teacher had authority, but in an earlier decision by the state Supreme Court, the court specifically said that student teachers

had no authority in the management and control of pupils.

3. Liability of the student teacher for pupil injury - Four general categories were found: (1) no law or legal guide; (2) implications found in statutes and clarification through attorney general's opinions; (3) specific coverage of student teachers in save-harmless statutes; and (4) one court decision.
 - A. Save-harmless statutes of Connecticut, and New York covered student teachers, while the attorney general of New Jersey has held that student teachers are not covered by that states' save-harmless statute.
 - B. In four of the ten states, no law or legal guide was found.
 - C. In three states, only an implication of the legal responsibility of the student teacher was found in statutes and in the opinion of an attorney general.
 - D. In New York, the Supreme Court found a student teacher negligent in an action involving injury to a pupil.

4. Legal responsibility for the actions and welfare of student teachers - The investigation yielded nothing except in the state of California where the Supreme Court held that a student teacher was entitled to compensation under the law, after being injured while supervising a playground. ⁶

Swalls also found evidence on which he could base an argument that unless a student teacher is held liable by state statute for his negligence resulting in pupil injury, then according to case law he is not liable for his own negligence. He also stated that it could be argued that the cooperating teacher is liable because he delegates his authority to the student teacher. As for injuries to the student teacher himself, school districts may be liable if there is no statutory provision.

Swalls study tended to reinforce the general finding that statutes, court cases, etc. concerning student teachers were either implied, vague, or non-existent. All evidence pointed to the assumption that student teachers are "assumed" to have the same rights as certificated and contracted teachers. If this assumption were not at work perhaps then it would be possible to find statutes, etc.; covering student teachers. Since this assumption of legal rights does exist, the authors will present not only cases which do cover student teachers but also cases which can be implied to cover student teachers.

SECTION II. CASES INVOLVING THE STUDENT TEACHER AND THE LAW

The number of actual cases which involve student teachers and the law are very few. Two representative cases were discovered and are described below:

1. The legal right of a student teacher to receive compensation for injury while student teaching

"In California a student teacher was injured while engaged in student teaching in a public school of that state. The question was whether she was entitled to compensation from the district under the state's workmen's compensation act."

"Under the California Educational Code 13159;1959 the student teacher is deemed a certificated employee, and entitled to compensation. The California Supreme Court upheld the statute and a ruling of the state Industrial Accident Commission to that effect."⁷

"A similar Illinois case was decided in an opposing manner. A senior student in a boys' private school received injury while supervising boys on a boating trip. The court refused to hold that the senior boy was an employee of the district. It is unlikely that the courts in most states would hold that there was an employer-employee relationship in the usual student teaching situation."⁸

2. Student teacher's right to student teach

"In a 1971 court case involving James vs. West, the plaintiff who was a physical education and social studies major, sought to vindicate his right to do his student teaching in the public schools of West Virginia. The plaintiff also sought to recover compensatory and punitive damages for deprivation of that right. The school board declined the plaintiff as a student teacher on the basis of his reputation as a militant (on and off campus) and also for publicity he had received linking him with violent student disturbances. In this case the U.S. District Court ruled that the school board acted, "in exercise of sound discretion" and had the legal right to do so. The court ruled also that there was no infringement of any of the plaintiff's constitutional rights. The plaintiff had no "right" by federal or state constitution to be assigned to a public school to undertake student teaching. The complaint was, therefore, dismissed."⁹

SECTION III HYPOTHETICAL CASES

Because of the limited number of court cases which actually concern student teachers, the authors chose to add some representative hypothetical cases which could also apply to the student teacher.

The first part of this section is composed of hypotheticals. All cases apply to fully certificated and contracted teachers, but could reasonably apply to student teachers. The authors suggest that you think about how you would deal with each case if you were the teacher. After completing the first part of this section, check your opinion against the decision of the court or point of law which applies.

AREA "A" CASES CONCERNING CLASSROOM DISCIPLINE

Cases of discipline are always of great concern to not only the student teacher but also to the beginning teacher. These cases will deal with "basic" points of law.

Case 1. In teacher X's Speech class student J enters wearing a black armband. When asked what it stands for he replies, "It's in protest to the war!" Teacher X knows that the local school board has passed a resolution prohibiting such displays on the school ground. She sends student J "to the office".

Case 2. In teacher O's senior English class, student W, a football player, sits in the back of the class silently reading "Sport" magazine. Teacher O upon seeing this orders him to, "Put it down and pay attention!" At this point, student W verbally attacks the teacher and incites other students to yell and complain. Teacher O removes student W from class.

Case 3. Teacher G enters her last class of the day planning to give a test. During the test, student T is misbehaving (in Teacher G's opinion) by making noises, (i.e. heavy breathing) and repeatedly dropping his pen to the floor causing other students to react with laughter. Teacher G, who has "had a bad day" marches up to student T and slaps him across the face causing his nose to bleed and says, "That will teach you, you little S.O.B!"

AREA "B" CASES OF LIABILITY FOR PUPIL INJURY

Cases involving pupil injuries are among the most frequent to reach the courts. Although student teachers' rights do differ from teachers' rights in this area, the cases are interesting and may be informative for the student teacher.

Case 1. On opening night of the high school play in John Q. Public High School, New Mexico, one of the student cast members is struck by a bullet from a pistol which is used as a prop in the play. The script called for a blank cartridge, but while the teacher in charge was engaged in applying make-up to the cast, another student got the gun from the principal's office (where it was stored) and inadvertently inserted a "live" bullet without the knowledge of the teacher or the principal. The consequentially injured student and his mother claim the accident was the result of inadequate supervision.

Case 2. Physical education teacher H entered his "Gym" class and began to take attendance. Student W, upon hearing his name called, answers, "Yeah!" Teacher H tells him, "The correct response is 'here sir'." Student W then tells teacher H that, "I'm not in the army and I don't have to answer here sir!" Teacher H walks up to student W and lifts him up, starts shaking him, then drops him to the floor and says, "Next time you'd better not give me any more of your lip!"

Case 3. Teacher D leaves her classroom for a few minutes while her class is engaged in calisthenics. While she is gone, a boy unforeseeably leaves his assigned place and does not do his "push-ups" as he has been instructed. As a result a girl's head is struck by his feet and two of her front teeth are badly chipped. A suit for damages against teacher D follows.

AREA "C" CASES CONCERNING THE RIGHT TO TEACH CONTROVERSIAL MATTERS

Cases of this type reach the courts frequently. The question of what a teacher can legally teach in the classroom is an area of the utmost importance.

Case 1. Teacher Q asks that her class recite "The Lord's Prayer" at the start of each class day. Teacher Q feels that she is only fulfilling a school board requirement that pupils do this. Since she gives her pupils a chance to decline the recitation she believes she is legally safe.

Case 2. In our high school Oral Interpretation class, Teacher C feels that her students should orally interpret all forms of literature so they may have complete understanding of the scope of oral literature. Teacher C assigns the class to orally interpret passages from the Bible to stress this point. Her students start work on these passages and later in the week present them before the class. Teacher F who happens to be observing these readings tells C after class, "You'd better not let the PTA or the principal find out you're having your class read prayers in school or you'll lose your job!"

Case 3. One day in teacher T's History class students begin a discussion about "sex". Since the work for the hour is completed, teacher T joins the discussion and begins to explain various aspects of the sex act and related matters as if relating personal experiences. The principal upon hearing about this discussion calls T to his office and tells him the school board is preparing to serve notice of termination against him.

AREA "D" CASES CONCERNING TEACHERS' RIGHTS

This section deals with the rights of the classroom teacher. Although the number of hypotheticals is small, they cover varying points of law which are important.

Case 1. Teacher V, an active member of the Communist party is refused a job in school district 409 because it is the belief of the board members that he, "Will pollute our kids' minds with dirty commie lies!"

Teacher U points out that he cannot be refused a job because of his political views and also says that he will sue the board if he is not hired. Upon hearing this, the chairman of the board, replies, "We don't have to hire you anyway; you failed our written examination when applying for the job which was before we knew you were a commie!"

Case 2. Teacher Z, who has taught at John Q. Public high for four years, is now wearing a beard. He is popular with the students and is considered by his peers to be an excellent teacher, but is transferred to a lower position with lower pay by the school principal because the principal believes that he will cause "trouble" due to his appearance.

Case 3. Teacher W, a tenured teacher, who has been late to school and class at least twice a week forgets his lesson plans one day. During one of his classes the principal walks in and finds the students reading non-subject matter material. He asks teacher W why he isn't teaching and W replies, "I forgot my stuff at home." Upon hearing this unprofessional answer the principal says, "You are fired!" "At the end of the school day I want you to have your desk cleaned out because you are incompetent!"

Case 4. Teacher P, a Political Science teacher sends a letter to the local newspaper concerning a recently-proposed tax increase. The letter severely criticized the school board and the superintendent for the manner in which they have handled various proposals to raise and use new revenue for the school. Teacher P is given notice the day after his letter appears in the paper that he is to be dismissed.

POINTS OF LAW CONCERNING THE HYPOTHETICALS

All of the preceding hypotheticals are covered by points of school law. Many of the hypotheticals have been drawn directly from actual cases. The authors personally constructed a majority of these situations but ask the reader to remember that they are based on actual cases. The footnotes not only give the source for the points of law but refer to models upon which the hypotheticals are based.

AREA "A" CASES CONCERNING CLASSROOM DISCIPLINE.

The following legal concepts should provide you with material to aid in deciding the legality of the hypotheticals concerning discipline.

1. Concept: "In Loco Parentis" (in place of the parent), the teacher is a sort of "legal" foster parent whose rights are similar to those of the natural parents insofar as the educational process is concerned. The concept is interpreted that the first loyalty of the teacher is to the child or the mass of children; or to the combination of both.
2. The Gault Decision: basically states that the juvenile is entitled to "due process" rights as an adult. The teacher as well as the principal must guarantee that no student shall be denied his rights under the fourteenth amendment of the U.S. constitution.
3. The Substantial Material Disruption Law: states that students' behavior and dress (armbands, buttons, hair, etc.,) falls under protection of the federal constitution as long as the exercise of such rights in the school buildings and grounds does not materially and substantially disrupt or interfere with the requirements of appropriate discipline in the operation of the school...

4. Right to administer Corporal Punishment: It is generally agreed by the courts that the teacher acting "In Loco Parentis" may administer C/P as a last resort, so long as it meets the following legal standards:
1. The teacher is not motivated by malice or anger.
 2. C/P is not prohibited by the local board of education.
 3. The punishment is reasonable.
 4. The punishment is related to the age, sex, size, and physical condition of the child.
 5. The punishment does not leave the child with a permanent injury.
 6. The punishment is conducive to the welfare of the child.
 7. The punishment is not enforcing an unreasonable rule.

All states but N.J. permit C/P. Illinois is silent on C/P but a teacher can use it, even though he can be sued and possibly held liable. ¹⁰

In case 1 student J is not causing any substantial material disruption. Teacher X is therefore violating the student's first amendment right to freedom of expression.

In case 2 student W is causing a disruption and teacher O is fully within his rights to remove W from class.

In case 3 the legal standards for the right to administer C/P would be used to determine that teacher G has overstepped the limitations set by standards and could be sued for damages.

AREA "B" CASES OF LIABILITY FOR PUPIL INJURY

Case 1 was drawn from an actual case decided before the Supreme Court of New Mexico in which the court upheld the teacher and principal.

The court stated, "We must recognize the impossibility of a teacher supervising every minute detail of every activity during the preparation and presentation of the play. As a matter of law, the act of the student who placed the live bullet in the gun was not foreseeable by the teacher or the principal."¹¹

Case 2 was drawn from an actual case decided before a Louisiana court, in which the court held that a physical education teacher's disciplinary action was excessive. He was ordered to pay damages in an amount exceeding \$11,000.00

"The court's rationale for holding the teacher liable in this case follows: The teacher's action in lifting, shaking, and dropping the pupil were clearly in excess of that physical force necessary to either discipline or to protect himself, and subjects the defendant to liability for the injuries incurred as a result thereof."¹²

Case 3 drawn from an actual case decided before a Court of Appeals in Maryland found the teacher was not negligent.

The court reasoned that; "A teacher's absence from the classroom or failure properly to supervise students' activities, is not likely to give rise to a cause of action for injury to a pupil unless under all the circumstances the possibility of injury is reasonably foreseeable."¹³

AREA "C" CASES CONCERNING THE RIGHT TO TEACH CONTROVERSIAL MATTERS

Case 1 which was a totally hypothetical case concerning the recitation of prayers, comes under a decision of the United States Supreme Court. The court stated: "This act is violative of the first and fourteenth amendments of the U.S. constitution, regardless of whether or not pupils are required to participate. It may be concluded, therefore, that state statutes and school board policies prescribing Bible reading and recitation of prayers as elements of the public school curriculum are unconstitutional and illegal."¹⁴

Case 2 is also a totally hypothetical case which to the authors' personal knowledge has never been tested before the courts. It was, however, the legal opinion of Ronald W. Sealey, Southern Illinois University School Law professor, that if a teacher can tie in the relevance of using the Bible for classroom instruction with the goals of the course, he would not be violating the 1962 Supreme Court decision and would be within his full legal rights as a teacher.¹⁵

Case 3 was drawn from an actual case decided before the courts in Wisconsin in which the dismissal of the teacher was upheld.

The court stated, "If the discussion on sex... had been conducted in such a manner as to constitute proper conduct in a Biology class....no action would have been taken. However the manner of discussing the topic of sex...exceeded the bounds of the recognized standards of propriety, we deem that it constituted bad conduct which would warrant a discharge..."¹⁶

AREA "D" CASES CONCERNING TEACHER'S RIGHTS

Case 1 serves as a totally hypothetical case which is truly representative of cases of this nature. The U.S. Supreme court has found that membership in a "subversive organization" is a right under the first amendment of the federal constitution. And that no teacher shall be denied work because to his political views. On the other hand, however, a teacher may be removed from the job if he is found to have attempted in class, any unlawful aims of his organization.¹⁷

Also school boards have the right to administer any written examinations to prospective employees. If a prospective employee fails a written test the school board is fully within it's rights to refuse employment. However, if the prospective employee can prove that the examination is discriminatory or culturally biased against him, he can seek relief in the courts.¹⁸

Case 2 was drawn from an actual case decided before a California Court of Appeals in which the court upheld the teacher's right to wear his beard.

The court said, "What we hold is simply that, on the record before us, with the complete absence of any actual experience at the high school involved as to what the adverse effect of the wearing of a beard by a male teacher would be upon conduct of the educational processes there, beards as such, on male teachers, without regard to their general appearance, their neatness and their cleanliness, cannot constitutionally be banned from the classroom and from the campus."¹⁹

It is interesting to note that the substantial material disruption law also applies to teachers. As to the legality of the transfer to one of a lower position and pay, it has been held by the courts that, "Tenured teachers may be transferred for various reasons so long as there is no element of demotion to a lower position (NOT GRADE) or assignment of lower salary."²⁰

Case 3 was a totally hypothetical case dealing with grounds for teacher dismissal. The teacher in this case is accused of incompetency, continually being late to school and class, and not having lesson plans.

In various court cases the following holds true: "Since a teacher holds a valid certificate, there is a presumption of competence before the law, and the burden of proof rests on the board of education. However the law required only average qualifications and ability. A teacher may be issued a warning without being given written notice and hearing that, unless the quality of his performance improves, dismissal will be recommended. The notice would allow the teacher a reasonable period to correct the alleged deficiencies."²¹

As for being fired on the spot, a tenured teacher has the protection of "Tenure Laws". Most laws prescribe procedures for dismissing a teacher. The procedures generally include the service of notice, the right of the teacher to a hearing, the right to be represented by counsel, and similar provisions.²²

Case 4 was drawn from an actual court case decided before the United States Supreme Court in which the court upheld the teacher's right to freedom of expression. The board dismissed the teacher for writing a letter which allegedly contained false statements, claiming that they damaged the reputations of board members and school personnel. The board also claimed that because of the letter there would be disruptions among the faculty and there would be a complete breakdown in faculty communications.

"The court weighed the allegations of the board, but rejected them as being inconsequential in the case where a teacher's right of free speech is involved." The following is a brief statement: "Teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal."²³

"In sum, we hold that, in a case such as this, absence of proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak in issues of public importance may not furnish the basis for his dismissal from public employment.²⁴

These hypotheticals have been presented to illustrate the numerous legal problems teachers and student teachers may have. The authors have detailed various types of cases which cover classroom discipline, pupil injury, controversial matters, and teachers' rights.

CONCLUSIONS

Efforts to compile a legal guide for student teachers have yielded very little actual legal fact. The presentation of the hypotheticals and related points of law have been an attempt to describe some practical legal areas involving teachers. It is apparent that student teachers are seldom if ever legally included in statutes affecting teachers.

The authors believe that the inadequacies in current legislation call for the following measures to be taken:

1. A recommendation by members of the teaching profession that each state seek legislation clearly setting forth the legal status of the student teacher.
2. A recommendation that states without clear statutes concerning the legal status of student teachers issue some type of "preliminary certificate" (such as California's) which would provide the student teacher with clear legal rights.
3. An effort on the part of Teacher Training Institutions to provide their students with a law course that would deal with the legal problems they might face while student teaching.

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