

FOCUS SECTION—LAW IN CATHOLIC SCHOOLS

Civil Law and Catholic Education: Past, Present, and Future

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Eight years ago this author wrote an article entitled, “Historical Overview of Catholic Education Law: How Did We Get Where We Are” for this journal (Shaughnessy, 2001). In 2001 readers were certainly aware of the importance of legal issues for the Catholic Church in general and Catholic schools in particular. The sexual abuse crisis, at least its public face, had not yet emerged. Administrators attended workshops, read articles, and pondered measures they should take to help ensure the legal rightness of their operations. Some 8 years later, those same administrators can perhaps only wonder at the naiveté they displayed, even as they believed themselves to be “on top” of legal issues.

A decade ago, many administrators felt a sense of protection: While other schools and institutions might be sued, their particular entities would be safe. It was not uncommon for an administrator to say, “I don’t see why I have to do that. We’ve always done it this way. God will take care of us. What’s the chance something will go wrong? And if it does, how can the church/school be held responsible?” Then, the crushing hammer of the sexual abuse crisis descended and, while administrators everywhere hoped to avoid the blows, few thought they and their institutions were forever immune. The days of “Father, Sister, Mrs. Jones” and even “the bishop says so” are gone; some say the moral authority of the Catholic Church is bankrupt. Others hold that it will be decades before the bishops regain any moral authority. If the Catholic Church and its administrators are seen as having little, if any, moral authority, it is a fairly easy leap to hold them accountable for anything that goes wrong in a Catholic institution. The court system offers one way to hold institutions accountable. The reticence that once precluded lawsuits against religious entities is gone.

Eight years ago, topics such as Facebook, Myspace, blogging, and cyberbullying were only just emerging as areas of educator discussion and interest. The author admits, with a certain degree of chagrin, to being asked to give a workshop about 7 years ago to high school students on the dangers of blogging, and having to ask what blogging was. Today, Catholic school educators

are quite familiar with blogging. The reality of blogging has given rise to many legal questions: (1) Can anyone just post the school's insignia, logo, mission statement, etc. on his or her blog? (2) Does the school have any control over what a student, parent, or employee writes on his or her blog if what is written reflects badly on the school or a member of the school community? (3) If one of our students threatens another student and uses his or her home computer to send the threat, can the school do anything? And if it can, should it? These are just a few of the questions commonly posed today that would have been unknown a few short years ago. The answers to these questions today may well determine the paths of litigation in the future.

But first, a bit of history: It has been less than 85 years since the Catholic Church established its right to operate Catholic schools. In the 1925 case of *Pierce v. Society of Sisters*, the United States Supreme Court recognized the right of Catholic schools to exist. Oregon, fearing the presence of foreigners, enacted a law requiring all children between the ages of 8 and 16 to go to public schools. A religious community of women, the Sisters of the Holy Names of Jesus and Mary, who operated a school challenged the law. The United States Supreme Court found that religious institutions had a right to exist and offer religious and educational programs of their choosing.

Pierce v. Society of Sisters (1925) is noteworthy for a number of reasons. Perhaps the least understood is the legal principle upon which the case was won. Most people believe that the case was argued and won on the right of parents to choose their children's schools, rather than be forced to enroll their children in public schools. However, for that right to be the deciding factor, a parent would have had to bring the case. The Sisters were not parents and, therefore, they could not bring a suit based on the rights of parents. In order to be heard in court, a litigant must have what is called *standing to sue*, sometimes popularly described as "having a dog in the fight." The Sisters' attorneys had to make a Fourteenth Amendment due process property argument: The Oregon law, if enforced, would cause the Sisters to close their schools; the closing would mean they could not support themselves and possibly would lose the property. Under the Fourteenth Amendment of the United States Constitution, the religious community, as a corporation, was a citizen with the constitutional right to hold property; the state of Oregon had to show a compelling interest in the law before it could enforce it, if the enforcement would result in the Sisters' loss of property. The court rejected the arguments of the governor and his attorneys, many of which were based on the prejudices of the day; for example, that the only way to assimilate foreigners into the culture of the United States was to force them into public schools where they could be molded into true Americans.

So, where did the notion of parental rights arise? The court stated in a dictum (not, strictly speaking, part of the decision, but something the court wanted to say) that parents had the right to choose their children's education. The court was basically putting the state of Oregon and all states on notice: If a state passes such a law and a parent challenges it on a constitutional right to choose, the parent will win. Nonetheless, the myth of parental rights as the deciding factor in the *Pierce* case continues, possibly because it seems a much more compelling argument than the right of anyone or any institution to hold property.

This article will address the sources of the laws impacting Catholic education, particularly constitutional law, statutory and regulatory law, and contract law. Specific issues related to these areas will be discussed, including discipline, lifestyle and belief, negligence, sexual abuse, boundaries, confidentiality, cyberspace, and safety. The author endeavors to make practical applications and offer practical suggestions for "lawful" ministry.

Constitutional Rights in the Private Sector: Individuals Never Had Them, Probably Never Will

While a private institution, such as the Catholic Church, has constitutional rights guaranteed by the government, a private institution is not required to recognize and protect the constitutional rights of employees, students, patients, volunteers, etc. The lack of constitutional protections in the private sector is a reality that many people do not seem to understand. For some 25 years, the author has used a true/false test in the presentation of education law seminars, lectures, and workshops. The first statement is, "Students and teachers in Catholic schools and programs do not have the same rights they would have if they were in public schools and programs." Invariably, employees and parents encountering this statement for the first time, answer "false." But the statement is true. One does not have the same rights in a Catholic school, for example, as one would have in a public school. A simple example will illustrate. If a Catholic school principal or director of religious education is walking down the hall and encounters a student wearing a button that states, "Abortion is a woman's right," the adult will tell the young person to remove the button, as it offends Catholic teaching. Yet, a student in a public school or a city-sponsored program could wear such a button. What is the difference? First Amendment freedom of expression does not exist in the Catholic or any private setting. The Constitution, particularly the Bill of Rights, dictates what the *government* must do, *not* what private persons or institutions must do.

Catholic school administrators can prohibit behaviors that public institutions cannot. In very early rulings, the doctrine of separation of church and state protected church-sponsored institutions from being sued successfully. The last 30 years have seen a rise in the number of cases brought against the Catholic Church. The primary law governing church relations with members and employees is contract law, whereas in the public setting it is constitutional law.

No court to date has ruled that religious institutions have to grant constitutional protections. Before churches could be required to grant constitutional protections, the substantial presence of the state, called state action, must be demonstrated: The court must determine that the state is significantly involved in a specific contested private action to such an extent that the action can fairly be said to be that of the state.

In 1969, the United States Supreme Court ruled in *Tinker v. Des Moines Independent Community School District* that public school students had constitutional rights that school officials, as government agents, had to protect. Thus, it was only 40 years ago that public school students won United States Supreme Court recognition of constitutional rights. Not surprisingly, shortly thereafter, some Catholic and other private school students brought cases alleging violation of constitutional rights. Several early private school discipline cases alleging constitutional deprivations resulted in findings for the school. In the 1978 case of *Geraci v. St. Xavier High School*, Mark Geraci, a St. Xavier student, encouraged a student from another Catholic high school to come to St. Xavier during final exam week and throw a pie in the face of a teacher. The school responded by expelling Geraci, who then brought a lawsuit alleging both constitutional and contract violations. Geraci's lawyers offered a state action argument and claimed that the presence of state law governing some aspects of the Catholic school, such as teacher certification and length of school year, made the school subject to the same constitutional requirements as public schools. The court found that, even if state action were present, it would have had to be so entwined with the contested activity (dismissal of the student) that the action could have been said to be that of the state, or that a symbiotic relationship had existed between the state and the school's dismissal of the student. No such relationship could be established, thus, state action was not present and constitutional protections did not apply.

Aggrieved parties in the Catholic Church have not been able to make successful deprivation of constitutional rights arguments. Persons increasingly turn to courts to solve problems. Anyone can walk to the courthouse, pay the fee, and file a lawsuit. However, the mere filing of a lawsuit does not

mean it will ever be tried in court; many suits are dismissed in response to a motion for summary judgment: The court looked at the facts in the light most favorable to the party who did not bring the motion, and decided there was nothing for a court to decide. Some state legislators have discussed and even attempted to pass laws that would grant constitutional protections to students in private schools. Such a maneuver, if successful, would have given students in Catholic schools constitutional rights, not because of the Constitution, but because of statutory law, which can bind us in the Catholic Church, as the following discussion will illustrate.

Statutory Issues

While perhaps the most well-known Catholic school cases involve breach of contract claims, cases alleging violation of statutory laws can also be found. Federal and state law can bind Catholic schools. For example, Catholic schools may not violate federal antidiscrimination law, except for the law prohibiting discrimination on the basis of religion. A religious institution has the right to give preference in hiring to members of that particular religion, to accept or prefer members of the faith for admission, and to hold employees, volunteers, and students to the precepts of the religion of the sponsoring institution. Catholic schools are not free, however, to discriminate against persons on other federally protected grounds. Age is one such federally impermissible ground. Once a person reaches the age of 40, he or she is protected against age discrimination. Race, gender, and national origin are other impermissible grounds. Still another is disability; an educational institution or program cannot discriminate against an otherwise qualified candidate for admission or employment simply because of the presence of a disability, if with reasonable accommodation, the individual can meet the requirements of the program of study or job.

For a successful claim of discrimination, a litigant must show a prima facie (on the face of it) case. Once a prima facie case is established, the burden of proof shifts to the party accused of discrimination to show that non-renewal would have occurred even if the discriminatory reason did not exist. For example, the mere existence of a disability in a student applicant who is denied admission might not, in and of itself, be enough to make a prima facie case. However, if witnesses heard the admissions officer say, "We can't keep taking kids with disabilities," a prima facie case could be established. The 1980 Iowa case of *Dolter v. Wahlert High School* remains relevant. An unmarried female teacher in a Catholic high school became pregnant and her contract was not renewed. She alleged that male teachers who were known to

have engaged in premarital sex were not held to the same standards as were female teachers. In ruling against a motion for summary judgment, the court held that it had to consider the facts as presented by the plaintiff (the non-moving party) as true. Thus, the teacher had established a prima facie case of sex discrimination. The school then either had to rebut the sexual discrimination charge or show that there were other, nondiscriminatory reasons for the nonrenewal of employment.

Clearly, Catholic schools are not immune to charges of discrimination. Administrators and other educators must construct policies that protect the rights of all and help to ensure that decisions are both legally and morally sound.

Contract Issues

Since constitutional arguments cannot be successfully advanced, persons generally raise breach of contract arguments against Catholic schools. The previously mentioned *Geraci v. St. Xavier High School* (1978) case also alleged breach of contract. The school, plaintiffs argued, breached its contract with the student and his parents when it expelled him, particularly in view of the fact that the student had never been in serious trouble, had paid the deposit for his senior year, and had received his senior ring. The school had a disciplinary code that prohibited, among other things, “immorality in talk or action” and “conduct detrimental to the reputation of the school.” The court ruled that throwing a pie in the face of a teacher was “patently immoral,” and therefore, the student breached the contract when he consented to and participated in such activity. The school’s general prohibitions were upheld. Church and school officials may spend unnecessary time trying to think of everything a person should be forbidden to do, when a broad clause will encompass all that is needed.

What happens when an individual claims that he or she has been disciplined in violation of contract or policy? The court will scrutinize the governing documents. Any ambiguity is resolved in favor of the non-writing party. The 1982 New Hampshire case, *Reardon v. LeMoyné*, will illustrate. Four religious sisters were told that their contracts as principal and teachers in a New Hampshire parish school would not be renewed. At trial, the court examined the contract signed by the sisters. One part of the contract stated that employment was for 1 year only and would end on a certain date in June; however, another part of the contract stated that a person could expect to be rehired until the summer following his or her 70th birthday—two very different realities. In effect, the document guaranteed a 21-year-old 49 years of employment. Applying the rule of construing the document against the party who

wrote it, the court ruled that in effect the clauses canceled each other out. The sisters ultimately won the case, but agreed to an out-of-court settlement.

Even in successful breach of contract cases, reinstatement (getting one's job or seat in the class back) is generally not a possibility. The remedy for breach of a contract for personal services has long been damages (money as compensation) rather than reinstatement. Nonetheless, it is not unheard of for a hearing or trial judge to issue an injunction barring a private school or other entity from dismissing an individual prior to the resolution of the case.

Discipline

Employees and students tend to sue when faced with two realities—suspension and/or dismissal. In *Geraci v. St. Xavier High School* (1978), the court stated what the position of most courts would be: “The disciplinary proceedings of a private school are not governed by the Fourteenth Amendment to the Constitution; nonetheless, under its broad equitable powers, a court will intervene when the procedures do not comport with fundamental fairness” (p. 149-150). What is “fundamental fairness?” Unfortunately, that term is also used as a definition for constitutional due process. The *Geraci* court seemed to be talking about reasonableness, about treating people decently. Administrators can spend a lot of time asking, “Can I do this legally?” when a better question would be, “What should I do?”

Since the United States Supreme Court has never heard a case involving student or employee discipline or dismissal in a Catholic school, there is no clear national precedent. Thus, state and other lower courts, when hearing such cases, must look to other state decisions for help in their legal decision making. Since many cases are eventually settled out of court, the number of reported cases is actually fairly small. Some cases, perhaps because of the issues or fact patterns involved, seem to garner more publicity than others.

The Rhode Island Supreme Court, in the 2004 decision *Gorman v. St. Raphael's Academy*, upheld the right of Catholic schools and programs to establish reasonable rules and regulations. Reflecting the principle of judicial restraint, the judges found that courts have no right to interfere in private school disciplinary regulations unless they violate law or public policy. To comply with a new school rule regarding hair length, school officials instructed freshman Russell Gorman to cut his hair or face expulsion. Russell, with his parents' support, refused. The parents sought and were granted a temporary restraining order keeping the school from expelling Russell for his hair length. The principal complied with the order for the school year, but then revised the school handbook for the next school year to include a new regulation stipulating that the hair of male students could be no longer than

the bottom of the shirt collar. School officials testified that Russell's parents were notified of the impending rule change before the end of the school year; the parents claimed that they did not know of the change until the summer and were not given a new handbook until August of that year when they filed an amended complaint alleging breach of contract and seeking injunctive relief.

While speculation is always an inexact exercise, the plaintiff's lawyer may not have raised any constitutional arguments because he knew they would not be successful; if breach of contract could be established, the case might be won without recourse to other arguments. One stumbling block that could have arisen was the fact that precedents (earlier decisions in similar cases) have routinely held that the remedy for breach of contract is damages, not specific reinstatement. In the *Gorman v. St. Raphael's Academy* (2004) case the trial judge, relying on a public school case, held that the rule was arbitrary and capricious and that the school's rules had to be related to the mission of the school. In effect, the judge violated the principle of judicial restraint, which holds that courts do not generally substitute their opinions for those of the professionals. St. Raphael's Academy appealed the decision, which could have, if upheld at the highest levels, had the effect of making virtually every Catholic school rule subject to judicial scrutiny.

The Gormans alleged breach of contract. St. Raphael's Academy argued that the Gormans did not identify the alleged contract, its terms or breach. The state supreme court found that the trial judge applied equitable, rather than legal, principles to the claim. An equitable remedy is only available when there is no adequate remedy at law. In this breach of contract case, the legal remedy of damages was available and therefore, specific performance (reinstatement) was inappropriate. The trial judge suggested that the Gormans had a 4-year contract for Russell's education, a suggestion that the state supreme court rejected, while it held that the contract was an annual one subject to renewal. (A 1981 Illinois decision, *Bloch v. Hillel Torah North Suburban Day School*, had declined to support a similar argument—the mere fact of enrollment in a school evidenced the existence of a multiyear contract to educate a student.) The state supreme court opinion held that this decision was one of first impression, the first time such a conflict had been litigated. Further, the justices observed that they could find no published case in any jurisdiction that dealt with hair-length rules in private educational institutions. Thus, this decision was groundbreaking. The court stated, "Because contracts for private education have unique qualities, we must construe them in a manner that leaves the school administration broad discretion to meet its educational and doctrinal responsibilities" (*Gorman v. St. Raphael's Academy*, 2004). School handbooks can be considered contracts. Parents of St. Raphael's students were

required to sign tuition contracts agreeing to the terms of the student handbook. Therefore, the court held that the relationship between students/parents and the school was a contractual one. The court recognized that some public school litigants have alleged that the right to wear one's hair the way one wishes is a constitutional freedom guaranteed by the First Amendment, but following earlier federal decisions, held that a private school would have to be a state actor before it would be required to recognize constitutional rights. Therefore, no constitutional protections existed.

So long as schools exist and students are disciplined, particularly when the more extreme penalties of suspension and expulsion are imposed, students and parents will sue the school. While a Catholic school cannot arbitrarily do anything it wishes and/or recklessly disregard its own policies and procedures, the doctrine of judicial restraint means that courts will not substitute their personal opinions for that of the professionals. Further, no matter how unfair a particular rule may seem, if the school has clearly stated the rule, preferably in writing, and a parent chooses to have his or her child attend the school, a court will generally uphold the rule. In the 1975 Louisiana case of *Flint v. St. Augustine High School*, two boys were expelled for a second smoking offense. The handbook stated that a first offense resulted in a \$5 fine; the penalty for a second offense was a \$10 fine or expulsion. The two students were expelled for a second offense late in their senior year. Evidence established that no second or even third offender had ever been expelled; all had been fined. Nonetheless, the court held that, while it found the school's actions regrettable, the administrator was clearly acting within his rights. Thus, Catholic educators may find themselves on the proverbial horns of a dilemma. The law may permit a certain action, courts may be compelled to hold the action legal, but those two realities do not make the action right. Nonetheless, courts rarely substitute the personal opinions of judges for those of the professional decision makers.

Issues of lifestyle and belief. A specific area of concern in discipline of employees is lifestyle and belief. Catholic parish and school employees can properly be said to be representatives of the Church 24 hours a day, 7 days a week. What they do, regardless of when or in what capacity they do it, can and does affect the reputation of the parish and/or school. It is not uncommon for a news story to lead off with, "Catholic school teacher [or principal] accused of . . ." rather than "John Doe accused of . . ." Therefore, the Catholic Church, like any private institution, has the right to set behavioral standards for its students, employees, participants, volunteers, etc. This right is not absolute, however; courts have been careful to hold private institutions to their stated

policies and procedures, to their contractual responsibilities and to statutory law. A rather old case illustrates. In the 1973 Michigan case of *Wiethoff v. St. Veronica School*, a teacher, who married a priest who had left the priesthood without obtaining laicization that would have allowed him to marry within the Catholic Church, was dismissed from her position before the beginning of the school year. She sued. Almost any person teaching in a Catholic school, at least at that time period, would have known that such an action would result in a loss of employment as a Catholic school teacher. However, the teacher's contract bound her to the "promulgated policies" of the parish. The school board had passed a policy requiring that all teachers be practicing Catholics, but that policy had never been promulgated; its passage had been noted in the board minutes that were filed in the board secretary's files. Therefore, the court ruled that the parish breached its contract with the teacher because it had failed to promulgate the policy it was attempting to hold her responsible for obeying. She did not get her position back; but she was able to avail herself of the remedy for breach of contract: damages, as mentioned above. She collected her salary for the whole year.

In 1990, a Pennsylvania court decided the case of *Little v. St. Mary Magdalene Parish*. Ms. Little, who taught in a Catholic school but was not a Catholic, had signed the standard contract that contained a provision popularly called the "Cardinal's Clause," which requires persons to "live a life consistent with the teachings of the Catholic Church." Ms. Little entered into marriage with a Catholic gentleman who had been previously married, but who had not yet obtained an annulment. Such a marriage was permissible in Ms. Little's religion; nonetheless, the court upheld the school's right to dismiss her from her position because she had violated a clause of the contract.

In 2004, a Catholic schoolteacher in Delaware signed a pro-choice ad that appeared in a local newspaper. The chief administrator promptly fired her. She sued, invoking a number of legal arguments, perhaps the most novel of which maintained that the Catholic school that employed her could not claim a religious exemption from compliance with religious discrimination laws (e.g., an institution operated by a religious organization can discriminate on the basis of religion) because a Catholic high school is not a religious organization (*Curay-Cramer v. Ursuline Academy of Wilmington, Delaware, Inc.*, 2004). The appellate judge declined even to consider the patently baseless argument. In upholding the termination, the court ruled that a religious organization could terminate the employment of a person who acted in a manner inconsistent with the teachings of the sponsoring religion.

Catholic schools and educational programs have the clearly protected right to uphold the teachings of the Church and to require employees, volunteers,

and schools to uphold those teachings. Problems can arise, however, when actions are inconsistent, (e.g., when one person who takes a particular action loses his job while another who does the very same thing keeps hers). Catholic schools are granted broad leeway in the interpretation of religious principles, but the unequal treatment of persons can pose difficulties.

Negligence

Negligence is the most often litigated case in education. Negligence, at its core, is an absence of care; it is the violation of a duty that proximately causes an injury. It is important to note that negligence law applies equally in the public and private sectors. For two decades, the most often mentioned case involving Catholic schools may well be the 1982 Missouri case, *Smith v. Archbishop of St. Louis*, in which a 7-year-old's costume caught fire from a candle kept all day on a teacher's desk during the month of May to honor the Virgin Mary. The young girl sustained horrible injuries. The diocesan insurer paid compensatory and actual damages, but the young girl, a keloid former for whom plastic surgery was not an option, is sentenced to a lifetime of facial deformity and social handicap. Why? Because a teacher wanted to burn a candle to honor the Mother of God, certainly a good action, but the teacher failed to think through the possible consequences. She did not foresee possible injury. She did not mean for the child to be harmed, but without her action, no harm would have occurred.

Negligence, by definition, implies an absence of intent. If someone intends to harm someone, negligence is not the appropriate claim if injury is sustained; one would need to allege assault and/or battery or defamation or several other claims. Educators sometimes have a hard time with the reality that damages can be awarded to an injured party even if there was no intent to injure. There is a distinction made between gross negligence and ordinary negligence, with gross negligence (in effect, an action or inaction that shocks the court) generally resulting in larger monetary awards.

When deciding negligence claims, courts often consider the concept of foreseeability: Should a reasonable person in the accused's position be expected to have foreseen that injury might result from a certain action or failure to act? Teachers are expected to be foreseeers of possible risks and injuries. In the wake of the school violence of the past decade, the following advice seems appropriate: Imagine the worst things that could happen in your school, religious education program, and/or youth ministry program. Then, talk about how you would deal with those things. From that conversation, the beginnings of a crisis plan emerge.

Recent case law. The following three cases are representative of more recent negligence cases involving Catholic schools. In the 2007 case, *Dwyer v. Diocese of Rockville Centre*, the diocese was granted its motion for summary judgment and the case was dismissed in a negligence claim brought by a high school student playing basketball who sustained an injury when he ran into and shattered a pane of glass. Although the glass had been in place for many years, the diocese was able to submit evidence demonstrating that the glass met all applicable building codes in effect at the time it was installed. Therefore, the court found that the diocese was entitled to summary judgment as a matter of law. In another 2007 case, *McCollin v. Roman Catholic Archdiocese of New York*, an eighth grade student was injured when a ninth grader, who was supposed to be assisting the coach, kicked him in the face. The court found that the student's action was not foreseeable and, therefore, the school could not be held liable, i.e., a reasonable coach would not be expected to foresee that a student who had never kicked another would suddenly do so. In a third 2007 case, *Ribaldo v. La Salle Institute*, a basketball player was injured when he ran into a concrete wall during a basketball tournament in the school gymnasium and sought to hold the school liable for negligence. The court held that a student and his or her parents have to accept and assume the risks involved in playing a sport. The case was dismissed. Courts have found that Catholic schools cannot foresee certain injuries while on the playing field or in the gym, but documentation can also help Catholic schools in negligence cases.

Supervision

Everyone will agree that adults have the duty to supervise young people. In schools and religious education programs, adults supervise the learning and the safety of young people. Schoolteachers, by and large, have had at least some basic instruction in the supervision of young people. Catechists, youth ministry volunteers, and school volunteers may have little or no instruction in supervision of young people.

A concept relatively recent in case law is that of mental supervision. Supervision is a mental as well as a physical act. It is not enough to be physically present, one has to be present mentally as well. In many, if not most negligence cases in past decades, injuries occurred when the teacher or other supervising adult was absent. The court then had to determine if the presence of an adult would have prevented the injury from occurring. Today, there seems to be almost as many negligence cases in which the teacher was

present but alleged to have not been paying attention as there are cases in which injuries occurred in the teacher's absence. Case law in the last decade demonstrates that injured students are no longer simply saying, "I was hurt and no teacher was present," but rather, "I was hurt, you were there, but you weren't paying any attention."

Adult supervisors must be mentally engaged with what is occurring while they are responsible for supervision. Courts have stated that there are times when a teacher must take care of a situation outside the classroom and will leave the class unattended. A court will generally utilize "the reasonable person" test: Did the supervisor act in a way that one could expect a reasonable person to act? If the adult is present, he or she is expected to be present mentally. How can administrators ensure mental presence? One can ensure mental presence by talking to adult supervisors about it and by requiring administrators to supervise the adult supervisors. This topic is sometimes a sore one. No one likes to be told to pay attention. But, in effect, that is what administrators must do: Pay attention to those they supervise.

Sexual Abuse

Certainly no cause of action has brought us greater pain than sexual abuse. Even though it is not the most often litigated claim, it is possibly the most tragic. No one can give a person back his or her innocence. Administrators must act swiftly, decisively, and appropriately in accordance with diocesan policy and with due care for both the victim and the alleged perpetrator.

All who serve in the educational ministries of the Catholic Church must avoid even the appearance of impropriety. Over two decades ago when the author was a high school principal, one of the male teachers once said, "I would never stay alone in a room with a girl unless the door was open or people could see in through a window." That observation is as true today as it was in the 1980s. A reputation is a terrible thing to lose and is almost impossible to rebuild, as persons often remember the accusation but not the exoneration.

There is a related issue raising legal concerns today—boundary issues: There have to be boundaries in relationships. Sometimes, well-meaning persons get "too close" to others. People tell all and answer any question. Far from being open, they are destroying the boundary to which the person being ministered needs. Boundaries are healthy and personal boundaries help us to keep within the legal boundaries that surround our ministry. Several of the author's books published by the National Catholic Educational Association contain recommendations for avoiding the appearance of impropriety (Shaughnessy, 2005, 2006, 2007, 2009; Shaughnessy & Shaughnessy, 1993).

Confidentiality

All who work in Church ministries must realize that there is no legal privilege in matters involving life and safety. There are only two privileges left in this country: priest/penitent, which is absolute, and attorney/client. All other individuals receiving information that may indicate a danger to individuals must report that information to appropriate persons and take all reasonable steps to ensure the safety of any individuals who appear to be in danger. Persons who are in professional counseling positions sometimes chafe at being told to report confidential information. Guidelines for professional organizations may direct persons to keep information received in counseling sessions confidential. But, there is no legal protection for the retreat director, for example, who is told by a student that he or she is contemplating suicide and who fails to do anything with that knowledge.

One of the fastest growing areas of litigation in public schools is journal writing. Case usually goes something like this: Person writes in journal: "I'm so depressed, I think I'll kill myself." Teacher writes back, "Please don't. We'd miss you." Student kills self. Parents get journal and sue (see *Brooks v. Logan*, 1995). Schools, religious education, and youth ministry programs often use journals. Please require all who may receive confidences to say to the confiding individual, "I will keep your confidence so long as no one's health, life, or safety is involved. Once health, life, or safety is involved, confidentiality is gone."

In the Michael Corneal, Paducah, Kentucky school shooting, parents of the victims brought lawsuits against many, including teachers. After Columbine, parents brought lawsuits alleging that the school should have done more to alert others, because of the writings and words of the killers. Hindsight is always 20/20. While courts appear reluctant to hold teachers responsible for the misdeeds of their students, failure to act on warning signals can land educators in court when someone is injured and allegations of "If only the teacher had said something" are made.

Cyberspace and Its Challenges: Facebook, Myspace, Cyberbullying, and Beyond

The term "blog" or web log is a recent one in the memory of most educators, but for many students it is a term that they have grown up knowing. The sites myspace.com and its progeny began innocently enough. Adults were able to share ideas, poems, thoughts, photos, etc. with other bloggers and site visitors. There was/is little or no monitoring of content or bloggers. Sites may

include a statement that all bloggers must be a certain age; however, there is no foolproof way to ensure that persons under the minimum age will not have access. Students generally blog from home, not school, but two problem areas cause administrative concern: (1) blogger safety and (2) the appropriateness of what the blogger posts.

Safety

Young school age bloggers often post identifying personal information that can have tragic consequences. Anyone with Internet access, including sexual predators and murderers, can log onto a blog. Many young people do not seem to understand mortality, at least their own: Bad things happen to “other people.” However, nothing prevents a predator from noting a child or adolescent’s picture, address, phone number, school, extracurricular activities, etc. and making plans to intercept the young person. The author presents workshops and seminars on blogging and Internet safety to audiences all over the country. Recently, however, a 9-year-old member of the author’s own family, claiming to be older than she is, set up her own blog on one of the more popular sites and began happily chatting away with much older individuals. Often, even the most vigilant adult monitoring cannot prevent such occurrences. Children accustomed to using the Internet do not and perhaps cannot appreciate the dangers to which they open themselves by pretending to be adults. So, would a school administrator or teacher be held liable for a student who is injured as a result of talking online with a predator? It is an inchoate area of law, but it is always best to be vigilant. The safety of young people is paramount. Whatever can be done to keep those we serve safe and educate parents should be done, regardless of whether the law requires it.

Appropriateness of Blogger Posts

Cyberspace and the “It didn’t happen at school” argument. Educators are already familiar with the issues arising from student threats conveyed through e-mail. Blogging provides another venue for making threats. Threats are threats wherever they are made. Individual blogs have been and continue to be used to plot crimes and to solicit criminal activity. If challenged, the blogger will generally claim that he or she was joking. If a crime occurs, especially if someone is injured or killed, who is responsible? Is it the blogger who posts a solicitation such as “I need someone to kill my brother; I will pay in money or sex,” but claims after the fact to be joking, or is the responsible person the one who actually did the deed? Can both be held responsible?

A more common problem occurs when students make negative, often untruthful statements about staff and other students. In addition to blogging

opportunities, some websites provide a place to “rate” teachers and to post potentially defamatory statements. Holding that teachers were, in effect, quasi-public figures and had to expect a certain amount of “grief” from parents and students, courts in the past were reluctant to find in favor of teachers who brought defamation suits against parents or students. Such is no longer the case. Several state courts have ruled that teachers and administrators have the same right to their reputations as do other people. Therefore, if defamed, educators have a right to sue.

When school administrators attempt to discipline students for Internet threats, defamatory material on blogs, etc., parents and students may argue that the school has no jurisdiction over what happens outside school. What students do outside school hours and off school property can reflect on the school. Catholic school administrators should ensure that handbooks include a disciplinary regulation that states that the school can discipline students for “conduct, whether inside or outside school, that is detrimental to the reputation of the school” [author’s suggested wording].

Use of school name and logo. The Catholic school or parish owns the school or program’s name and administrators have the right to restrict its use. An administrator can determine that an after-prom party organized by parents is not a school event and can decline to allow the use of the school name; in the same way, rules can prohibit unauthorized use of school names and logos on blogs.

Adult staff and blogs. Many adults have blogs. Some use blogs as a way to communicate with friends and families. It is easy to forget that virtually anyone in the world can access a blog. What a person posts can certainly come back to “haunt” him or her. A person is just as responsible for what is posted on his or her blog as for what is said or written in other venues.

Some teachers, and even a few principals, have expressed to the author a desire to have a blog to which their students have access. Arguing that blogs have become the playgrounds, ice rinks, and hangouts of today’s youth, educators may believe that blogging is a way to be relevant and to meet students “where they are.” This author remains unconvinced, at least at this time. Professional web pages for parishes and schools are a better and safer means of communicating, at least from a legal standpoint, than individual blogs.

Conclusion

Legal issues can be frightening for educators. The number of cases against Catholic schools, parishes, and programs is increasing. The vast majority of

readers were not thinking about laws and litigation when they decided to become educators. Yet, civil law weaves a boundary around everything that is done in our society. Stay within the boundary and one should be safe. Move outside it and one puts everything inside, i.e., one's ministry, at risk.

When in doubt, seek competent advice. It is far better to ask what may appear to be a “dumb” question than to guess at the answer and find that one has put one's self at legal risk. The master teacher himself, Jesus Christ, perhaps said it best, “Render unto Caesar the things that are Caesar's and unto God the things that are God's.” If educators are respectful of legal boundaries, they will be better able to perform the role of teacher and mentor.

References

- Bloch v. Hillel Torah North Suburban Day School, 100 Ill. App. 3d 204; 426 N.E. 2d 976 (1981).
 Brooks v. Logan, 127 Idaho 484; 903 P.2d 73 (1995).
 Curay-Cramer v. Ursuline Academy of Wilmington, Delaware, Inc., 344 F.Supp.2d 923 (D.Del. 2004).
 Dolter v. Wahlert High School, 483 F. Supp. 266 (N.D. Iowa 1980).
 Dwyer v. Diocese of Rockville Centre, 845 N.Y.S.2d 126 (2007).
 Flint v. St. Augustine High School, 323 So.2d 229 (La. 1975).
 Geraci v. St. Xavier High School, 444 U.S. 839; 13 Ohio Op. 3d 146 (Ohio 1978).
 Gorman v. St. Raphael's Academy, S.Ct. R.I. 853 A.2d 28 (2004).
 Little v. St. Mary Magdalene Parish, 739 F.Supp. 1003 (1990).
 McCollin v. Roman Catholic Archdiocese of New York, 846 N.Y.S.2d 158 (2007).
 Pierce v. Society of Sisters, 268 U.S. 510 (1925).
 Reardon v. LeMoyné, 454 A. 2d 428 (N.H. 1982).
 Ribaud v. La Salle Institute, 846 N.Y.S.2d 209 (2007).
 Shaughnessy, M. A. (2001). Historical overview of Catholic education law: How did we get where we are? *Catholic Education: A Journal of Inquiry & Practice*, 4(4), 437–453.
 Shaughnessy, M. A. (2005). *The Law and Catholic Schools: Legal issues for the third millennium* (2nd ed.). Washington, DC: National Catholic Educational Association.
 Shaughnessy, M. A. (2006). *Religious education, parish and youth ministry: Legal issues for catechetical and youth leavers*. Washington, DC: National Catholic Educational Association.
 Shaughnessy, M. A. (2007). *Volunteers in Catholic education: An administrator's guide to legal considerations* (2nd ed.). Washington, DC: National Catholic Educational Association.
 Shaughnessy, M. A. (2009). *Selected legal issues* (2nd ed.). Washington, DC: National Catholic Educational Association.
 Shaughnessy, M. A., & Shaughnessy, J. (1993). *Ethics and the law: A teacher's guide to decision-making*. Washington, DC: National Catholic Educational Association.
 Smith v. Archbishop of St. Louis, 632 S.W.2d 516 (Mo. App. 1982).
 Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).
 Wiethoff v. St. Veronica School, 48 Mich. App. 163, 210 N.W. 2d 108 (1973).

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