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Student Rights in the Educational Setting

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Abstract

In today's legal climate, educators should be aware of the rights students are afforded within the educational setting. Areas of particular interest include freedom of speech and religion, privacy, due process, search and seizure, and equal protection. This article reviews current literature explaining the rights that students retain in each category listed and offer information to educators on how to apply this knowledge in a practical manner.

Introduction

The issue of student rights can become complicated within the educational setting. While student do retain some constitutional liberties in school, those liberties are not without restrictions in order to maintain a functioning learning environment. However, current literature reveals that many school administrators are not aware of the rights students are afforded in an educational setting (Thompson, Arum, Edelman, Morrill, & Tyson, 2015, p. 391). This could be because of many factors, including lack of clear information available on how to navigate a complex legal topic.

Freedom of speech and freedom of religion are two common topics in legal proceedings concerning student rights. Freedom of speech is not unlimited within the school environment. According to *Tinker v. Des Moines Independent Community School District*, a student's right to free speech must be applied in light of the special characteristics of the school environment (Blokhuis, 2015, p. 67). The same framework applies to freedom of religion. Educators should be aware that the school itself is not permitted to promote religion, but students are permitted to engage in personal religious expression if it abides by the guidelines set by *Tinker* (O'Brien, 2016, p. 1; Conover, 2015, p. 358). To properly accommodate for freedom of speech and religion, educators should learn and be able to apply the *Tinker* guidelines.

Data privacy is an area of student rights that is unique to modern-day education. To protect student privacy both online and offline, educators should be informed on three major federal acts: the Protection of Pupil Rights Amendment (PPRA), the Children's Online Privacy Protection Act (COPPA), and the Federal Educational Rights and Protections Act (FERPA). PPRA was put in place to give parents of minors certain rights in regards to surveys or evaluations that inquire about personal topics or areas of information, such as psychological problems, sex behavior, religious practices and more (Family Policy Compliance Office, n.d.). COPPA is designed to protect children's information when they are using online devices in an educational setting (Liu, Wang, Guo, & Hong, 2016, p. 105). FERPA sets regulations involving access to educational records (Petronio & Reiersen, 2009, p. 371). Educators should learn and understand the rules set by PPRA, COPPA, and FERPA to ensure that student data is managed correctly.

Due process, search and seizure, and equal protection are other areas of interest regarding the rights of students. As is the case with freedom of speech and religion, students do not retain unlimited constitutional rights in these areas within the school environment. Under due process, students are given the right to one informal hearing in the event of misconduct (Gowdey, 2015, p. 2286). Educators should be aware of this before enacting punishments for perceived wrongdoing. However, educators are allowed to search and seizure without a warrant if reasonable suspicion exists (Darden, 2014, p. 70). Therefore, educators may not engage in unnecessary discipline, but may take action if a student poses a perceived risk. Any disciplinary measures should be completed with a student's right to equal protection in mind. Though students are under the jurisdiction of the school, they still retain the right to equal opportunity and nondiscrimination (La Noue, 2014, p. 453). It is important for all educators to understand the legal rights of students within the school environment in order to afford all students the best and most productive educational experience.

Freedom of Speech

Student freedom of speech is not unlimited within the school environment. The hallmark court case addressing freedom of speech in school, *Tinker v. Des Moines Independent Community School District*, set many of the guidelines regarding what constitutes acceptable student speech. In *Tinker*, Justice Fortas, author of the majority opinion, argued that students retain constitutional rights within schools, but that those rights must be "applied in the light of the special characteristics of the school environment" (Blokhuis, 2015, p. 65-67). In practice, *Tinker* set a two-pronged approach for schools to determine whether speech can and should be restricted. According to its framework, schools can restrict student speech only if it "materially and substantially interferes with the requirements of appropriate discipline in the operation of the school" or "collides with the rights of others." (Conover, 2015, p. 351). Because every instance of contested speech is unique, school officials should use the precedent set by *Tinker's* two-pronged approach to make the most informed judgment. Therefore, maintaining a functioning school environment should be the number one priority for teachers, administrators, and others.

Freedom of Religion

Many of the same boundaries that exist surrounding student speech also extend to the arena of student religious expression. The U.S. Supreme Court notes that while private speech endorsing religion is protected by the Constitution, government speech or action that endorses religion is not. Therefore, a student may pray privately before a football game, but a prayer delivered via loudspeaker as part of a regularly scheduled, school-sponsored football game is not acceptable (O'Brien, 2016, p. 1-2).

However, private religious speech has some restrictions in the school environment. Schools must use their best judgment in deciding what is acceptable language and what is not. According to legal precedent, including language set forth in *Tinker v. Des Moines Independent Community School District*, religious freedom in school should only be limited if the circumstance in question creates a hostile school environment or points to a reasonable forecast of harm (Conover, 2015, p. 378). For example, the Ninth Circuit court in *Harper v. Poway Unified School District*, maintained that a shirt that read "HOMOSEXUALITY IS SHAMEFUL" should not be permitted in school, as other students should be protected from assault "on the basis of a core identifying characteristic" (Conover, 2015, p. 358). Administrators, teachers, and other school officials are expected to uphold that students do have the right to religious expression in schools, but the school itself may not sponsor that expression. School officials should be aware of the Establishment Clause, which requires that schools are not funding or promoting religious interests in any way (O'Brien, 2016, p. 1).

Privacy Issues

The majority of privacy issues in schools today center around educational records, digital data, and which "boundary outsiders" can access said information (Petronio & Reiersen, 2009, p. 370). Entities that are permitted to collect this information must follow certain guidelines regarding student information, including regulations that address where it may go and who may access it. For students under the age of 13, the most comprehensive legislation detailing privacy regulations is the Children's Online Privacy Protection Act (COPPA) (Golob, 2015, p. 3469). COPPA requires web hosts and online content providers to obtain parental consent before storing data on individuals under the age of 13 (Liu, Wang, Guo, & Hong, 2016, p. 105). Technology providers must also share what information is being collected and for what purpose (Sabourin, Kosturko, FitzGerald, & McQuiggan, 2015, p. 166).

Student privacy issues also fall under the jurisdiction of the Family Educational Rights and Privacy Act (FERPA). FERPA regulates what kind of student data can be shared and who can access it (Petronio & Reiersen, 2009, p. 371). FERPA is designed to better protect students' privacy by allowing parents, administrators, and instructors unlimited access to educational records until the student turns 18. When the student reaches the age of 18, the powers awarded under FERPA transfer to the student (Sabourin et al., 2015, p. 164). The only exceptions to limited disclosure are if the records are needed for the purpose of litigation, college officials have a "legitimate education interest" in the records, or if the student is viewed as a threat (Kelly & George, 2015, p. 2). In practice, teachers at the elementary level should be aware that under COPPA, student data may not

be released without parental consent. They must also recognize that FERPA designates that parents should be able to access educational records until the child reaches the age of 18. However, individuals at the post-secondary levels need to know that FERPA powers transfer at the college age and significant legal ramifications exist for when instances of illegal access occur.

Due Process

As an instructor, knowing the various rights that students have in the classroom is important. However, current studies show that many instructors and administrators are unfamiliar with students' rights, especially students' right to due process in the face of disciplinary action (Thompson et al., 2015, p. 391). Due process within education is a procedure in place to assist in the resolution of any disagreements between a student and the school (Burke & Goldman, 2015, p. 1345). A student's right to due process means that in the case that any alleged misconduct is attributed to a student, he or she is to be given a generally short, informal hearing before any sanctions can be administered. The purpose of due process is to protect students from any unnecessary or non-educational school discipline (Gowdey, 2015, p. 2307-2308).

A downfall of the process that has been noted in the literature is that the immediacy and the informality of the hearing may prevent the student from being able to seek counsel or even notify his or her guardians. However, the constitutional requirement that students receive due process only requires the minimum of an informal hearing (Gowdey, 2015, p. 2286). In the cases that due process takes the form of a formal hearing, an impartial officer of the school conducts a legal proceeding involving the student, the school, and the student's parents, if possible (Burke & Goldman, 2015, p. 1345).

Search and Seizure

The Fourth Amendment of the United States Constitution secures citizens' right to privacy under the search and seizure law, and a limited version of this right extends to all students in the public educational setting as well. Prior to a 1985 Supreme Court case that dictated change in the public school system, the idea that students had Fourth Amendment rights was unclear. After this period, legislators determined they needed to find a compromise between the students' rights to privacy and the school's need to maintain a conducive and safe learning environment (Policing Students, 2015, p. 1747-1749). Federal law has since ruled that school officials have the right to search students without obtaining a warrant if the student exhibits behavior that gives the officials reasonable suspicion. However, the search of students is limited to only areas in which the prohibited items may be concealed. The reasonable suspicion component distinguishes the search and seizure process from becoming unwarranted and intrusive to the student. Federal courts have observed that without reasonable suspicion specific to the student in question, the search is classified as unreasonably intrusive (Darden, 2014, p. 70-71).

Equal Protection

The fourteenth amendment of the United States includes the Equal Protection clause, which posits that no person should be denied their equal protection of the laws.

Regarding education, this can be interpreted as every student has the right to the same educational opportunities and shall not be discriminated against (La Noue, 2014, p. 453). As an instructor, this means that all students are given the same opportunities, as well as measuring achievement using the same barometer. It is a violation of the Equal Protection clause to adjust achievement measures of students based on demographic information, such as race or ethnicity (Bland, 2014, p. 59-60). Altering achievement measures based on the demographics of a student is not only unethical, but it impedes the students' ability to learn. When a student is aware of a negative stereotype that is attributed to his or her race, it can significantly affect his or her academic performance (Bland, 2014, p. 75-76). In contrast, the Equal Protection clause also prohibits any advantages given to members of marginalized or underrepresented racial groups (i.e. Hispanic or African-American) (La Noue, 2014, p. 455). As an instructor, it is important to be cognizant and familiar with the Equal Protection clause, because all students have the right to equal opportunity, treatment, and expectations within the classroom.

Conclusion

Using the information above, educators can become more informed of the rights that students possess in school and learn how to accommodate those rights while maintaining a functional educational setting. Student rights are not unlimited in school and often take a backseat to the special characteristics of the school setting. Freedom of speech and religion are two such areas of student rights that are acceptable on a private, personal level, but are not permitted to cause disruption or infringe on the rights of other students (Conover, 2015, p. 351). Conversely, student privacy should be accommodated at all times under the guidelines of COPPA and FERPA (Petronio & Reiersen, 2009, p. 370). It is imperative that educators are aware of the nature of student data rights both online and offline. Students also retain rights to due process, but are only awarded one informal hearing under current guidelines (Gowdey, 2015, p. 2286). However, regardless of whether a due process hearing is conducted, educators are given the power of search and seizure without a warrant within the context of reasonable suspicion (Darden, 2014, p. 70). While constitutional rights are limited for students in school, all students must be given equal protection under the law and given the same educational opportunities as their peers (La Noue, 2014, p. 453). Constitutional rights change when a student steps inside the school building. In order to create and maintain a secure and productive educational environment, educators should be aware of these legal rights and learn how to accommodate them to the best of their ability.

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