

# EDL 628



Welcome to the EDL 628 assignment manual. This manual will help you navigate through your assignments and exams. An explanation of your assignments, with examples, are provided on the following pages.

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# Statute Quiz Prep

What are the ages of compulsory school attendance in Kentucky?

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Source

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What are the three types of schools for which the State of Kentucky makes exceptions to the compulsory attendance laws?

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Source

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How many hours of school work constitute a school day?

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Source

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How many days must a student miss to be considered truant?

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Source

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For what three reasons does the KRS say schools can ban books.

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Source

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Out of what fund are schools authorized to provide for busses?

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Source

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# Case Summary Assignment

This assignment is designed to both introduce the skill of reading and briefing cases for each student as well as to provide a service to the class.

**Instructions:** Students will sign up for a case, which they will brief and present to the class on the assigned day. The text of the case will be provided to the student. The student is to read the case (probably more than once) and synthesize the case into the format provided below. You are summarizing what the justices said in the case and not giving your analysis of the decision. The brief (1-3 pages) will be due on the day of the student presentation. *The presenting student should bring copies (about 11) for every student in the class.* In addition, the student will provide a brief oral summary of their case to the class when the topic of the case is being discussed. This presentation should provide a little information on each element of the case brief below. An example will be provided to you in class.

**Elements of a Case Brief:**

| Element of Case Brief  | Description  |
|--|--|
| <b>1. What is the CASE NAME and what is the CITATION?</b>                  | This includes the names of the principal litigants ( <b>the parties of the case</b> ), followed by the volume <b>number</b> , reporter <b>name</b> , and page <b>number</b> on which the case begins. In parentheses, identify the court and the year of the decision. <b>[An example of the case name and citation is: <i>Davis v. Monroe County Board of Education</i>, 526 U.S. 629 (1999).]</b>                          |
| <b>2. What are the FACTS of the case?</b>                                  | State the essential facts leading to the controversy. Be concise, including only relevant information. Please include what happened in the <b>lower courts [e.g., if your case is a U.S. Supreme Court case, what happened in the Circuit Court of Appeals and in the District Court?]</b> .   |
| <b>3. What is the ISSUE that the court is deciding?</b>                    | State the issue or issues identified by the court in question form. Specify the provision of law that the court is interpreting (e.g., 14 <sup>th</sup> Amendment; IDEA).  |
| <b>4. What did the court decide? What was the HOLDING of the case.</b>     | Identify the court's response to the issue or issues involved (1-2 sentences).   |
| <b>5. Why did the court rule this way? What was the court's RATIONALE?</b> | Explain the court's reasoning for its decision. On what legal grounds (e.g., Fourteenth Amendment Due Process Clause, Title IX of the Education Amendments of 1972) did the court base its opinion? Identify any judicially created tests (e.g., endorsement test under the Establishment Clause) that the court applied in reaching its decision. <i>This should be the longest, most detailed section of your summary.</i> |

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## U.S. Supreme Court

**BROWN v. BOARD OF EDUCATION, 347 U.S. 483 (1954)**

**347 U.S. 483**

**BROWN ET AL. v. BOARD OF EDUCATION OF TOPEKA ET AL.  
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT  
OF KANSAS. \*No. 1.**

Argued December 9, 1952. Reargued December 8, 1953.

Decided May 17, 1954.

United States on the original argument, as amicus curiae, urging reversal in Nos. 1, 2 and 4 and affirmance in No. 10.

Briefs of amici curiae supporting appellants in No. 1 were filed by Shad Polier, Will Maslow and Joseph B. Robison for the American Jewish Congress; by Edwin J. Lukas, Arnold Forster, Arthur Garfield Hays, Frank E. Karelson, Leonard Haas, Saburo Kido and Theodore Leskes for the American Civil Liberties Union et al.; and by John Ligtenberg and Selma M. Borchardt for the American Federation of Teachers. Briefs of amici curiae supporting appellants in No. 1 and respondents in No. 10 were filed by Arthur J. Goldberg and Thomas E. Harris [347 U.S. 483, 486] for the Congress of Industrial Organizations and by Phineas Indritz for the American Veterans Committee, Inc.

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

→ These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion. 1 [347 U.S. 483, 487]

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, [347 U.S. 483, 488] they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in *Plessy v. Ferguson*, 163 U.S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction. 2 Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court. 3 [347 U.S. 483, 489]

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time. 4 In the South, the movement toward free common schools, supported [347 U.S. 483, 490] by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was

forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race. 5 The doctrine of [347 U.S. 483, 491] "separate but equal" did not make its appearance in this Court until 1896 in the case of *Plessy v. Ferguson*, supra, involving not education but transportation. 6 American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education. 7 In *Cumming v. County Board of Education*, 175 U.S. 528, and *Gong Lum v. Rice*, 275 U.S. 78, the validity of the doctrine itself was not challenged. 8 In more recent cases, all on the graduate school [347 U.S. 483, 492] level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337; *Sipuel v. Oklahoma*, 332 U.S. 631; *Sweatt v. Painter*, 339 U.S. 629; *McLaurin v. Oklahoma State Regents*, 339 U.S. 637. In none of these cases was it necessary to re-examine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt v. Painter*, supra, the Court expressly reserved decision on the question whether *Plessy v. Ferguson* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike *Sweatt v. Painter*, there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. 9 Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout [347 U.S. 483, 493] the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the

children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt v. Painter*, supra, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin v. Oklahoma State Regents*, supra, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." [347 U.S. 483, 494] Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system." 10

Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. 11 Any language [347 U.S. 483, 495] in *Plessy v. Ferguson* contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment. 12

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question - the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term. 13 The Attorney General [347 U.S. 483, 496] of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as amici curiae upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954. 14

It is so ordered.

# Sample Case Brief:

## Brown v. Board of Education



### **Case Name and Citation:**

Brown v. Board of Education, 347 U.S. 483 (1954).

### **Facts:**

Black children had been denied admission to their community public schools which were only attended by white children under the State segregation laws in several places, including Topeka, Kansas where Brown resided. The tangible factors that schools rely upon to function were equalized or are being equalized, although the plaintiffs argued they would never receive the same public education in the black schools. This was acknowledged through a lack in motivation and educational and mental development because of the constant inferiority imposed by segregation. The black students sought admission to the white schools.

### **Issues:**

Whether the Fourteenth Amendment permitted the “separate but equal” doctrine, and whether the educational environments of the plaintiffs were equal to their white counterparts.

### **Holding:**

The doctrine of ‘separate but equal’ was unconstitutional under the Fourteenth Amendment Equal Protection Clause and the students were ordered to gain admission to white public schools in which they had applied for and been denied admission.

### **Rationale:**

The court found that the doctrines of separate but equal educational facilities “are inherently unequal.” Thus, no manner of equalized segregation could ever reach the demand imposed by the Equal Protection Clause of the 14<sup>th</sup> Amendment. Education had changed so substantially in the time since the Fourteenth Amendment was passed that its prior interpretation in *Plessy v. Ferguson* is no longer valid. Further, Segregation has inherent inequalities for children, and these inherent inequalities have detrimental effects of the black children of segregated schools limiting the long term abilities as citizens. This is what the 14<sup>th</sup> Amendment sought to prohibit, and does in the case, therefore the plaintiffs and all other children should not be denied admission to a public school simply on the basis of race.

Having reached this conclusion for public education, the court then extended the reach of the prohibition of separate but equal to all aspects of society. Thus, the court directly overturned the Supreme Court case of *Plessy v. Ferguson* which sanctioned the doctrine as constitutional in 1896.

### **Dissenting/Concurring Opinions:**

None

# Oral Argument & Policy Brief

There will be three oral arguments throughout the course of the class. Students will participate in all three oral arguments, twice representing a party to the action and once serving as the judges. The Policy Brief is described in more detail below. Oral arguments are expected to be around 35-40 minutes in length. More specific time guidelines are provided below.

## Oral Argument Format

### Opening Arguments

Counsel(s) for the student present their opening arguments  
(10 min.)

Counsel(s) for the school present their opening arguments  
(10 min.)

Opening Arguments Should Consist of:

1. Constitutional & Statutory Arguments
2. Case Law Arguments

### Rebuttal

Counsel(s) for the student present their rebuttal  
(5 min.)

Counsel(s) for the school present their rebuttal  
(5 min.)

Any type of argument may be presented in rebuttal, but the arguments should be intended to counter the arguments presented by the opposition.

### Judges Deliberation & Verdict

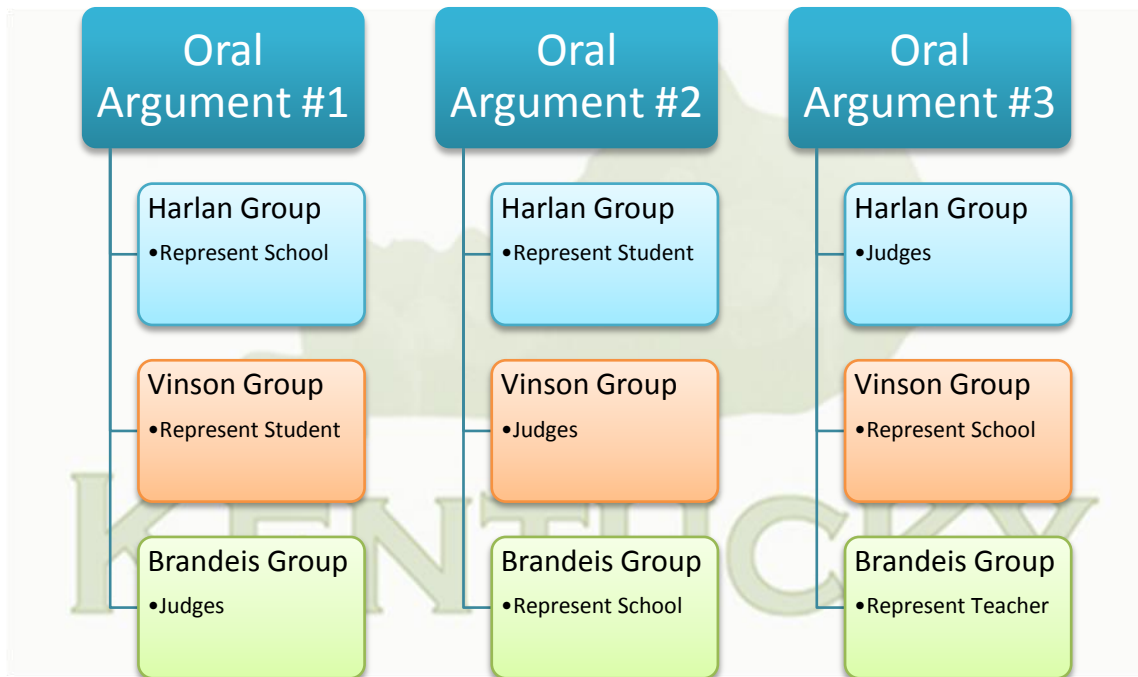
After opening arguments and rebuttal the judges will weigh both the evidence presented to them in the policy brief of the parties as well as the evidence presented in the oral argument and arrive at a verdict. After nominating a foreperson, they will then announce that verdict, as well as the reasoning behind it, to the class. (10 min.)

Judges may ask questions of the parties at any time during the proceedings, either on questions that arise from counsels' policy brief or from the oral argument of the

### Synopsis of the Arguments:

On the day of your oral argument, each group representing a party to the action will present a one page synopsis of their arguments to the judges (and the instructor – 6 copies). The judges will then consider not only the arguments presented orally but also the arguments made on the one page synopsis. This synopsis should be completed as a group and cover all the elements of the oral argument: Constitutional and Statutory Arguments; Case Law Arguments; and, Policy Arguments.

## Oral Argument Assignments:



## Oral Argument and Policy Brief Topics and Applicable Fact Patterns:

### Oral Argument #1: Church & State - *Robertson v. Lieberman County School District, No. 413*

A public middle school student died in an accident a week before school began. Many students approached the teacher about a way to honor and pray for Robbie, so the student's teacher asked the principal if the student's rabbi could lead a prayer for the deceased student at school. The principal organized a voluntary student assembly on the first day of class at 2:00 pm. The principal required every student to be in the gym; however, students that did not wish to attend were permitted to sit on the top walkway of the gym and do their homework, distant from the other students but still within earshot of the speakers. About 15 students sat at the top of the gym. At the assembly the principal told the students of the accident and about counseling services that were available. After the principal finished he introduced the rabbi by name and said he was a religious friend of Robbie's, but did not identify the rabbi by affiliation. The Rabbi said a short (less than 1 min.) nondenominational prayer. A Christian student and her parents filed a lawsuit against the school. This case is scheduled for oral argument on Thursday, Sept. 25, 2008.

### Oral Argument #2: Student Expression - *Palin, Clinton & Pelosi v. Strom Thurman School Dist.*

After seeing the play the Vagina Monologues, a group of female high school students designed shirts that said, "I ♥ My Vagina." A picture of the shirts can be seen below. Although ten students wore the shirts to school, all but three turned the shirts inside-out before they entered the school building for classes. The three students that did not turn their shirts inside

out were called to the principal's office during second period. The principal asked the girls to remove their shirts or turn them inside out, but the girls refused to do so, saying the shirts represented their femininity and that he, a male principal, was only try to keep women in their proper place, subservient to men. The principal sent the students home and, in addition, gave each a three day suspension. The girls, through their parents, have filed a lawsuit against the school. The case is scheduled for oral argument on Thursday, Oct. 16. 2008.



### **Oral Argument #3: Teacher Speech - *Kucinich v. Rumsfeld Community High School, District 180***

A second year teacher, Ms. Kucinich, was teaching a social studies lesson on Vietnam. As part of the lesson she talked about the resistance to the war in the United States and the many protests that went on around the country. After class, but before the students left for their next class, one typically challenging student ask the teacher if she would ever protest a war and what she thought about the War in Iraq. The teacher, smiling, replied, "I honk for Peace" and made no further comment. The student went home and told his father of the incident. The father consulted the principal. Two weeks later, on May 27, Ms. Kucinich was informed she was not being renewed for the following school year. Ms. Kucinich, who had always received great teaching evaluations for her two years, knew the nonrenewal occurred because of the comment she made because there was a good deal of rumor floating around the school about it and how she was against the Iraq war and our President. Ms. Kucinich filed suit against the school for violating her First Amendment rights. The case is scheduled for oral argument on Thursday, Oct. 30, 2008.

### **Oral Argument & Policy Brief Outside Sources to be Used**

In providing arguments from caselaw in both the Oral Argument and in the Policy Brief, students should consult and reference **at least two cases not listed in your text book**. Cases may be found using LexisNexis. Information on using LexisNexis will be provided on the First night. Students should choose cases that relate and support their argument. If students are having trouble locating cases they should contact the instructor. References to these cases should be provided in the Synopsis of the Arguments and in the Policy Brief.

## Policy Brief Format

1. **Title Page:** Provide the name of the case, the party you are representing, the date, and the name and partners of your law firm.
2. **Introduction:** Provide a brief overview of the facts, the position you represent, and your arguments.
3. **Constitutional Arguments:** Explain what constitutional amendments apply to this situation and how they apply and support your arguments. Include any important constitutional tests, as interpreted by the Supreme Court, in this section and how they apply to you.
4. **Case Law Arguments:** If constitutional tests from cases have not previously been provided, provide them here with information on the original case. In this section, also provide cases that support your argument. The cases do not need to have a similar outcome to yours to support your argument. In this section use two cases not listed in your books that you found with your legal research skills.
5. **Policy Arguments:** Explain how non-legal arguments support your position. Provide at least two practical reasons for the court to find for your client. An explanation of policy arguments will be provided in class.
6. **Opposition's Arguments:** In the policy brief it is important to distinguish your opposition's main arguments and explain why these arguments are wrong or incomplete. Many of these can be gleaned from the oral argument.
7. **Conclusion:** Sum up your main arguments and give an impassioned plea for the court to side for your client.
8. **References:** Attach a reference page with citations to all statutes, cases, and secondary sources referenced in the text.

### More information on the Policy Brief:

- The policy brief should be between 3-4 pages. References should be attached in a recognized citation format.
- The policy brief can be submitted as a group or individually. However, because of the time frames, groups may find it advantageous to split up the work.

# Sample Policy Brief

A contentious battle between conservatives and liberals erupted after the school board of Appleton, Arkansas voted to display the motto “In God We Trust” in each of the classrooms in the school district. Some argue that the display violates the Establishment Clause, while others argue that there is no problem with displaying this piece of history in the classrooms. This issue is very important to educators and students alike because it has far reaching implications on what is and is not acceptable in the classroom in relation to any reference of a Supreme Being. To completely ban the mention of a God would be to disregard a large part of our American culture and values. Because of this, the motto’s historical context, and the lack of any type of coercion, and other reasons discussed below, the school should be allowed to post the motto in each classroom without fear of retribution or punishment.

The First Amendment clearly prohibits the promotion of any religion by a governmental institution, something called the Establishment Clause. However, displaying the motto “In God We Trust” does not violate this clause; rather it is a reminder of the values on which our nation was founded. Additionally, the motto can be related to the Pledge of Allegiance, which contains a very similar phrase: “One nation, under God...” and should therefore be treated similarly. Because of the large amount of litigation related to the pledge of allegiance, we have a large amount of precedent on which we can make the decision about the motto. Courts have held that the pledge of allegiance does not establish a religion nor prohibit a student’s free exercise of their particular religion (See *Elk Grove Unified S.D. v. Newdow* below). The courts have used the coercion test to weigh the constitutionality of the pledge and found there is no coercion to believe in a Christian God or any other god for that matter. If a student disagrees with the motto, they are free to disagree and voice their opposition in a non-disruptive manner.

Case law supports the opinion that the motto is not unconstitutional. In *Elk Grove Unified S.D. v Newdow*, the U.S. Supreme Court reversed the Ninth Circuit's Court of Appeals decision that the phrase "under God" in the pledge of allegiance violated the First Amendment's prohibition of establishing a religion. This case relates to the current scenario because of the historical context of the motto "In God We Trust" which is strikingly similar to the phrase "One nation, under God." In the concurring opinion in *Newdow*, O'Connor explained that the government "was permitted, in a discrete category of 'ceremonial deism' cases, to acknowledge or refer to the divine without offending the Constitution" (p. 99). More importantly, in reciting the pledge, the word "God" has lost its religious context and serves only a "historical" purpose (p. 41). Therefore, because they are so closely linked, the *Newdow* decision applies to the Appleton motto.

The Supreme Court also ruled on a case addressing the Establishment Clause in *Lynch v. Donnelly*. In this case, the Supreme Court reversed the lower court's judgment which affirmed the removal of a nativity scene from the public city park. The *Lynch* Court held that the nativity itself did not promote Christianity except "indirect[ly], remote[ly] and incidental[ly]" (p. 683). The *Lynch* decision is linked to this Appleton issue because the motto "In God We Trust" is not automatically linked with a Christian creed, other than indirectly. To juxtapose, a sign claiming: "Jesus is the Christ, the son of God, and my savior" would embody the Christian philosophy, but in the Appleton motto, "God" is vague enough that it refers only to a higher power, regardless of religion or lack thereof.

In a 2007 article by James Browning entitled *Newdow v. United States Congress: Is there any room for God?*, Browning gives a detailed background of the *Newdow* case, a review of the tests courts have used to evaluate a violation of the Establishment Clause, and an analysis of the Court's findings. It relies on past cases and states the opinion that the first *Newdow* finding set a dangerous precedent and incorrectly linked the phrase "under God" to the issue of school sponsored prayer at graduation ceremonies. The review article supports the position that the Appleton motto cannot be a violation of the Establishment

Clause because it sets a dangerous precedent, much like the first *Newdow* decision.

Browning (2007) discusses the importance of at least recognizing that the great majority of the nation believes in a Supreme Being. This belief is part of the culture of America, and should not be eradicated from the American school.

Not only has the Supreme Court ruled on similar cases, but common sense must play a role in the decision to allow the Appleton motto to remain. Students cannot be expected to be insulated or protected at every moment from references to ideas they may not agree with. The best education occurs when the student weighs information against his own preconceived notions or values. Simply making the statement “In God We Trust” should not offend anyone. It is a simple statement that can be related to almost every religion. The motto doesn’t include a picture of judgment day, or the gates of hell as a method of influencing or coercing students to behave or be honest. It simply states that we trust in a higher being. God is not exclusionary to the traditional Judeo-Christian higher power.

Additionally, the Appleton school system’s learning environments are not affected by the presence of a motto that is prevalent in our society. We come into contact with this exact same motto every day because it is printed on our money. Just having those words present doesn’t keep people from using money in immoral ways like buying liquor and drugs. It would be nearly impossible to find a person who refuses to use cash because of its “establishment” of a religion. In the same way, the motto displayed in the classroom will not have an effect on the learning environment for the students.

Some may argue that the Supreme Court has stated that the bible and other religious documents should only be taught in a “literary or cultural, or historical perspective” (McCarthy, 2004, p. 52) and that the motto on the wall would not meet those criteria. However it does, in the same way the pledge of allegiance is protected. That is, the motto’s presence indicates a respect and acknowledgement of the historical roots of our nation, even if not overtly expressed.

Another common argument will be that the motto only recognizes one religion and encourages the establishment of Christianity. However, case law and policy arguments indicate that “God” is a very generic term, not only relevant to Christianity, but to almost every single religion other than atheism. Students may choose to apply the motto to their own individual creed or ignore it completely. The choice is theirs.

The Appleton motto does not violate the Establishment Clause, and in fact guarantees the free exchange of ideas, not the censorship of potentially “hot topics” from the classroom. It is important that students’ best interests are kept in mind which would include providing them the opportunity to make their own decisions. Prior case law that is highly related to the motto has consistently held in favor of the motto or like phrases and policy law ensures that American schools do not become censored areas where the free exchange of ideas is prevented. It is important that the Appleton school district hold strong to their decision because precedent is on their side and striking down prior cases that rule in favor of similar situations may be very dangerous in creating ineffective learning environments that are not relevant to the American student. It is most important to always remember the students should be the first concern of the educational system.

#### References

Browning, J. (2007). *Newdow v. United States Congress: Is There Any Room For God?*, *Northern Kentucky Law Review*, 34 *N. Ky. L. Rev.* 51.

*Elk Grove Unified S.D. v. Newdow*, 542 U.S. 1 (2004).

*Lynch v. Donnelly*, 465 U.S. 668 (1984).

McCarthy, M.M., Cambron-McCabe, N.H., Thomas, S.B., (2004). *Legal Rights of Teachers and Students*. Boston: Pearson, Inc.

## Analysis Overview:

Students are expected to get their hands dirty in local school policy and provide analysis on the benefits and detriments of particular policy aspects. The assignment is not to examine all local district and school policies. Instead, it is to take one or a couple of specific policies and provide an in depth level of analysis. For instance, a whole paper may be dedicated to analyzing a school's anti-bullying policy in light of the new state law. Or, one can analyze the principal's duties if they are listed in school policy. Or one can analyze teacher leave policies. Or the state teacher evaluation regulation as applied to your schools. A partial list of acceptable policies that may be analyzed are listed below.

In your analysis, it would likely benefit you to conduct at least some outside research to support your arguments. If there is an applicable state or federal policy, you should probably cite it (you can use your statute books and textbooks for guidance). Also, it may be beneficial to obtain some neighboring or out-of-state policies for comparison. You may also want to cite some research to support your policy recommendations. Outside research is not necessary for an A paper, but it would probably make your arguments stronger and thus a stronger paper.

As far as what your papers should contain, your papers should contain some or all of the following sections:

1. Description of the Policy
2. Kentucky or Federal legal compliance of the policy.
3. Based on your experience, how the policy works in real life.
4. How the policy is working effectively
5. Where and/or how the policy can be improved.
6. Any proposed changes in the policy and/or state laws.

Papers are expected to be between 4-7 pages in length, excluding references (if applicable). Papers should be double spaced and in a readable font. These papers may be included in your portfolios under ISLLC Standard Six or Kentucky Continuum Dimension 5.

## Policies that can be analyzed:

1. School Board Policies
2. SBDM Policies
3. School Discipline Code
4. Collective Bargaining Agreement
5. Individual Teacher Contracts
6. Parental Agreements
7. Other Documents Carrying Legal Weight (Consult with Instructor)

## Copies:

When you turn in your analysis, please also turn in one copy of each school policy used in your analysis. This is necessary for me to judge the quality of the work. Unless otherwise requested, these policies will not be used for any other purpose than grading your response and will be destroyed at the conclusion of the course. If this is a problem in any of your districts, please let me know and I can talk to your principals.

## Evaluation of Fayette County Schools Policy Concerning Student Groups

The policy under evaluation is the Fayette County Public Schools (FCPS) policies on student groups with specific reference to the policy concerning the meeting of non-curricular student groups. The FCPS policies on student groups can be found in the FCPS Policy/Procedure Manual in chapter nine, subpart 3.2-3.311 (attached). The FCPS has policies on student organizations, student clubs and non-curriculum student related groups. In the policy on student organizations the FCPS states that they shall have approval rights for all groups and that school-sponsored groups shall be directed by a faculty advisor. The FCPS also allows local principals to approve student clubs. Also, these clubs may limit admissions to only qualified individuals. Finally, the FCPS has a policy on the use of school facilities by non-curriculum related student groups. This policy largely mirrors the Federal Equal Access Act and will be analyzed in more detail below. The remainder of this paper will analyze the student group and club policies of FCPS using a legal lens and will also analyze the practical implementation of this policy based on the author's experience as a classroom teacher. Finally, the concluding sections of this paper will propose possible beneficial modifications to the FCPS policy.

### *Legal Analysis*

#### **FCPS Policy/Procedure 09.32: Student Organizations**

In part one of this subchapter the FCPS specifically outlines that they will not sponsor or support any "secret or socially exclusive societies, fraternities or sororities under District auspices." Schools are

granted broad authority to regulate school sponsored activities as acknowledged by the U.S. Supreme Court in *Hazelwood School District v. Kuhlmeier*. Thus, in explicitly stating that they do not support negative student groups functioning in a school-sponsored manner they are merely repeating a power already articulated to them by the Courts. Also under the heading of “Secret Organizations” are two other provisions that really have nothing to do with secret organizations. The national affiliation provision and the faculty advisor provision, while legally sound, are misplaced within this heading as these provisions address more than just “secret organizations.”

#### **FCPS Policy/Procedure 09.321: Clubs**

This section seems to distinguish a student “club” from a student “organization.” In the previous section, the FCPS explicitly state they condone “socially exclusive societies,” yet in the following subchapter on “clubs” the FCPS states that “groups ... where membership is determined by the scholarship, ... interests, or other such qualifications, may restrict membership.” On their face, these provisions seem to conflict making a statement to the effect that ‘we are against all socially exclusive student groups, except the ones we approve.’ Clearly this section on student clubs, where qualifications may be used to determine membership calls into question the Equal Protection Clause of the Fourteenth Amendment which guarantees the equal protection of the laws unless there is a rational basis upon which to discriminate. This provision on clubs seems to be an attempt to provide a rational basis and mechanism to provide oversight, the principal’s approval. However, in light of the previous section against “socially exclusive societies” the FCPS is in danger of raising the legal bar to something beyond a rational basis.

#### **FCPS Policy/Procedure 09.3211: Use of Sch. Facilities by NonCurriculum-Related Stud. Groups**

This provision is clearly meant to provide a district level policy to meet the demands of the federal Equal Access Act (EAA). The provision limits itself to secondary students, limits itself to meeting

space and limits student groups only to non-instructional time before and after school. The subchapter also outlines the acceptable circumstances under which student groups may qualify for the use of school facilities under this provision. The headings, however, seem to misconstrue elements of the EAA. Specifically the headings of “approval required” and “permission may be denied” give a substantially negative tone to this subchapter. At no point in the subchapter does the provision state that students have a right to meet. In fact, the provision seems to imply the exact opposite in stating that space will only be granted “on application to and approval by the Principal.” Under the EAA, if the group meets the necessary requirements, the school principal has little to no discretion whatsoever in deciding whether the group is allowed to meet.

In addition, the final section addressing when permission to meet may be denied seems to overstate the limitations outlined in the EAA. While the EAA does agree that meetings that substantially or materially interfere with the orderly conduct of the school may be limited, the EAA does not explicitly speak to the limitation of activities that “pose a danger to the health, safety, or welfare of the students in attendance or to the school property.” The EAA does not speak to the maintenance of school property whatsoever and only fleetingly refers to health, safety, and welfare of children in subsection (f). This section could be considered an unconstitutional expansion of the school’s authority to regulate by the Courts. Finally, the district’s provisions seem to unnecessarily highlight political and “religion-related” meetings as meetings that faculty members can attend, but not participate in. Whether the district would treat an ethnic group differently from a political or religion-related group is unclear, but the singling out of these types of groups seems to imply some differential treatment of these groups. The EAA would clearly not permit such differential treatment of groups by the FCPS.

### *Practical Implementation and Effectiveness*

Based on my observations of schools both as a teacher and experience with this issue from anecdotal evidence, these policies would seem to work effectively from the school's perspective. Schools benefit from stability and if these policies err, they err on the side of over-regulation. The explicit policy on secret societies and the overly broad language in the facilities related policy would seem to serve as additional deterrents to any groups meeting in the first place. In reality, few students are probably reading and considering the district policy before attempting to form a student group. More likely, school administrators are using these policies as a means to restrict groups from meeting once the administration becomes aware of their presence. The overly harsh and restrictive language in these policies may serve to deter groups from meeting further. Even where the school policy is implicitly granting students an additional right guaranteed by the United State Congress, the policy uses restrictive language and repeatedly asserts the principal's right to oversee the activity. While this is likely an effective administrative practice, it is probably not in keeping with the intent of Congress or the state and local governments which permit and encourage non-disruptive student groups to meet.

From a policy perspective, schools may be limiting student collaboration and peer learning in the name of maintaining order. These policies do not just inform students, they also inform teachers and principals that have limited or no legal training and are likely to be unaware of federal guarantees such as the EAA. Thus, these policies are the legal instruction for both teachers and students and the instruction is occurring in a decidedly one-sided manner favoring administrative power, even, in the case of the EAA policy, where none may exist. While this may serve to maintain orderly learning environments, it may be shutting down legal and essential peer learning which frequently occurs in disorganized formats but may be just as important as the structured curricular learning administered by teachers.

## *Recommendations*

As worded, the policy is likely over restrictive of student rights. To alleviate this problem the FCPS can take several steps. First, the FCPS can provide clarity and accuracy in headings. Standard provisions such as affiliation approval under a heading of “secret organizations” are confusing to students and technically inaccurate. Not all student groups are secret organizations, yet as currently structured, that is the implication of the heading structure. Second, eliminate the secret organizations language altogether. Schools already possess the ability to regulate secret organizations that seek to exist “under District auspices” and thus the policy is unnecessary. Not only does the provision conflict with the section on student clubs, but it seems intentionally designed to be scary to students. If necessary, a more blanket statement to the effect that healthy student organizations will be encouraged and disruptive student organizations will be eliminated could serve a similar purpose but convey a different feel to students.

Third, the subchapter on the use of student facilities should be rewritten to more closely effectuate not just the language of the EAA, but also its intent. The provision should convey that students have a right to gather and use school facilities if they meet all the requirements of the EAA. The web address of the EAA would also aid in students effectively engaging in their federal right to gather in a non-disruptive way. Also, the final provision on the health, safety and welfare of the students or school property being legitimate reasons for regulation should be eliminated. Not only does that possibly expand the EAA beyond what may be constitutionally permissible, but it is unclear language. What is good or bad for the welfare of students is substantially debatable. Students, and even judges, may interpret that clause in ways the school did not intend. Finally, as a general matter, the FCPS school policy on student groups should not be viewed as a way to gain the upper hand on students. School policies are agreements between schools and students in which students have no bargaining power.

Thus, these policies should be written with that in mind and serve as a teaching tool for students about their rights rather than merely a regulatory tool.

### *Conclusion*

The FCPS policy on students groups is not a bad policy and while contradictory at times, it has no explicitly illegal provisions contained in it. The policy is written with a moderate administrative slant and seems unconcerned with using the document as a teaching tool for children. Hopefully the policy can be modified in the future to more clearly state both school and student rights in a way that both encourages peer learning while at the same time maintaining order within the school.

### References

U.S. Const., Amend. XIV (2008).

Equal Access Act, 20 U.S.C. § 4201 (2008).

Hazelwood Sch. Dist. V. Kuhlmeier, 484 U.S. 260 (1988).

### **Student Organizations**

#### **SECRET ORGANIZATIONS**

The Board does not support or sponsor the establishment or operation of any secret or socially exclusive societies, fraternities, or sororities under District auspices.

School groups' affiliation with state and national organizations must be approved by the Board.

All school-sponsored student organizations shall be under the direction of a faculty advisor.

#### **STUDENT GOVERNMENT**

The development of a student government organization is encouraged and shall be at the discretion of each school.

#### **REFERENCE:**

[KRS 161.185](#)

#### **RELATED POLICIES:**

09.321  
09.3211  
09.36

Adopted/Amended: 03/04/1996

Order #: V.A

### **Clubs**

#### **MEMBERSHIP**

Groups such as honor clubs, athletic clubs or other groups where membership is determined by scholarship, special curricular-related interests, or other such qualifications, may restrict membership to pupils who qualify according to bylaws of the organization approved by the Principal and subject to review by the School Director.<sup>1</sup>

#### **REFERENCE:**

<sup>1</sup>[KRS 160.290](#)

#### **RELATED POLICY:**

09.3211

Adopted/Amended: 08/15/1988

Order #: V.A.

**Use of School Facilities by Noncurriculum-Related Student Groups**

**APPROVAL REQUIRED**

Noncurriculum-related secondary student groups may be provided meeting space on application to and approval by the Principal. Space shall only be provided during noninstructional time either before the beginning or after the conclusion of the school day.

**PROVISIONS**

All meetings of noncurriculum-related student groups shall be voluntary. No meeting shall be sponsored by the District or any of its employees. All such meetings shall be student initiated, directed, conducted, and controlled. Nonschool personnel may not attempt to direct, control, or conduct nor regularly attend such meetings. Agents or employees of the District may attend political or religion-related meetings only in a nonparticipatory capacity.

**PERMISSION MAY BE DENIED**

Permission to use school facilities may be denied where reasonable cause exists to believe the meeting will materially and substantially interfere with the orderly conduct of the educational activities of the school or pose a danger to the health, safety, or welfare of the students in attendance or to school property.

**REFERENCES:**

20 U.S.C. Section 4071, et. seq.  
[KRS 158.181](#)

**RELATED POLICIES:**

09.3  
09.32  
09.321

Adopted/Amended: 08/28/2006

Order #: K.17

# EDL 628 Content Quiz Review Sheet

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*This review sheet is intended to give you an idea of some of (not all) the topics that may be covered on the exam. You should complete it outside of class, but you are free to work together with classmates. I will not answer questions directly from this review sheet. I will only answer specific questions. Generally, to answer the questions, you will need more room than the space provided. I will stop answering student questions at 3:00 p.m. the day of the exam.*

## LEGAL FRAMEWORK

- Explain the levels of the state and federal court systems.
- Explain why this statement is false: If the 11<sup>th</sup> Circuit Court of Appeals decided that corporal punishment was unconstitutional, then every state *must* follow its decision.
- What's the difference between the U.S. Constitution, federal statutes, federal regulations, state constitutions, state statutes, state regulations, school board policies, and school policies/classroom rules?
- What does case law mean?
- Why would a lawsuit be brought to federal court instead of state court?
- What constitutional amendments apply to school districts? Explain.
- Explain why this statement is false: The US Constitution authorizes Congress to be solely responsible for public education.

- You are the parent of a child who qualifies for services under Title I, but your child's school has refused to provide additional tutoring services. Which court(s) can you file suit in and why?

## CLASSIFICATIONS BASED ON RACE

- What is important about *Brown v. Board of Education*? What case did it overrule?
- How did some school districts respond to the *Brown v. Board of Education* decision?
- Discuss de jure and de facto segregation.
- Define affirmative action.
- Explain whether race can be a factor in admissions criteria (both higher education and K-12 student assignment plans)?
- How does the Fourteenth Amendment apply to this issue?
- In order for the government to treat people differently based on race, what must be demonstrated (hint: compelling state interest)?
- In order for the government to treat people differently based on gender, what must be demonstrated?

## TORTS

- What type of court usually hears tort cases?
- Discuss negligence (the four elements) and the four defenses to negligence.
- Be able to analyze a scenario and determine whether the defendant is likely to be found negligent.
- Discuss the difference between negligence and intentional torts.

- Discuss examples of intentional torts.
- A scrawny second grader goes up to his teacher, who also happens to be a professional football player, and says, "You played worse than my grandma at your game last night. I'm going to tear you apart with my bare hands." Is this assault?
- Define and describe defamation. Is there a difference in standards when a defamation case is brought against a teacher versus a famous person?

## CHURCH/STATE RELATIONS

- What is the significance of the two clauses in the First Amendment that relate to religion?
- "Congress shall make no law respecting an *establishment of religion* or prohibiting the *free exercise* thereof."
- How do courts determine whether there has been an Establishment Clause violation?
  - Lemon Test
  - Endorsement Test
  - Coercion Test
- Discuss the legal difference between school-sponsored and student-initiated prayer.
- What is the legal status on the following:
  - Silent Prayer v. Meditation
  - Prayer at Graduation
  - Prayer at Football games
  - Proselytizing in the classroom
- What are the constitutional issues surround a banner that is posted in a classroom stating "In God We Trust?"
- Describe the significance of the EQUAL ACCESS ACT and explain how it works.

- Is the Equal Access Act a federal or state law?
- Find at least 3 reasons why the EAA does not apply to this scenario: Lauren, a 5<sup>th</sup> grader, wants to start a Bible study club after-school with her mom. Therefore, Lauren and her mom ask the principal if they can use the gym to hold their Bible study meetings. He tells them, "Of course, I know that Teacher Todd would also like to help you organize your meetings!"
- May school officials deny a student-led GLBT group from meeting after school? Explain.

### INSTRUCTIONAL ISSUES

- Discuss the roles of the courts, the state, the school board, the teacher, and the parent in determining what is taught in the classroom.
- Are community service requirements constitutional? Why or Why not?
- What is the legal status on banning books in public schools?
- Discuss fair use under copyright law.
- Could you use an episode of *American Idol* in your class without permission (assuming it has SOME curricular value ☺). Explain.
- Discuss the copyright guidelines for not-for-profit groups such as schools.

### INSTRUCTIONAL PRIVACY RIGHTS

- FERPA – What's this?
- What is considered an educational record?
- Does the *Owasso* case permit peer grading?

### STUDENT EXPRESSION

- What was the Supreme Court's decision in *Tinker v. Des Moines*?

- What was the Supreme Court's decision in *Bethel v. Fraser*?
- What was the Supreme Court's decision in *Hazelwood v. Kuhlmeier*?
- What was the Supreme Court's decision in *Morse v. Frederick*?
- Discuss whether schools can regulate student hairstyle and dress codes.
- Discuss in detail whether schools can punish off-campus student expression.
- Could school officials make a high school student remove a t-shirt worn in school that included the following phrase: "Barack Obama is a Mutt"?
- Could a principal expel a student for creating a Web site that states that the student is "a little upset at the principal and is going to give him what he deserves." Explain.

#### DISCIPLINE & SEARCH AND SEIZURE

- What type of due process is required before a suspension? What amendment applies?
- What amendment applies to search and seizure?
- Explain reasonable suspicion and who does it apply to?
- Explain probable cause and who does it apply to?
- What is the difference between the school standard and the police officer standard?
- When can schools drug test students? When can schools drug test teachers?

- When can they search lockers, cars, possessions, and persons?

#### DISCRIMINATION IN EMPLOYMENT

- What federal *laws* address discrimination regarding gender (including pregnancy), age, and disability in employment?
- Are their federal protections available for gay or lesbian teachers who have been harassed in the workplace? Are there any state laws? Any in Indiana?
- What is meant by a bona fide occupational qualification (BFOQ) exception?
- If a teacher feels that she has been discriminated against because of her disability, what two federal laws would be most helpful to her.
- What is Title VII? Who does it protect?
- What is Title IX? Who does it protect?

#### TEACHER SUBSTANTIVE RIGHTS/LIFESTYLE CHOICES

- What are teacher rights to free speech/expression inside the classroom?
- What are teacher rights to free speech/expression outside the classroom?
- What are a teacher's rights regarding lifestyle choices (sexual orientation, etc.)?
- When may school officials dismiss a teacher based on teacher lifestyle?
- Which amendment(s) best applies to teacher lifestyle (*i.e.*, teacher privacy rights, equal protection)? Why?

#### CONDITIONS OF EMPLOYMENT/CONTRACTS

- What should you look for in a teacher contract (*i.e.*, what are the elements or characteristics of a contract)?
- What are some conditions of employment that may be placed on teachers? Explain.

## TEACHER DISMISSAL

- What are some of the causes for dismissal? Are these the same in every state?
- What are the due process requirements for tenured teachers?
- What are the due process requirements for non-tenured teachers?
- Describe the difference between non-renewal and dismissal?
- What constitutional interests are at issue with dismissal and non-renewal?
- What amendment applies to teacher dismissal? Why?

## HARASSMENT AND ABUSE

- What are two steps that a teacher should do under the law if he/she suspects child abuse or neglect?
- Name the factors that the court will consider when deciding whether a school district may be liable for employer-to-employee harassment? (Discuss *quid pro quo* and hostile work environment)
- Name the factors that the court will consider when deciding whether a school district may be liable for teacher-to-student harassment?
- Name the factors that the court will consider when deciding whether a school district may be liable for student-to-student harassment?

- Is there a national anti-bullying law?
- Approximately how many states have adopted anti-bullying legislation/policies?

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## Sample Questions

Sample Multiple Choice and Short Answer Questions. The following questions are samples of the type of questions that you may see on the exam. *None of them are the actual questions that will appear on the exam.* Although I am not providing the answers to you, if you are interested, please feel free to double-check that you got the answer correct by contacting me or your friends.

\_\_\_\_\_ The Pregnancy Discrimination Act is

- a part of Title VII that prohibits employment discrimination based on pregnancy.
- a federal law that prohibits employment discrimination based on pregnancy.
- a federal law that prohibits a pregnant woman from taking a lengthy maternity leave.
- Both b and c are correct.
- None of the above are correct.

\_\_\_\_\_ The current status of search and seizure in public schools is:

- Teachers and other school officials must have probable cause before searching students.
- Teachers and other school officials must have reasonable cause to search.
- School officials must have reasonable suspicion before searching students.
- Teachers usually need a warrant before searching a student.
- The Supreme Court held in *New Jersey v. TLO* that either the search must be reasonable at inception **or** the search must be reasonable in its scope.

\_\_\_\_\_ The Supreme Court has held that:

- voucher systems in public schools are never constitutional.
- a voucher system in an Ohio public school district was constitutional.
- voucher systems in public schools are always constitutional.
- a voucher system in an Indiana public school district was constitutional.

- e. The Supreme Court has not decided any cases about voucher systems in public schools.

Describe two types of sexual harassment and the federal law that prohibits sexual harassment in the workplace.

Betty Boozer is a 3<sup>rd</sup> grade teacher and a recovering alcoholic. One night, a relative of one of Betty's students saw Betty at an Alcoholics Anonymous meeting. Soon the news that Ms. Boozer was a recovering alcoholic spread amongst the parents of Betty's students. They insisted that Ms. Boozer should be fired. You are the school's lawyer. What legal advice should you give the school?

Describe what happens after a teacher's union and a school district are unable to agree on a collective bargaining agreement (in other words, what happens when they are at an impasse or deadlock)?

Describe whether a school can discipline a teacher for his/her speech/expression outside of the classroom.