



Appendix E ~ Legal Issues

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Release Time Law

Release Time Religious Education

NYS Education Law 3210 and Commissioner's Regulations 109.2

Absence from school for religious observance and education

- a. Absence of a pupil from school during school hours for religious observance and education to be had outside the school building and grounds will be excused upon the request in writing signed by the parent or guardian of the pupil.
- b. The courses in religious observance and education must be maintained and operated by or under the control of duly constituted religious bodies.
- c. Pupils must be registered for the courses and a copy of the registration filed with the local public school authorities.
- d. Reports of attendance of pupils upon such courses shall be filed with the principal at the end of each semester.
- e. Such absence for a release time program, grades K-12, shall be for no more than one hour each week at the close of either the morning or afternoon session, or both, at a time to be fixed by the local school authorities; provided that the time designated for each separate unit, the primary grades (K-3), intermediate grades (4-6), junior high school grades (7-9), and senior high school grades (10-12), shall be the same for all pupils in that unit in each separate school. Notwithstanding the foregoing, a board of education, in its discretion, may permit pupils in the various units which are departmentalized to be released for not more than one hour a week in groups that may include less than whole units at such times and upon such conditions as such board of education may deem proper; in no event may any pupil be released for more than one hour a week.

In the event that more than one school for religious observance and education is maintained in any district, the hours for absence in each particular public elementary or secondary school unit in such district shall be the same for all such religious schools.

f. A board of education may establish an optional program for high school students in grades 9-12 to permit a student with written approval of parent or guardian to enroll in a course in religion in a registered nonpublic high school. Enrollment in a course of this nature shall be subject to prior approval by the public high school principal with respect to course schedule, public attendance and reporting of public achievement. Absence to attend such a course may be excused for the number of periods per week that the course is scheduled in the nonpublic school, provided that the excused absences are at the beginning or close of a public school session and are mutually agreed upon by the school officials.

Legal Issues

Keeping student confidences:

What can you tell?

What must you tell?

One of the more perplexing situations facing Catholic educators today is presented by students sharing confidential information. Young people in the '00s may well face more pressures and problems than the youth of any other decade. Broken homes, alcoholism and drug addiction, sexual and physical abuse, depression and violence seem to be more prevalent, or at least more openly acknowledged, than they were when the majority of today's practicing Catholic educators were students.

The responsibility for advising students and receiving their confidences in both day-to-day situations and crises can be overwhealing. Busy teachers may well ask, "What am I supposed to do? I'm not a professional counselor, a psychiatrist or a social worker. But I'm the one the student trusts, the one the student has consulted. Are there legal issues involved in the receiving of student confidences? Are there matters that must be made known to others, even when the student has asked for and received a promise of confidentiality from me?"

These are appropriate questions for any educator to ask. None of us can afford to think that we can help all students all the time. We cannot. If a student were to come to a teacher and tell the teacher he or she is experiencing shortness of breath and chest pain, the teacher would quickly summon the medical assistance and the student's parents. Yet psychological problems are no less serious than physical ones, and the layperson who attempts to deal with such problems unaided may well be courting tragedy for both self and student. Such tragedies are more likely to be averted if we fully understand the concepts of confidentiality and legal immunity.

Confidentiality

Confidentiality is generally held to mean that an individual or individuals will keep private and not reveal information that has been given to them. For example, someone receiving the sacrament of reconciliation rightfully expects that the subject matter of confession will be held sacred and not divulged to anyone by the confessor. Indeed, there are accounts of priests who died rather than break the seal of confession.

Friends confide in each other. One friend may say to another, "This is confidential. You cannot repeat it." The person speaking in confidence has a right to expect that the confidant to whom the information has been given will keep the matter between them.

But there are recognized limits to what friends will keep confidential. For example, if a friend confides that she has been stockpiling sleeping medication to commit suicide that evening, morality demands that the confidant communicate that knowledge to a spouse or other family member of the suicidal friend, or take some other intervening action.

Sometimes a teacher who would not hesitate to get help for a friend refuses to believe that a student who is talking about suicide is serious, or assumes the student can be talked out of the planned action, or is incapable of carrying out a threatened suicide. As child and adolescent psychologists report, young people do not usually comprehend the finality of death nor do they think through the long-term ramifications of a suicide attempt. There is also, among some young people a fascination with death, as can be seen by the idolization of famous people who have died young or committed suicide.

If a student tells a teacher that he or she is going to harm self or others, the teacher must reveal that information even if a promise of confidentiality has been given. In a number of lawsuits brought against teachers and school districts, parents sought damages from teachers who were told by students in confidence that they planned to harm themselves or someone else; the teachers did not contact parents or other authorities. In some cases, the educators were held to be negligent in failing to give warning. The 1995 case of *Brooks vs. Logan and Joint School District* (cf. *Recent Developments*, page 18) illustrates the liability that can ensue to both teacher and school when a threatened suicide becomes a reality.

Legal immunity

It is a widely held myth that counselors, physicians, psychologists and social workers have legal immunity from responsibility for injuries that may arise from their not acting on confidential information presented to them. Most states have abolished counselor immunity, and the few who still "have it on the books" have imposed severe limitations on the practice. A counselor to whom a young person discloses plans to kill his or her parents and does nothing about it will not be able to legally decline to answer questions under oath, nor will the counselor be held blameless for any resulting injuries. Counselors and teachers must make it very clear to confiding individuals that they will keep their confidences unless their own health, life or safety or those of another are involved.

The only two privileges from disclosure of confidentiality information that seem to remain in state law are that of priest/penitent and attorney/client. Even the husband/wife privilege, which allowed a spouse to refuse to testify against a spouse, has been abandoned in most jurisdictions.

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Legal Issues, continued

In light of the above facts, a teacher must presume that no legal protection exists for those who receive student confidences. What should the teacher do who wants to be a role model for young persons, who wants to be approachable and helpful? The answer is simple: lay down the ground rules for confidentiality before you receive any confidences. Tell students you will respect their confidences except in cases of life, health and safety. If a student asks to speak to you in confidence, reiterate the ground rules before the student begins to share.

Journal writing

Teachers of religion, language arts, and English have long recognized the value of student journal writing. This practice does, however, carry a real risk of student disclosure of information that the teacher is compelled to reveal. Teachers must set the same rules of confidentiality as are discussed above.

Teachers must understand that they are expected to read what students write. If a teacher cannot read the assignment, then the assignment should not be made. In particular, teachers should avoid telling students to clip together pages they do not wish the teacher to read or to write "Please do not read" at the top of such pages. Journal writing has a place in today's curriculum, but teachers must be sure that students understand the parameters of the assignments and of the teacher's responsibilities of reporting threatened danger.

Retreats

The retreat experience is extremely important for today's Catholic young people. However, students are often at their most vulnerable in such situations. They may share stories of child abuse, sexual harassment, family dysfunction, even possible criminal activity. While encouraging students to share, the group leaders must once again set the ground rules before the sharing begins. The use of peer leaders does not lessen the responsibility of supervising adults. Student leaders must be told the ground rules and the necessity to communicate them to group members as well as the procedures to be followed in notifying adults if matter is revealed in sessions that must be reported.

Conclusion

The case study and the discussion in this article indicate the vulnerability of teachers who receive student confidences. The wise Catholic educator will establish and enforce ground rules for dealing with student confidences, and will seek help from school officials and/or parents when appropriate.

Sr. Mary Angela Shaughnessy, SCN Professor of Education, Spalding University, Louisville, Kentucky

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Questions An Employer Can and Cannot Legally Ask a Candidate

Guidelines for both written and oral inquiries

FAMILY STATUS

Do Not Ask:

"Are you married?" "What is your maiden name?" "What is your spouse's name?" "Do you have any children?" "Are you pregnant?" "What are your child care arrangements?"

Ask:

"Do you have any responsibilities that conflict with the attendance requirements of the position for which you are applying?"

AGE

Do Not Ask:

"How old are you?" "What is your date of birth?" "What were your dates of attendance at X college?"

Ask:

"If you are under 18, will you be able to furnish a work permit after employment begins?" "How many years did you attend X college? Did you receive a degree?"

CITIZENSHIP & NATIONALITY

Do Not Ask:

"Are you a US Citizen? If not, do you have a current work permit?" "What language do you most commonly speak at home?"

Ask:

"Are you legally eligible to work in the US? (Verification will be required upon hire.)" "The job for which you are applying requires fluency in speaking and writing English. Can you meet this requirement?" (This can only be asked if fluency is in fact a bona-fide requirement, e.g. for a teacher, a secretary).

CRIMINAL RECORD (Arrest & Convictions)

Do Not Ask:

"Have you ever been arrested?"

Ask:

"Have you ever been convicted of a crime, other than a traffic violation? If yes, please explain on a sheet of paper. Please know that conviction of a crime is not necessarily a bar to employment."

DISABILITY

Do Not Ask:

"Are you disabled?" "What is the nature or severity of your disability?" "Do you have a disability that would interfere with your ability to perform the job you are applying for?" "How many days were you absent from work last year?" "Have you ever been injured on the job?" "Have you ever been treated for mental health problems?" "Have you ever seen a counselor?" "What prescription drugs are you currently taking?"

Ask:

"Are you able to perform the essential functions of this job with or without a reasonable accommodation?" "Our parish offers a maximum of 10 sick days per year. Will you be able to comply with this requirement?"

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