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FREE SPEECH AND EDUCATORS

All children should have access to a high-quality education. Officials overseeing public education must answer to the citizens and taxpayers in the community they serve, and that includes anyone receiving public money to educate our students. Educators should have the freedom to discuss what works and what does not work in their classroom. It is a simple concept, in theory, made more difficult in practice.

Day-after-day school officials or school boards warn front-line educators that they cannot talk about actual concerns like poor curriculum, substitute teacher shortage, out-of-control student discipline, or growing teacher assaults. Educators are afraid and very frustrated by their inability to speak out on so many issues of concern. Concerns are often complex and have multiple layers, and the educator may not be able to explain an issue because of board policies or existing laws limiting their free speech.

Writer Taylor Woolsey got it right when she described our education system: "Educational standards determine what teachers teach and the amount of time to teach it. Students are then tested vigorously on those standards, mostly in the form of multiple-choice scantron tests. The results of those tests are sent to the state to measure the effectiveness of the teachers." Educators are losing enthusiasm for teaching because of scripted curricula, high-stakes testing, and over-standardization.

"It's as if we've thrown up our hands and said effective teaching is this mystical, magical thing you can't explain," Professor Emeritus Edward Haertel of Stanford University in educational testing and assessment said. "All we can do is look for it statistically and credit people when we find it. And fire people when we don't find it." The next generation of teachers will simply utilize a script, and will not develop the competence, creativity, and instinct of their veteran counterparts and predecessors.

Local control has been replaced, and we end up with top-down control, excessive data, and test-driven decision-making by people with little experience in educating children. Educators get left out of the equation in most decisions about public education. Outside groups establish standards. Assessments are purchased from out-of-state corporations. Textbooks are increasingly under fire for biases. We need to think about who is making these decisions. It is rarely teachers.

We have seen educators who have been suspended and/or reprimanded for not sticking to the script. Seemingly gone are leaders who seek educators who are willing to experiment with pedagogy, and adjust to the needs of individual students, while building trust and confidence as they create an engaging classroom. You can script teaching, but you cannot script learning.

SUMMARY

"Local control has been replaced, and we end up with top-down control, excessive data, and test-driven decision-making by people with little experience in educating children."

Educators not only lost their ability to be creative, but they also rarely get the opportunity to set the record straight on issues. The use of social media to improve communication with parents and students, augment the curriculum, and connect with colleagues started with good intentions. However, educators on social media have discovered that social media has a dark side. In general, I tell educators to never “friend” a child who is under 18 years, a student, or a parent of a student. You are inviting trouble. Educators are increasingly attacked online by some---usually unfairly and anonymously.

Educators, as public employees, do not surrender their First Amendment rights to free speech. In 1968, in *Pickering v. Board of Education*, the Supreme Court ruled that Marvin Pickering, an Illinois high school science teacher, had a First Amendment right to send a letter to the editor of the local newspaper. In 1969, *Tinker v. Des Moines Independent Community School District (1969)*, the Court emphasized, “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

However, we are wise to remember the adage that “the devil is in the details.” The Supreme Court did rule in *Hazelwood School District v. Kuhlmeier* that public school officials can regulate school-sponsored student speech if there is a legitimate educational purpose for their action. Other courts have also applied that the Hazelwood decision could apply to public school teachers for not appropriately monitoring their students’ classroom expression.

The First Amendment does not protect teacher speech that meets the legal definition of obscene or defamation. If school officials can establish that your speech could adversely affect your effectiveness as an educator or how a school functions, the First Amendment may not protect you. The freedom to express ideas through our speech is essential for society to flourish. Right now, too many of our state laws and board policies are ambiguous and unclear. Public schools should never be a battlefield for ongoing culture wars.

So, briefly, if you are speaking on an issue about your job, especially in an official capacity to students, you may have limitations as a teacher or administrator because you have a captive audience. If you are speaking as a private citizen on a question of public concern you most likely have protected speech under the First Amendment. It is a fine line, and you should always err on the side of caution. Speaking up or speaking out does not always have to be negative. As author Alex Haley says, “Find the good, and praise it.”

It is up to policymakers to revisit the issue of free speech in K-12 education, and ensure that our policies are transparent, clear, and reflective of existing law---especially considering social, political, and technological changes in the last decade. Policymakers simply have not kept up. Once again, we need to give educators a voice to discuss their genuine concerns about education and create policies that empower educators, not thwart free speech.

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