Thinking Like A Lawyer

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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.
Overview of Presentation

- Introductions
- Why would one want to think like a lawyer?
- What does it mean to think like a lawyer?
- How does it work to think like a lawyer in real life decisions
  - Examples of strategy
  - Examples of policy making
  - Examples of dispute resolution
- Free Lawyer Tips
Introductions: The Context

• There is an old saying that the course of civilization is a race between catastrophe and education. In a democracy such as ours, we must make sure that education wins the race. John F. Kennedy (1958)
Introductions: The People

- Lawyers & Educators Come together (Goss)
- Professor of Law
- Practicing Attorneys
- US? Canadian? Other?
- Educator P12
- Educator 12-16+
- Educator/administrator
- School Boards
- Other Government
Why would you want to think like a lawyer?
Why would you want to think like a lawyer?

Think Like a Lawyer?
• * Societal values / rule of law
• * Avoid liability
• Feel confident
• Analytical skill
• Understand options
• Create options
• Talk to other lawyers
• Well everyone is one?
• Money
Why would you want to think like a lawyer?

Rule of law
Why would you want to think like a lawyer?

• The number of lawsuits against schools is increasing dramatically.
• In 1960, the U.S. education law reporters published some 300 suits with schools named as parties; in 1970, it was about 700; and by 2000, over 1800.
• In 2001, there were a hundred federal court cases addressing just IDEA (special education).
Why would you want to think like a lawyer

Well everyone is one (ex later)

• over half of our U.S. Senators, nearly half of our governors,
• a third of our representatives to Congress, and
• about one fifth of our state legislators. three of
• Leadership in re: %
Why would you want to think like a lawyer

• Avoid liability, understand options?

• The California Teachers Association (CTA) and California State Superintendent of Public Instruction Jack O'Connell are suing Governor Arnold Schwarzenegger to force the state to increase funding for schools by $3.1 billion.

• The U.S. Court of Appeals for the Fourth Circuit has ruled that Virginia's statute mandating that school boards require the daily recitation of the Pledge of Allegiance in classrooms does not violate the First Amendment's Establishment Clause.

• The U.S. Court of Appeals for the Fourth Circuit has ruled that a student who alleged that he was beaten by teammates at the instigation of his wrestling coach stated a valid claim against the coach under Section 1983. Section 1983 allows a plaintiff to sue a public official who, acting under color of state law, violates rights secured by the federal constitution or statutes.

• Tim Hogan of the Arizona Center for Law in the Public Interest (ACLPI) has filed suit in federal district court, seeking to stay the State of Arizona from requiring English-learner students to pass the state's assessment test (AIMS) in order to graduate until the state complies with a federal court order to improve funding for English-learner instruction.
Why would you want to think like a lawyer

• The Californians for Justice Education Fund (CJEF) has filed suit in state court against the California Commission on Teacher Credentialing (CTC), alleging that CTC created a new internship certificate in 2002 for teachers who had emergency credentials in order to inflate the number of "highly qualified" teachers under the No Child Left Behind Act (NCLB).

• The Commonwealth Court of Pennsylvania has ruled that a state law that requires the Philadelphia school district to place a student who returns from having been adjudicated delinquent in an alternative school rather than in a regular classroom, without affording the student a hearing, violates the student's due process rights under both the state and federal constitutions.

• In a brief per curiam opinion, the U.S. Court of Appeals for the Sixth Circuit has upheld a Kentucky school district's race-conscious student assignment plan.
Why again?

- Libraries ... academic freedom, grading ... privacy ... accommodation ... curriculum ... language ... race ... computer access ... medical services ... flag salute ... prayer ... clergy ... yearbooks ... newspapers ... discipline ... searches ... athletics ... student speech ... teacher speech ... unions ... hire fire ... testing ... disability ... harassment ... liability ... immunity ... discrimination ... funding ... civil rights ... due process ... residency ... aliens ... corporal punishment ... student service ... vulgarity ... homeless ... literacy ... safety ...
What does it mean to think like a lawyer?

it depends!
How does it work to think like a lawyer?

Sources of Law
How does it work to think like a lawyer?

- Caselaw*
- Statutory law
  - Title 20 /10 vol.
  - NCLB = 500 pages +/-
  - Reauthorized IDEA, IDEIA
- Regulatory provisions implementing all
- Policy provisions implementing all
- Examples
What does it mean to think like a lawyer?

A thoughtful person

• Vocabulary
• Constant questioning & analytical rigor
• Empowerment and empowering
Free lawyer tips

Think like A DECENT PERSON

• Be considerate
• Be reasonable
• Be specific
• Be responsive /investigate
• Be thoughtful (no truisms)
• Be ahead of the curve
Free lawyer tips

- Be polite
- Be reasonable
- Be specific
- Be responsive /investigate
- Be thoughtful (no truisms)

- Be ahead of the curve
- (Don’t count on immunity)

- Due process
- Non-negligence
- Vagueness challenges
- Deliberate indifference
- EP

- KNOW
- Law clear
- at the time
Free lawyer tips

- WHAT WILL I SAY TO THE JUDGE
- CHILD CENTERED DECISION MAKING
- (lawsuits inevitable)
“There are now many areas of education law in which legal standards and educational principles are intertwined. Under the First Amendment, for example, public school officials may determine the content of the curriculum and of school-sponsored newspapers and assemblies, as long as the educators can show that their decisions were "reasonably related to a valid pedagogical concern" (Hazelwood School District v. Kuhlmeier, 1988). In these and many similar situations, it takes a lawyer to know what the legal standard is and an educator to know whether that education-based standard has been met. In sum, it is increasingly the case that neither lawyers nor educators can do their work independently.”
The example of student discipline?

What would you do?

What would you think about?
Discipline

• Student Jane Doe is harassed by fellow student Jack Jones.
• She is physically and verbally harassed.
• Her mother eventually tells the teacher.
• The teacher tells Jane to ignore Jack.
• (Her mother eventually tells the principal).
• The school eventually suspends the harasser for 2 days.
• The teacher tells Jane to ignore Jack or confront Jack when the bullying continues.
• Jane does so and a fist fight ensues in the hallway.
• ?
The example of strategy?

What would you do?

What would you think about?
Charter high school example

• **Public** Charter high school in your city.
• You are principal/superintendent.
• You are literally kept out of middle schools to recruit.
• You need numbers.
Questions

• And answers?

**Redfield, Sarah E.**, *Thinking Like a Lawyer: An Educator's Guide to Legal Analysis and Research*
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