Contents

Handout 1.1 Student Injury Hypothetical Cases

Hypothetical Cases	Is the Teacher Liable?		
CASE #1: As a result of Mr. Big's using reasonable force to break up a fight in the hallway, one of the students hits his head on the floor and has a serious concussion.	YES	NO	Don't Know
Totals			
CASE #2: After an evening play rehearsal, Mrs. Care gives a student a ride home without parental permission, and the student is injured, but not because of the teacher's negligence.	YES	NO	Don't Know
Totals			
CASE #3: Although Mr. Carefree is supposed to be on duty in the gym at 1 pm, he drinks another cup of coffee in the teachers' room and then walks into the gym at 1:15. At 1:14, a high school student is seriously injured when he bumps heads with a classmate while jumping for a rebound during a friendly basketball game.	YES	NO	Don't Know
Totals			
CASE #4: Miss Busy leaves her class for 10 minutes to duplicate science worksheets. She tells the students to work quietly while she is gone. When she leaves, some students begin to throw spitballs, pencils and paper planes. After 7 or 8 minutes, a girl is struck by a pencil and blinded in one eye.	YES	NO	Don't Know
Totals			
CASE #5: As the bus was leaving the high school on a field trip, 16 year old Flo Friendly suddenly reached out of the window to waive at a friend and broke her arm when it hit a lamppost. She sued teacher Tripper for failing to adequately supervise and for not warning students not to open the bus windows.	YES	NO	Don't Know
Totals			
CASE #6: Instead of paying attention to the students when she was on playground duty, Mrs. Lesscare was gossiping with another teacher. During this time, Sue Sadly, ran across the playground, tripped, fell on her face, broke 3 teeth, and received 6 stitches.	YES	NO	Don't Know
Totals			
CASE #7: Despite repeated warnings to Bob Bobbing to stay in his seat, he continued to jump out of his seat, disrupt the class and perhaps injure himself. As a result, teacher Strictman puts a restraining hand on Bob's shoulder against the advice of a colleague who told him, "never touch a student."	YES	NO	Don't Know
Totals			

Handout 1.2 Student Injury Liability Questions

Questions	The Law
1) Was there a duty of care?	Educators have a duty not to injure their students and to protect them from known or foreseeable dangers.
2) Was there negligence?	Teachers are negligent when they fail to act as a hypothetical *reasonably prudent teacher* (RPT) should have acted under the circumstances. To determine whether a teacher acted as a RPT, the teacher's behavior is measured against the professional norms of prudent teachers. If they do act as a RPT under the circumstances, they are not negligent. When circumstances are more dangerous (e.g., on field trips, in chemistry class, or when working with young children), a reasonably prudent teacher should provide clearer warnings and closer supervision.
3) Did the negligence cause the injury?	The plaintiff (or injured student) must prove not only that the defendant teacher who is being sued is negligent but also that the negligence caused the injury. (Plaintiffs usually sue for a dollar amount for medical expenses, lost wages, and/or pain and suffering to compensate them for their injury.)
4) Was there contributory negligence?	Adults and most high school students are expected to exercise ordinary/reasonable care and not to expose themselves to known or obvious dangers. Therefore, in most states, if an injured person's own negligence contributed to her injury, courts would usually reduce the amount of the dollar award to the injured person in proportion to her negligence. This is known as *comparative negligence.* For example, an older student might have her award reduced by 40% if the judge concluded that she was 40% responsible for her own injury. However, if she was primarily responsible for her injury (i.e., more than 50%), she would probably receive no award. In all states different standards apply to children. Generally, children under the age of 7 cannot be charged with contributory negligence. Children between 7 and 14 are presumed incapable of contributory negligence. And beyond the age of 14, students are expected to act as reasonably prudent students of their age and maturity should act under the circumstances.

Handout 1.3 Questions about the Hypothetical Cases

1. Was there a duty of care?

2. Was the teacher negligent? i.e., Did the teacher fail to act as a reasonably prudent teacher should have under the circumstances?

3. Did the teacher's negligence cause the injury?

4. If so, was there contributory negligence that might reduce the award to the plaintiff?

After the small groups report the results of their discussion of the cases, the principal can use the following answers to summarize and clarify how the principles of law would likely apply. The principal may need to address only selective cases as time permits.

Handout 1.4 Results for Hypothetical Cases

Case	Result
Case #1	TEACHER NOT LIABLE. Mr. Big has a duty to protect students from being injured. If, pursuant to that duty, he tries to break-up a fight, and he unintentionally injures a student, he should not be held liable for the student's injury. This is because a teacher who uses reasonable force to protect himself or a student is not negligent even if a student is injured in the process. Furthermore, even if the teacher was negligent, many state laws and the federal Teacher Liability Protection Act (2001) would probably protect him from liability if his action was carried out to "maintain order or control in the classroom."
Case #2	Mrs. Care is NOT LIABLE for the student's injuries if they were not caused by her negligence. The fact that Mrs. Care did not have a parent's permission may or may not have violated a school policy. But even if Mrs. Care did violate school policy (or administrative advice), this would not make her a negligent driver; and if she was not negligent, she cannot be held liable for the student's injury.
Case #3	In this case, Mr. Carefree is NOT LIABLE for the student's injury. By drinking coffee when he should have been supervising the gym, Mr. Carefree was negligent and violated his contractual duties. But if bumping heads in a friendly game is an accident that would not have been prevented even if a reasonably prudent teacher would have been present, then Carefree would not be liable for the injury because his negligent absence was not the cause of the accident. Carefree should be disciplined for not being on duty when he should have been supervising the students. But he could only be held liable if the facts of the case were different, and the injured student could prove that a reasonable teacher's presence would have prevented the injury.
Case #4	Miss Busy probably is LIABLE for the injury of the blinded student. Miss Busy had a duty to protect her students from injuries caused by other students when such injuries could have been prevented by reasonable supervision. If, under the circumstances of this case, a reasonably prudent teacher would not have left the classroom unattended for 10 minutes, then Busy was negligent for doing so. And if a reasonably careful teacher would have stopped the students' misconduct before it caused the injury, then a judge or jury could conclude that Busy's negligence caused the injury.
Case #5	In this case Mr. Tripper probably would NOT be held liable since a judge or jury would probably conclude that Miss Friendly was negligent in failing to act as a reasonably prudent high school student should have under the circumstances. High school students have a duty to exercise ordinary care and not to expose themselves to obvious dangers. Even if Mr. Tripper was not watching Miss Friendly when she suddenly reached out of the bus, her negligent behavior was the primary cause of the injury – not the action or inaction of Mr. Tripper.
Case #6	Probably NOT LIABLE. Mrs. Lesscare was negligent for not paying attention to the students when she was on playground duty, and perhaps she should be disciplined for her failure to carry out her duty of care. But she could not be liable for the injury to Sue (which was an accident that was caused by her running) if Sue's injury would not have been prevented if Lesscare was carefully supervising and not gossiping.
Case #7	Probably NOT LIABLE. Mr. Strictman may have ignored the advice of his colleagues, but this does not mean he could be held liable for preventing Bob from repeatedly jumping out of his seat, disrupting the class, and possibly injuring himself. Although many educators tell teachers, "never touch a student," this is overly broad advice and in some situations is poor advice. Certainly sexual touches of students by teachers is always illegal. But there are many situations where the law permits teachers to use reasonable force to protect themselves or their students and use reasonable restraint to enforce discipline. In fact, the purpose of the Teacher Liability Protection Act is to protect teachers from frivolous lawsuits and the fear of liability for their reasonable actions to maintain order in their classrooms.

Handout 1.5 Liability Assessment Scenarios

Q1. While Mr. Carefree was having coffee instead of supervising the gym, some of the students started a rough basketball game that included pushing, elbowing and cursing. After 10 minutes of increasingly unsportsmanlike conduct, one of the students intentionally tripped another player who was seriously injured just as Mr. Carefree entered the gym. Is the teacher liable? Why or why not?
A1. Mr. Carefree probably would be held liable because he was negligent in not being on duty in the gym and because a reasonably prudent teacher would have intervened to stop the uncontrolled game before the student was injured.

Q2. Just before Miss Busy returned to her classroom after duplicating worksheets for 10 minutes, a student threw a baseball from the playground that shattered a window and sprayed glass that blinded one student's eye. Is the teacher liable?
A2. Miss Busy would not be held liable because the presence of a prudent teacher would not have prevented the unforeseeable injury that occurred.

Handout 1.6 Additional Liability Questions and Answers

1. What should teachers do when they confront new situations that might pose dangers such as field trips?
When in doubt about what one's duty of care requires, a reasonably prudent teacher should CONSULT with other prudent teachers or administrators who have confronted similar situations. By collaboratively developing and following safety checklists, teachers protect their students, themselves, and their schools.

2. Are teachers liable for ANY injury that occurs if they leave their classroom unattended?
No. There may be emergencies in or outside the classroom that would require a reasonably prudent teacher to *briefly* leave her class, and in these circumstances, she would not be negligent for doing so.

3. Can teachers be held liable for failing to prevent every injury that might occur when they are supervising a class, hallway or playground?
No. Most injuries are caused by accidents which are not the result of anyone's negligence and for which no one is liable. Furthermore, teachers cannot be expected to anticipate every situation in which one student could injure another. The law does not expect teachers to prevent unforeseeable injuries, only those that ordinary care can prevent.

4. Do teachers have a duty to physically intervene in a fight?
Not necessarily. It depends on the circumstances. For example, a female teacher has no duty to physically intervene in a fist-fight between 2 high school students and risk injury. In many situations, teachers simply have the duty to seek help when circumstances are beyond their control.

5. What happens if I am injured while breaking-up a student fight?
Teachers would likely be covered by their medical insurance for short and long-term disability as well as workman's compensation for a serious injury.

6. If parents sign waivers, does that protect teachers and schools from liability?
Not necessarily. In many states, courts construe such waivers very strictly or rule that waivers of responsibility in school activities are against public policy. In a few states, such as Massachusetts, courts uphold waivers in extra-curricular activities – especially those that students and parents know are dangerous. Although it is usually wise to ask parents to sign permission slips to permit their children to participate in special activities, parents should not be asked to waive their right to sue educators who are negligent and whose negligence causes student injuries because most courts are not likely to uphold such waivers and because parents should not be asked to waive their children's rights.

7. If a teacher's negligence causes an injury, would s/he be personally liable or do teachers have any protections?
Teachers who belong to organizations such as the National Education Association or the American Federation of Teachers, are provided liability insurance (usually for $1,000,0000) as part of their union dues for negligence claims that might be made against them. This policy costs the NEA less than $5 per year to insure each member. Since the premium is based on the likelihood of being sued, this indicates that the chances of a teacher being held liable for a student's injury are extremely low. Also, many school districts and professional associations provide liability insurance for their employees. In addition, many state laws protect public employees such as teachers and principals from being held personally liable for their negligence that occurs within the scope of their employment.

8. What would happen if a student assaulted a teacher?
The student would be subject to school discipline and/or criminal punishment. Although teachers could sue students for damages, this is not likely since even if teachers win their suit, they would be unlikely to collect damages. This is because very few students have independent wealth and because parents usually are not financially responsible for their children's misbehavior.

Handout 2.1 Student Freedom of Expression Hypothetical Cases

Hypothetical Cases	Did schools violate student freedom of expression?		
1. Students in Yourtown Middle School were prohibited from wearing buttons with a red slash through a swastika and the wording "NO SCHOOL UNIFORMS" to protest the new policy requiring all students to wear uniforms. Administrators felt that the buttons with the swastikas were offensive.	They Did	They Did Not	Don't Know
2. In a high school journalism course that publishes Spectrum, the school newspaper, editor Veritas Strong wrote an editorial criticizing one of the candidates for the local school board. The journalism teacher censored Strong's editorial based on his policy of "keeping our schools out of local school politics." 3. As a joke, J.S. created a fake profile making fun of her principal on a social media site. The profile contained juvenile humor and an absurd depiction of the principal as a sex addict. The profile was not viewed at school since the district blocked access to the site. When the principal learned about the profile, he suspended J.S. for 10 days because he said the profile was defamatory and offensive. J.S. argued that the suspension violated her free speech rights because there was no evidence that anyone took the profile seriously, and it caused no disruption at school.	They Did	They Did Not	Don't Know
4. Each year, the student members of the high school drama club selected a popular Broadway musical for their annual show. But this year the faculty adviser, Karol Kaution, rejected the student selection because it included profanity.	They Did	They Did Not	Don't Know
5. A high school student, Calvin Cool, was suspended for refusing to take off a T-shirt that said "Legalize Pot." The principal explained that if Calvin was allowed to wear the shirt, other students or their parents might think the school was willing to tolerate an illegal activity.	They Did	They Did Not	Don't Know
6. A student, Bob Anger, was suspended for two days because of his home website's "disrespectful" message to other students saying that the school football coach was "lousy" and should be replaced.	They Did	They Did Not	Don't Know
7. A teacher tells Henry Patrick that he may not be required to say the Pledge of Allegiance but that he must stand "in respectful silence." Henry is suspended when he refuses to stand.	They Did	They Did Not	Don't Know
7 High student, Kara K. used her home computer to create a discussion group on a social media site, and invited 100 "friends" to join. The discussion focused on Shay, a	They Did	They Did No	Don't Know

Hypothetical Cases	Did schools violate student freedom of expression?		
student who was accused of having herpes and being a slut. After Shay complained to school officials, Kara was given a 10-day suspension. But Kara argued that the suspension violated her First Amendment rights because the discussion occurred off-campus and had not caused any disruption in school. Administrators justified the suspension because the Webpage violated the school's anti-harassment policy and because there was evidence that it was "foreseeable" that Kara's Webpage would cause disruption at school.			
1. Teacher Ron Respekt, ordered a student to take off a "disrespectful" T-shirt that said, "President Obama is an International Terrorist." Mr. Respekt was concerned that the shirt might lead to conflicts between students who supported American bombing in Iraq and those who opposed our "killing of innocent civilians."	They Did	They Did Not	Don't Know
2. Teacher I. M. Caring prohibited two student T-shirts that were designed to protest the high school's Tolerance Day. One shirt read, "Be Happy, Be Straight"; the other read "Homosexuals are Sinful and Shameful."	They Did	They Did Not	Don't Know

Note: Principals can change the names and especially the grade levels when appropriate.

Handout 2.2 Student Freedom of Expression Slides/ Handouts

Slide 1: Political Speech *Tinker v. Des Moines* (1969) When must schools tolerate and protect and when can they prohibit or punish controversial speech?
Slide 2: Lewd and Indecent Speech *Bethel School District v. Fraser* (1986) Can schools prohibit vulgar and lewd speech if it doesn't cause a disruption?
Slide 3: School-sponsored Speech *Hazelwood School District v. Kuhlmeier* (1988) When can schools control student newspapers or plays?
Slide 4: Advocating Illegal Activities *Morse v. Frederick* (2007) Can schools punish students who advocate illegal activity?

Handout 2.3 Case Scenario Outcomes

Case 1. VIOLATION. Because this is a case of symbolic speech, the principles of *Tinker* apply. According to *Tinker*, students do not shed their constitutional rights to freedom of expression when they enter the public schools unless their expression causes substantial disruption or interferes with the rights of others. In this case, even if the buttons did offend some teachers and administrators, there was no evidence that they caused disruption or interfered with the rights of other students. Therefore, the students had a right to wear their buttons to protest the school's uniform policy, and the school's prohibition of their buttons was unconstitutional.
Case 2. NO VIOLATION. This is a controversy about curriculum-related student expression. Therefore, the principles of the *Hazelwood* case apply. Because the newspaper was published by the students as part of a Journalism course under the direction and supervision of the teacher, he had broad authority to decide what topics should and should not be discussed. Most students and some teachers might think that students should be able to discuss local politics in the school paper. But as long as the teacher had some legitimate reason for his decision, students have no constitutional right to challenge his judgment. In contrast, if *Spectrum* was an "underground" paper published by Veritas in her home, then *Tinker* would apply, and school staff would not be able to prevent her from distributing her article criticizing a school board candidate as long as it didn't cause substantial disruption. Schools can issue reasonable rules concerning the time, place, and manner governing student distribution of non-school sponsored publications, but distribution can't be prohibited just because the student's views are controversial or offensive. Similarly, *Tinker* applies to students' online publications or blogs that are created on their home computers and are distributed to their friends or classmates.
Case 3. VIOLATION. Applying the principles of *Tinker*, a federal appeals court ruled that the school could not punish J.S. for her speech because it was created off-campus, was not viewed on campus, and did not cause disruption. In addition, it was not defamatory because it was "so outrageous" that no one took it seriously, and therefore it did not injure the principal's reputation. In contrast, a court upheld the punishment of a student who created a false social media site profile of his principal indicating he had inappropriate behavior with his students. This constituted defamation because those who visited the fraudulent Website – including parents and a reporter - believed it was authentic and that the principal had been guilty of improper behavior.
Case 4. NO VIOLATION. Here the principles of both *Bethel* and *Hazelwood* apply. In *Bethel*, the Court ruled that the First Amendment does not protect lewd or vulgar speech in a school-related activity even if it does not cause a disruption. Also the Court allowed educators to decide what speech they consider lewd or vulgar. As the school play is a school-sponsored activity, the faculty advisor had the authority to reject the students' selection of a musical or play that included profanity, and therefore Kaution's decision did not violate the student's free speech rights. In addition, the principles of *Hazelwood*, that give educators broad discretion to control school-sponsored activities, would also lead a court to rule in favor of the school.
Case 5. VIOLATION. This is a controversy where the principles of both *Tinker* and *Morse v. Frederick* apply. In *Morse* the Court ruled that schools could prohibit and punish student speech that promoted illegal drug use. But the Court also reaffirmed *Tinker's* protection for speech concerning social and/or political messages that did not cause disruption. If the T-

shirt had said, "smoke pot," school officials would have been able to require the student to take it off because it clearly promoted illegal drugs. But in this case, the message is clearly and primarily political and is not advocating any illegal activity. Therefore, the controversial T-shirt should be a protected form of student expression under the principles of *Tinker* and *Morse*.
Case 6. VIOLATION. Judges have ruled in favor of students who refuse to stand during the Pledge. Courts reason that schools cannot require students to engage in "implicit expression" by standing respectfully while the Pledge is being recited. Since standing is an integral part of the Pledge ceremony, one judge wrote that, standing "can no more be required than the Pledge itself." Therefore, it was unconstitutional to require Henry Patrick to participate in that form of symbolic expression.
Case 7. NO VIOLATION. According to a federal court, the evidence indicated that Kara's conduct "would reach the school via computers, smart phones and other electronic devices" since Kara's "friends" and the target of the harassment were students at the same school. Therefore, the court ruled that the school was authorized to punish Kara "because her speech interfered with the work and discipline of the school" and because her "hate Website" violated the school's anti-harassment policy.
Case 8. VIOLATION. The *Tinker* decision is directly relevant to this case. Just as the principal in Des Moines couldn't prohibit Mary Beth Tinker from wearing her armband because of fear of disruption, so Mr. Respekt can't order the student to take off his anti-Obama T-shirt because of his concern that the shirt was "offensive" or "might" cause a conflict - unless he had evidence that would enable him to "forecast substantial disruption."
Case 9. The answer depends on the specific facts of the case. The principles of *Tinker* apply to both T-shirts. But it is likely that the shirt that said "Be Happy, Be Straight" would be protected if it did not cause disruption since it does not target any individual and is not a serious verbal attack against LGBT students. However, a prohibition of the "Homosexuals are Sinful and Shameful" shirt could be upheld if the judge concluded that it collided with the rights of gay students to be secure and free from verbal assaults—especially where the school had a history of anti-gay conflicts. Although *Tinker* applies to both shirts, the outcome in cases such as these may depend as much on the specific circumstances of the case as on the wording of the controversial messages.

Handout 2.4 Student Freedom of Expression Summary Cards

Application to Your Own Practice:	*Application to Your Own Practice:*
Tinker v. Des Moines: The First Amendment protects student freedom of expression in the public schools unless that expression causes substantial disruption or interferes with the rights of other.	*Bethel v. Fraser:* The First Amendment does not protect offensively lewd and vulgar speech in school-related activities.
Application to Your Own Practice:	*Application to Your Own Practice:*
Hazelwood v. Kuhlmeier: Educators have broad discretion to control school-sponsored, curricular-related activities such as official school newspapers and school plays.	*Morse v. Frederick*: Schools can prohibit student expression that promotes illegal drug use.

Handout 3.1 Group 1: Individuals with Disabilities Education Act

Identifying Students with Disabilities

States have the duty to identify children ages 0-21 who are in need of services. This duty is known as "child find." A parent, a state education agency, or a local education agency may request an evaluation of a child who is suspected of having a disability. School personnel must obtain parental permission before conducting an evaluation. If a parent refuses to give consent (or refuses to respond to district requests), school officials *may* begin due process procedures or mediation (discussed below) in order to proceed with the evaluation. It is important to note that it is permissible for school officials to choose not to pursue due process measures or go to mediation if the parents refuse the evaluation. It should also be highlighted that after an evaluation is completed, and the parents do not provide informed consent for services, school officials cannot pursue due process measures or go to mediation in order to obtain consent. And, school officials will not violate the law by not providing services to the child.

The evaluations must be accurate in order to ensure the proper placement of the child. To this end, a variety of assessment tools and strategies should be used (e.g., classroom observation and several different types of tests). If the parents disagree with the evaluation, they may seek an independent evaluation. If the parents opt for an independent evaluation, the school district does not need to accept the results, but they must be considered.

Providing for Students with Disabilities

Each state must provide a student receiving services under IDEA with a free appropriate public education (FAPE). The definition of appropriate has been at issue in several court cases. FAPE does not need to *maximize* a student's learning potential; instead, a FAPE must merely provide a "basic floor of opportunity" for the student. All students receiving services under IDEA are entitled to FAPE.

The individualized education program (IEP) outlines how a student will receive FAPE. Specifically, based on the student's evaluation, an IEP team prepares the IEP document. The IEP is designed to meet the unique needs of the child and outlines the goals and objectives for the child. The IEP team includes the parents, one general education teacher, one district administrator, one special education teacher, others with expertise that are relevant to the student's needs, and in some cases the student. Students typically participate when they are able to understand and participate in the discussion. School officials must ensure parental participation in the IEP process. Part of this responsibility includes providing parents with notice of their rights under IDEA. Legal controversies have emerged when parents believe that the IEP does not provide their child with a FAPE (see *P.L. v. New York Department of Education*, 2014). Courts will continue to address what level of educational benefit a child must receive under the IDEA (see *Endrew F. v. Douglas Cnty. Sch. Dist.*, 2015).

Students with disabilities must be educated in the **least restrictive environment** – in other words, with students who are not disabled to the maximum extent appropriate. Students with disabilities may only be removed from an educational setting with their general education peers when the instruction in the general education courses cannot be achieved satisfactorily. Factors that are considered in determining the least restrictive environment include: the educational benefits of placing children with disabilities in the general education classroom, the nonacademic benefits of such placements, the effect that the presence of students with disabilities would have on others in the classroom, and the costs

associated with the placement. Often parents initiate lawsuits when they believe that their child was not placed in the least restrictive environment (see *B.E.L. v. Hawaii*, 2014).

School districts must also provide related services so that a child with a disability can benefit from special education services. For example, a school district should provide busing services to a student if this service is necessary to deliver special education. Courts have found, however, that medical services are not considered related services (although nursing services, occupational therapy, physical therapy are considered related services).

Students with disabilities may be required to pass competency exams with accommodations before receiving a high school diploma. Accommodations might include questions in Braille, enlarged answer sheets, additional time, having tests read to students, or sign language responses. Before taking a competency exam, students should be given appropriate notice about the exam and the opportunity to learn the academic content. IDEA also requires that school officials provide transition services for students with disabilities (beginning at age 14) who are shifting from school to independent living, work, or post-secondary education. The transition plan should be individualized to meet each student's needs.

Another provision under IDEA is due process for parents, which ensures fairness of educational decisions. Due process occurs when a parent expresses complaints regarding the child's evaluation, identification, or placement. Some of the related procedural safeguards for parents include the following: 1) notification in writing of the referral; 2) ability to grant or deny permission to evaluate the student; 3) notification of IEP meetings (and the right to be present); 4) participation in all decision-making regarding the child with the exception of informal conversations between school officials; 5) bringing an advocate to meetings; and 6) the right to review all of the child's records. If there is a disagreement between the parents and school officials, either side may initiate a due process hearing. It is important to note that IDEA requires that mediation be available to all parties before a due process hearing is conducted. During the mediation session a neutral third party assists parents and school officials to develop a solution. If the issue is not settled in mediation, parents can initiate a due process hearing. Such a hearing involves an independent hearing officer who ultimately makes a decision based upon the evidence presented. If either party is dissatisfied, a complaint can be filed in court.

Handout 3.2 Group 2: Disciplining Students with Disabilities

Disciplining students with disabilities often raises a lot of questions for teachers. Basically, students with disabilities are disciplined in the same manner as students without disabilities, if there is no connection between their misconduct and the disability. However, if a student with a disability is suspended for ten or more total, cumulative days during the school year, the IEP team and other relevant parties must conduct a manifestation determination to decide whether the student's disability is related to the misconduct. If a relationship exists, the IEP team needs to conduct functional behavioral assessments (FBA) and incorporate behavior intervention plans (BIP) into the IEP if necessary. When conducting an FBA, the IEP team develops educational programming that is related to supporting the student's behavioral problems. The team creates a BIP based on the FBA. The BIP should implement several strategies that would prevent the behavior at issue from reoccurring. It is also important to note when a student who is receiving services under IDEA is removed for more than 10 days it is generally considered a change in placement and requires that the child receives a new IEP. During the time that the new IEP is created, the student needs to remain in their original placement. This is known as the stay put provision.

If the student brings a weapon to school, possesses illegal drugs at school, or inflicts serious bodily harm on another person at school, school officials may forego a manifestation determination and remove a student with a disability to an interim alternative educational setting (IAES) for up to 45 school days. In these cases, a student may be placed unilaterally in an IAES, without the consent of a parent. During these 45 days, FAPE must be provided. Specifically, the child must continue to participate in the curriculum but in another setting.

Students who have not yet been identified as needing services under IDEA might also get legal protection when removed from the classroom for more than ten days. Specifically, if school officials knew or should have known that a student had a disability before the incident occurred, the student should not be removed until an IEP team determines the student's eligibility for special education services.

Recent news reports have highlighted discipline issues related to the use of restraint and seclusion in schools. As a result, in 2012, the U.S. Department of Education issued a "Resource Document" to assist school officials with this issue. Despite this guidance, litigation involving restraint and seclusion continues (see, e.g., *Muskrat v. Deer Creek Pub. Sch.*, 2013). One article discusses a recent lawsuit involving a student who was placed in an "isolation box" that was the size of a phone booth to calm her down. Her parents argued that school officials were aware of the child's past trauma involving confinement (see Bouboushan, 2014). The litigation suggests that students' claims related to seclusion and restraint have generally been rejected by courts if school officials' conduct was considered reasonable, not conscience-shocking and did not cause "obviously excessive" injury to the student (see Eckes & Watts, 2014).

Handout 3.3 Group 3: Section 504 of the Rehabilitation Act and Americans with Disabilities Act

Unlike IDEA, Section 504 is a civil rights law that prohibits those institutions receiving federal funds from discriminating against people with disabilities. Section 504 is a much broader law than IDEA and therefore protects more students. Students who are identified under IDEA also receive protections under Section 504. However, those students receiving services under Section 504 do not automatically receive services under IDEA (e.g., for instance a student in a wheelchair may qualify under Section 504, but not IDEA).

To qualify for services under Section 504, the individual must be a person who has a physical or mental impairment which substantially limits one or more major life activity, has a record of such impairment, and is regarded as having such impairment. A major life activity may include, but is not limited to, seeing, hearing, walking, and talking. Individuals who qualify for services under Section 504 are entitled to reasonable accommodations to facilitate their participation in educational activities. Courts have found that an otherwise qualified individual, under Section 504, is someone who can meet all education or job requirements with reasonable accommodations. A reasonable accommodation might be Braille, a notetaker, a sign language interpreter, or more time on an assignment. On the other hand, a school would not be forced to allow a student who is legally blind to try-out for the varsity basketball team – this would be an example of an unreasonable accommodation.

Similar to IDEA, students receiving services under Section 504 must be provided a free appropriate public education and must be educated in the least restrictive environment. When determining FAPE, Section 504 compares the services and treatment provided to students with disabilities to those provided to students without disabilities. The individualized accommodation plan for Section 504 students is called a 504 accommodation plan. Although a written accommodation plan is not required by the law, most school districts do require such a plan.

Similar to Section 504, the ADA was designed to eliminate discrimination based on disability. In 2008, Congress clarified the definition of disability when it passed the ADA Amendments Act. The purpose of the amended legislation was to make it easier to prove an impairment qualified as a disability. Specifically, this law protects those individuals who have a physical or mental impairment that substantially limits one or more major life activities; have a record of impairment; or are regarded as having such an impairment. The ADA incorporates all of the Section 504 law and expands its reach to include all entities – public or private. Both Section 504 and ADA apply to persons of all ages. Those students who are "otherwise qualified" must be permitted to participate in an educational program unless their participation poses a significant safety risk or an undue burden for the school district. Although the ADA is very similar to Section 504 for students, there is one major difference: the ADA requires that school districts **provide access** to individuals with disabilities who are attending school events. Thus, the ADA requires that athletic stadiums, lecture halls, and other facilities be barrier free (e.g., the school should ensure facilities have wheelchair ramps). When removing structural barriers from existing facilities, it must be "readily achievable" and not unduly expensive. When making new structures; however, the building must comply with ADA regulations and be barrier free.

Unlike the IDEA, both Section 504 and the ADA also apply to school district employees. Both laws require school districts to make reasonable accommodations for teachers with disabilities. The accommodation must be reasonable unless it would impose an undue hardship on the employer. "Reasonable" has been interpreted to mean that the accommodation must enable the employee to perform the "essential functions" of the job. Courts often decide what might be a reasonable accommodation. For example, one court ruled that the ADA does not require a district to create a full time position for a teacher with pedophobia (*Waltherr-Willard v. Mariemont City Schools*, 2015).

Handout 3.4 What's Important to Know About

1. Individuals with Disabilities Education Act IDEA

2. Disciplining Students with Disabilities

3. Section 504 of the Rehabilitation Act and Americans with Disabilities Act (ADA)

Handout 3.5 Special Education Scenarios

Scenario One

Parents of an elementary school student with autism requested that the school district provide their child with the Applied Behavior Analysis (ABA) method. The ABA method attempts to ensure a match between the behavioral intervention and the specific behavioral problems at issue. The ABA method is a comprehensive intervention to behavioral issues – it is ideally carried out in every setting possible.
The parents argued that their child would educationally benefit from the ABA method, and in making this argument the parents cited several studies which demonstrated the effectiveness of the ABA. The school district denied this request, arguing that it was too costly and that other methods were equally as effective.

QUESTIONS

1. Would the school district be denying this student FAPE if it did not implement the ABA method?

2. What if the parents pulled their child out of this school and sent him/her to a private school that used the ABA method? Would the parents be able to be reimbursed for the private school tuition?

3. How would the parents appeal the school district's decision under IDEA?

Scenario Two

A student receiving services under IDEA spray painted graffiti inside the school's restroom. The student painted "death to principal Stuckey." The student had already been suspended nine days this academic year. Thus, school officials needed to conduct a manifestation determination before suspending this student for five additional days. The parents argued that their child's diagnosis of ADHD was related to his misconduct; thus, he could not be suspended. (Note: Although ADHD is not listed as one of the 13 specific categories of disability, it is sometimes included under the "other health impairment" category.)

QUESTIONS

1. Do you think a diagnosis of ADHD could be found to be related to the conduct described above?

2. Do you think that school officials could have moved this student to an interim alternative educational setting for 45 days because of the "death threat" to principal Stuckey?

3. Would a manifestation determination need to be conducted before placing this child in an interim alternative education setting? How would this be decided?

Scenario Three

A kindergarten student was diagnosed with acquired immunodeficiency syndrome (AIDS) from a contaminated blood transfusion received at birth. The child's doctors wrote the school district indicating that there was no medical reason why the child should not be able to attend kindergarten. The school district allowed the child to attend kindergarten. After the child bit another classmate (no skin was broken), school officials had the child evaluated and decided that he should be tutored at home. The child's parents filed a lawsuit, contending that their son should be placed in the kindergarten classroom.

QUESTIONS

1. Would this child be found to be a "handicapped" person under Section 504? Is this student "otherwise qualified" to attend public school?

2. How do school officials balance the rights of the individual student and the safety of the rest of the students in the class?

Scenario Four

School officials dismissed a fifth grade teacher who suffered epileptic seizures. The school district found out about the seizures because parents had seen the teacher have an episode at the mall and voiced concerns about student safety to the superintendent. After an investigation, school officials learned that even when the teacher took her medication, there was still a very small chance that she could have a seizure. The teacher suffered from approximately two seizures per year. The school board did not renew the teacher's contract. The teacher filed a lawsuit contending that the school board violated her rights under the Americans with Disabilities Act.

QUESTIONS

1. Is this teacher otherwise qualified?

2. What would this teacher argue under Section 504?

Handout 3.6 Special Education Scenarios for Moderators

Scenario 1

Question 1: It depends on the facts of the case. The school must provide an educational program that is considered "appropriate." An appropriate education is not necessarily the "best" education. Therefore, if the schools alternative is appropriate then rejecting the parents option does not deny FAPE. However, cost is never a justification to deny appropriate services. Further, even if what the parents are suggesting is better than the "floor of opportunity," school officials may want to provide the better services. In the

long run, compromise is often less costly than due process and fosters a cooperative relationship. The IEP team would determine whether the ABA method provided the student with a FAPE.

Question 2: The parents would need to demonstrate that the child's placement in the public school was inappropriate and that the private school is appropriate (see *School Committee of Burlington* v. *Department of Education of Massachusetts*, 1985). Parents who unilaterally place their child in a private school are certainly taking a financial risk. If the public school placement was found to be appropriate the parents would not be reimbursed. In a recent case, the Third Circuit did not find that the parents were entitled to any reimbursement for private school tuition (see *H.L. v. Downington Area Sch. Dist.*, 2016).

Question 3: The parents must exhaust their administrative options under the IDEA first. Thus, the parents would first participate in a mediation and may eventually participate in a due process hearing with an independent hearing officer.

Scenario 2

Question 1: We obviously need more facts about the student in this scenario; but this issue has certainly arisen in public schools before (see *Richland School District* v. *Thomas P.*, 2000). Based on the limited facts, however, it could be argued that the student's disability (ADHD) is related to the student's conduct (spray painting). Of course, it could be easily argued that there is no relation between the conduct and the disability. The IEP team would resolve this issue by analyzing the student's prior history and current diagnosis to determine if any relation exists.

Question 2: No. The student could only be unilaterally placed in an interim alternative educational setting for 45 days if the student inflicted serious bodily harm. The student could also be moved to an interim alternative educational setting if the parents agreed. Decisions about the interim alternative educational setting are made by the IEP team, although it may be ordered by a due process hearing officer as well.

Question 3: In this case the graffiti would not meet the three factors to justify an interim alternative educational setting (IAES) without a manifestation determination. However, the 45 day IAES may be used even when the conduct may be related to a student's disability. Thus, no manifestation determination is needed before placing the student in the interim alternative educational setting if drugs, weapons or an assault was involved.

Scenario 3

Question 1: At least one court has found that the student was a "handicapped person" under Section 504 and was "otherwise qualified" to attend kindergarten in a public school setting after having been diagnosed with AIDS. The court reasoned that there was no significant evidence that the child posed any significant risk of harm to his classmates.

Question 2: In balancing this student's rights under Section 504 and the safety of his classmates, the court noted that there is no medical evidence that AIDS can be spread through biting (see *Thomas* v. *Atascadero Unified School District*, 1987; *District 27*

Community School Board v. *Board of Education of the City of New York*, 1986). It should also be noted that when AIDS is reported to public health departments, it must be done in a way that respects the privacy of the student (in the same manner that other diseases are treated with regard to privacy).

Scenario 4

Question 1: This teacher could reasonably argue that she was otherwise qualified under the ADA. In so doing, she may demonstrate that school officials could reasonably accommodate her by training several school officials about how to respond if a seizure were to occur in the classroom. For example, the school nurse or a teacher's aide could be trained in working with the teacher if a seizure occurred in the future.

Question 2: This teacher could also rely upon Section 504, arguing that although she has a physical impairment that substantially limits a major life activity, she is otherwise qualified to teach with reasonable accommodations. She would also contend that she has the necessary physical qualifications for the job.

Handout 4.1 Due Process Scenario 1

Al's Issue			
1. Al has a right to some type of due process hearing before being suspended for one to three days?	True	False	Unsure
2. Al has a right to bring a parent to a meeting with the principal before being suspended for more than one day?	True	False	Unsure
3. Before being suspended for ten days, Al has a constitutional right to bring a lawyer to a hearing to advise him.	True	False	Unsure
4. Before suspending Al for one to ten days, the principal must investigate Al's claim by talking with the teacher and/or some of the students.	True	False	Unsure
5. Before expelling Al, he has a right to a formal hearing that includes a written statement of the evidence against him, the right to bring witnesses on his behalf, to question witnesses against him, plus the right to record the hearing and to appeal.	True	False	Unsure
6. If Al were a special education student, he would have additional due process rights.	True	False	Unsure

Handout 4.2 Due Process Scenario 2

Case			
1. A student at Yourtown High told Mr. Kalm, the eighth grade teacher, that she saw Bully Barnes put a long knife in his backpack. Kalm asks Bully if he can look in his backpack for a knife. Bully says, "Sure, 'cause I don't have a knife." Kalm looks through the backpack and can't find a knife. But Kalm opens Bully's wallet and finds an envelope with a substance that he gives to the principal that turns out to be marijuana. The principal then turns the marijuana over to the police. At Bully's trial, his lawyer claims that the search of his backpack was illegal, and therefore the marijuana can't be used as evidence against him.	Agree	Disagree	Unsure
2. Suppose Mr. Kalm had been told that Bully had marijuana in an envelope in his backpack, and when Kalm searched Bully's backpack for the marijuana, he couldn't find any, but he did find a long knife. When a prosecutor introduces the knife as evidence in court, Bully's lawyer claims that the knife was seized illegally since there was no reason to believe Bully had a knife in his backpack.	Agree	Disagree	Unsure
3. When a student tells principal Kal Koncern that Sharon Shy gave her a pain pill in violation of school rules, Kal tells the nurse to search Sharon. Finding no pills in Sharon's backpack or outer clothing, the nurse continues the search by telling Sharon to take off her clothes and pull out her bra and panties. After no pills are found, Sharon's mother claims that the search violated Sharon's Fourth Amendment rights.	Agree	Disagree	Unsure

Case			
5. When teacher Cee Sharp spotted Sue Sly using her cell phone in class in violation of school rules, Sharp took the cell phone and scrolled through Sly's messages. When the teacher saw a message about buying marijuana, she turned the phone over to the principal who suspended Sly. The student argued that the search violated her Fourth Amendment rights. The principal claimed that Sly's illegal use of the phone in class raised a reasonable suspicion of other improper activity that justified his search.	Agree	Disagree	Unsure

Handout 4.3 Due Process Key Terms

The Law	Examples
Informal Notice and Hearing	
Definition (Your own words)	Implications for Teachers

The Law	Examples
Formal Notice and Hearing	
Definition (Your own words)	Implications for Teachers

The Law	Examples
Manifestation Determination	
Definition (Your own words)	Implications for Teachers

Handout 4.4 Search and Seizure Key Terms

The Law	Examples
Reasonable Suspicion	
Definition (Your own words)	Implications for Teachers

The Law	Examples
***BOE v. Earls* (2002)**	
Definition (Your own words)	Implications for Teachers

The Law	Examples
***New Jersey v. T.L.O.* (1985)**	
Definition (Your own words)	Implications for Teachers

The Law	Examples
***Safford Unified School District No. 1 v. Redding* (2009)**	
Definition (Your own words)	Implications for Teachers

Handout 4.5 Due Process Notes for Distribution

Due Process

In *Goss v. Lopez* (1975), the U.S. Supreme Court ruled that students do not "shed their constitutional rights at the schoolhouse gate." Therefore, they are entitled to some form of due process if they are faced with a possible suspension for one to ten days. This is because a suspension of up to ten days is not so minor a punishment that it may be imposed "in complete disregard of the Due Process Clause."

Due process is a flexible concept. It varies according to the possible seriousness of the penalty: the more serious the possible penalty, the more formal the process that is due.

In cases of a short one to ten-day suspension, the process required is an informal notice and hearing. The informal notice may be oral or in writing and consists of telling students what they are accused of doing and what school rule they are charged with breaking. According to the Supreme Court, if they deny the charge, students are entitled to an informal hearing that consists of: (1) "an explanation of the evidence the authorities have," and (2) "an opportunity to tell his side of the story" before the disciplinarian decides on what, if any, punishment to impose. The concern of the Court is that there be at least "rudimentary precautions against unfair or mistaken findings of misconduct" and arbitrary suspensions from school. Thus the Court does not turn schools into courtrooms or require formal due process in cases of short-term suspensions. In fact, the informal process required in these cases is the minimum that most good disciplinarians would follow even if there were no court rulings about student suspensions.

In cases of long-term suspension or expulsion, a formal notice and formal hearing is required. Since such serious penalties can have serious consequences on a student's education and employment opportunities, meticulous procedures must be followed. These consist of a written notice that informs students and their parents of the charges, witnesses, and evidence against them and of their procedural protections at the hearing including the right to question their accusers, to bring witnesses and evidence on their behalf, to have someone represent them, to record the hearing, and to appeal the decision.

Additional procedures are required for students with special needs. Before they can be suspended for more than a total of ten days during the school year, there must be a manifestation determination. This means that an IEP (individual educational program) team meeting must be called to determine whether the misbehavior is a manifestation of the student's disability. If not, the student can be disciplined like any other student. If the team concludes that the misbehavior is a manifestation of the disability, then standard discipline cannot take place, and the team must conduct a functional behavioral assessment and develop a behavior intervention plan to address the behavior and/or modify the existing plan. (For more on disciplining students with special needs. (see Chapter 3).

In sum, due process is not a fixed or inflexible concept that requires the same procedures in all discipline cases. Instead it is a concept based on fairness that requires more formal procedures before more serious penalties are imposed. That is the reason judges require a formal notice and hearing before expelling a student, an informal process before a one to ten day suspension, and no due process before minor punishments such as detention or probation.

Handout 4.6 Search and Seizure Notes for Distribution

Search & Seizure

In *New Jersey v. T.L.O. (1985)*, the Supreme Court ruled that the Fourth Amendment's protection against unreasonable search and seizure applies to students in the public schools. However, the Court explained that educators are not required to comply with the requirements that apply to police who must obtain a warrant from a judge based on probable cause before searching citizens in their homes. Educators do not need a warrant. Instead of probable cause (a relatively high standard of evidence required of police before a judge will issue a warrant), the lower standard required of teachers or administrators is reasonable suspicion. Specifically, to justify a search by educators, the search must be reasonable in its inception and in its scope. To be reasonable in inception, a school official must be able to articulate some objective reason for the search. Furthermore, the scope of the search must be related to its reason and not be excessively intrusive in light of the age and sex of the student and the nature of the infraction. For example, if one student reported that he saw another student put a pistol in his backpack, it would be reasonable in inception to search the backpack. But it would not be reasonable in scope for the educator to open and search the wallet in the backpack since it could not contain a pistol.

In *Board of Education v. Earls* (2002), the Supreme Court held that schools could require students to sign waivers permitting random, suspicionless drug testing as a condition for participating in *any* extracurricular activity. In a 5-4 decision, the majority reasoned that participation in extracurricular activities is a privilege not a right. The Court further justified its decision based on the school's responsibility to protect the health and safety of students and on its belief that the goal of a drug-free school outweighed the limited invasion of privacy involved in random urine testing.

In *Safford Unified School District No. 1 v. Redding* (2009), the Supreme Court ruled that information from one student that a classmate gave her a pain pill in violation of school rules constituted reasonable suspicion to justify a search of the student's backpack and outer clothing. But the court also ruled that proceeding to a strip search was not reasonable in scope. This is because the search was for a common pain reliever that posed no danger to the students (the drug was limited in power and quantity), and there was no reason to think the student was carrying pills in her underwear. Thus a search, even if justified at its inception, crosses the constitutional boundary when it becomes excessively intrusive in light of the age and sex of the student – especially when the object of the search poses no danger to students.

Handout 4.7 Due Process Scenarios Revisited

Due process		
Issue	**True/False**	**Why?**
1. Al is entitled to some type of due process hearing before being suspended for one to three days?		
2. Al is entitled to bring a parent to a meeting with the principal before being suspended for more than one day?		
3. Before being suspended for ten days, Al would be entitled to bring a lawyer to a hearing to advise him.		
4. Before suspending Al for one to ten days, the principal must investigate Al's claim by talking with the teacher and/or some of the students.		
5.Before expelling Al, he has a right to a formal hearing that includes a written statement of the evidence against him, the right to bring witnesses on his behalf, to question witnesses against him, plus the right to record the hearing and to appeal.		
6. If Al were a special education student, he would have additional due process rights.		

Handout 4.8 Search and Seizure Scenarios Revisited

Search and Seizure		
Case	**Agree / Disagree**	**Why?**
1. A student at Yourtown High told Mr. Kalm, the eighth grade teacher, that she saw Bully Barnes put a long knife in his backpack. Kalm asks Bully if he can look in his backpack for a knife. Bully says, "Sure, 'cause I don't have a knife." Kalm looks through the backpack and can't find a knife. But Kalm opens Bully's wallet and finds an envelope with a substance that he gives to the principal that turns out to be marijuana. The principal then turns the marijuana over to the police. At Bully's trial, his lawyer claims that the search of his backpack was illegal, and therefore the marijuana can't be used as evidence against him.		
2. Suppose Mr. Kalm had been told that Bully had marijuana in an envelope in his backpack, and when Kalm searched Bully's backpack for the marijuana, he couldn't find any, but he did find a long knife. When a prosecutor introduces the knife as evidence in court, Bully's lawyer claims that the knife was seized illegally since there was no reason to believe Bully had a knife in his backpack.		
3. When a student tells principal Kal Koncern that Sharon Shy gave her a pain pill in violation of school rules, Kal tells the nurse to search Sharon. Finding no pills in Sharon's backpack or outer clothing, the nurse continues the search by telling Sharon to take off her clothes and pull out her bra and panties. After no pills are found, Sharon's mother claims that the search violated Sharon's Fourth Amendment rights.		
4.The Yourtown School Board is concerned about drug use. Therefore, the Board wants to require all students who want to participate in any extracurricular activity to sign a waiver agreeing to submit to random, suspicionless drug testing. Some parents claim that forcing their children to		

submit to drug testing when there is no reasonable suspicion that they have used drugs is a violation of their Fourth Amendment privacy rights.		
5. When teacher Cee Sharp spotted Sue Sly using her cell phone in class, in clear violation of school rules, Sharp took the phone and scrolled through Sly's messages. When the teacher saw a message about buying marijuana, she gave the phone to the principal who suspended Sly. The student argued that the search of the phone violated her Fourth Amendment rights. The principal claimed that the improper use of the phone in class raised a reasonable suspicion of illegal activity that justified his search.		

Handout 4.9 Assessment Tickets

Due process question	Search and seizure question
Are students entitled to due process? If so, when and what process is due?	When may educators search students without violating the Fourth Amendment?

Handout 5.1 Davis Case

The responsibility of school districts to take action against peer sexual harassment was recognized in a 1999 U.S. Supreme Court decision, *Davis v. Monroe County Board of Education.* The Court explained in *Davis* that school officials have clear responsibilities to respond to known acts of peer sexual harassment in public schools. When school officials are deliberately indifferent to the sexual harassment, school districts can be held financially liable.

Most of the recent peer sexual harassment lawsuits, including the *Davis* decision, have been based on Title IX of the Education Amendments of 1972, which prohibits sex discrimination under any education program or activity receiving federal financial assistance. Title IX has been interpreted broadly to cover peer harassment and also covers cases involving teachers harassing students. It is important to note that state laws may also address obligations regarding sex discrimination in schools.

In *Davis*, a fifth-grade female student was allegedly subjected to a prolonged pattern of sexual harassment. According to the complaint, the offending male student attempted to touch LaShonda's breasts and genital area and made vulgar comments toward her. Additionally, in one incident the male student placed a door stop in his pants and acted in a sexually aggressive manner with the female student. The female student and her mother notified a coach, several teachers, and the principal about the various incidents of harassment throughout the school year. School officials, however, failed to effectively respond to these complaints and only threatened possible action. Based on the female student's dropping grades and a suicide note, her mother contended that the continued harassment and the school's failure to respond affected her daughter's education.

In examining this issue, the Supreme Court established a standard of school district liability for peer sexual harassment under Title IX. In addition to the harassment being based on sex, the following four factors must be present for a school district to be found liable for peer sexual harassment:

1. Appropriate school officials must have actual knowledge of the harassment;
2. School officials must have responded with deliberate indifference to the harassment (e.g., they did not do anything to stop the harassment or their response was clearly unreasonable);
3. The harassment must have been severe, pervasive, and objectively offensive; and
4. The harassment must have had a negative impact on a student's education.

When applying these four factors in the *Davis* decision, the Court found the school district to be liable for peer sexual harassment. It is important to note that all four factors must be proven for a school district to be held liable. For example, in this case, a mere drop in grades would have been insufficient to prove that the harassment was actionable. However, in conjunction with the other three factors in this case, the grades provided evidence of a connection between the offender's conduct and the denial of educational benefits. The plaintiff's claim also relied on the severity of the harassment and the school's knowledge of and deliberate indifference to the harassment. It is also important to note that school officials must have control over the harasser and the environment in order to be liable.

Oftentimes in Title IX peer harassment court decisions, the outcome of the case will focus on whether school officials did enough to appropriately respond to the harassment. In a recent case, a male student alleged that he frequently heard inappropriate sexual remarks, was called gay, and experienced another student exposing his genitals, among other offensive acts at the school. School officials responded by rearranging the classroom for the student to avoid the perpetrator as well as suspending the perpetrator on a few occasions (*Doe v. Board of Education of Prince George's County*, 2015). The Fourth Circuit Court of Appeals found that school officials took steps to address the harassment and that their actions were not clearly unreasonable.

Handout 5.2 Harassment and Bullying— Students with Disabilities

There is a growing body of litigation involving the harassment and bullying of students with disabilities (*Long v. Murray*, 2013; *Moore v. Chilton Cnty. Bd. of Educ.*, 2014). In addition to the increasing number of lawsuits, the U.S. Department of Education (USDoE) has stated that it "has received an ever-increasing number of complaints concerning the bullying of students with disabilities" (p. 1). In response, the USDoE has published two recent letters providing schools with guidance about their responsibility to address disability-based harassment. First, in 2013, the USDoE's Office of Special Education and Rehabilitative Services (OSERS) issued a "Dear Colleague Letter" to address bullying and harassment of students with disabilities receiving services under IDEA (see http://www.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.doc). The guidance cites research highlighting that students with disabilities are disproportionately affected by bullying.

The second recent letter addressing this issue was issued by the Office for Civil Rights (OCR) in 2014 (see http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf). In these types of disability-based harassment cases, sometimes a court might apply the *Davis* standard or instead might apply a different standard and ask whether school officials acted in "bad faith" or engaged in "gross misjudgment" when analyzing disability-based harassment claims. The letter explains that bullying a student with a disability on any basis can result in a denial of FAPE (Free Appropriate Public Education).

Handout 5.3 Scenarios and the Davis Standard

Scenario	*Davis* Standard
1 Jane, a sixth-grade student, was subjected to severe and continuous harassment. The harassment began when she was referred to as the "German gay girl" (*Vance* v. *Spencer County Public School District*, 2000). The harassment continued when another student asked the female student to describe oral sex. Jane was also regularly shoved into walls and her homework was destroyed on several occasions. During one particular bathroom break from class, several boys called Jane names such as whore and bitch. While doing so, two of the boys held her hands and the other grabbed her hair and started yanking her shirt off. One of the boys stated that he wanted to have sex with her. School officials responded to several such complaints from Jane and her mother by speaking with the boys, but their response was not effective. Specifically, the boys were only spoken to and not punished. After they were spoken to, Jane contended that the harassment grew worse. When the harassment continued throughout the following school year, Jane and her mother filed a complaint, pursuant to the school harassment policy. The school claimed that it did not have enough information to investigate. Jane was later diagnosed with depression and withdrew from school. She and her mother then filed a lawsuit against the district. Would the school district be held liable in this situation?	1. Appropriate school officials must have actual knowledge of the harassment; 2. School officials must have responded with deliberate indifference to the harassment (e.g., they did not do anything to stop the harassment or their response was clearly unreasonable); 3. The harasser's behavior must have been severe, pervasive, and objectively offensive; and 4. The harassment must have had a negative impact on a student's education.
2 Mary, a high school student, was sexually assaulted by two male students (*Doe* v. *East Haven Board of Education*, 2006). It took her about 3 months to report the assault to school officials. After Mary told school officials that she had been sexually assaulted, the boys called her a "slut, a liar, a bitch, a whore" and other students began to taunt her. Mary and her mother made repeated complaints to the superintendent, the principal and the guidance counselor, and the parent felt that the complaints were ignored. Several weeks after receiving the complaints, the school district responded. The school officials argued that they provided the female student with a separate room in the guidance office where she could go if she felt uncomfortable. In the meantime, Mary became withdrawn, missed some	1. Appropriate school officials must have actual knowledge of the harassment; 2. School officials must have responded with deliberate indifference to the harassment (e.g., they did not do anything to stop the harassment or their response was clearly unreasonable); 3. The harasser's behavior must have been severe, pervasive, and objectively offensive; and 4. The harassment must have had a negative impact on a student's education.

school and had suicidal thoughts. Would the school district be held liable in this situation?	
3 Tom and Sally were high school juniors and classmates. Tom repeatedly asked Sally for a date and she repeatedly refused. After the third request, Sally complained to her teacher who told Tom to stop bothering Sally. The following week Tom asked again and tried to kiss Sally. As a result, her mother complained to the principal and asked him to move Tom to another class. Instead, the principal called Tom to his office ordered him to stop harassing Sally, and warned of consequences if he did not. The following week, Tom kissed Sally who became extremely upset. As a result she was enrolled in a private school and sued the school district for failing to prevent the harassment. Should the school be held liable?	1. Appropriate school officials must have actual knowledge of the harassment; 2. School officials must have responded with deliberate indifference to the harassment (e.g., they did not do anything to stop the harassment or their response was clearly unreasonable); 3. The harasser's behavior must have been severe, pervasive, and objectively offensive; and 4. The harassment must have had a negative impact on a student's education.
4 A student with a disability receiving services under Section 504 and the IDEA experienced harassment and bullying in the classroom on a daily basis throughout her fourth grade year. A few students in the class frequently referred to her as "retard" and would often knock her books out of her hands when she was in the hallway. During recess, kids would try to trip her and teased her about her thick glasses and stutter. The student's mother complained to the teacher who did speak with the perpetrators' parents on several occasions. When the harassment continued, the mother reached out to both the principal and the superintendent. They held meetings with the student's teacher to develop ways to keep her safe. Unfortunately the harassment continued and on one occasion she was punched in the bathroom. As a result, the mother sued the school district under Title IX and Section 504. Should the school be liable?	1. Appropriate school officials must have actual knowledge of the harassment; 2. School officials must have responded with deliberate indifference to the harassment (e.g., they did not do anything to stop the harassment or their response was clearly unreasonable); 3. The harasser's behavior must have been severe, pervasive, and objectively offensive; and 4. The harassment must have had a negative impact on a student's education. With regard to the disability harassment claim, did school officials act in "bad faith" or engage in "gross misjudgment"?

Handout 5.4 Case Scenario Outcomes

Scenario	Outcome
1	The court held in favor of Jane, finding that the sexual harassment was so severe, pervasive, and objectively offensive that it deprived her of access to the educational opportunities provided by the school and that school officials had actual knowledge of the harassment and were deliberately indifferent to the harassment. Because of the numerous complaints to several different school officials, the actual notice factor was clearly met. A jury awarded the student $220,000 in this case.
2	The court found that school officials had acted unreasonably because it took them five weeks to address the harassment. The court also noted that school officials failed to take actions other than speaking to the harassers.
3	This scenario is not based on a real case, but the scenario is a common one. In this situation, it may be difficult to prove peer harassment under Title IX. Applying the *Davis* decision, school officials knew of the harassment but were not deliberately indifferent. It is important to note that even if school officials did not do all that they should have, they still may not be found to be deliberately indifferent if their response was not clearly unreasonable. The third prong of the *Davis* test will be the most difficult to demonstrate. To illustrate, it is not clear whether the harassment in this case was severe, pervasive or objectively offensive. It is also unclear if the harassment denied Sally her education. Therefore, it does not appear that there has been a violation of Title IX in this scenario. Nevertheless, school officials should still pay attention and respond to such incidents of harassment.
4	Whether the court applied the *Davis* standard or asked if school officials acted in "bad faith" or "gross misjudgment" it seems that school officials did take steps to address the harassment. Although it is questionable about whether enough was done to address the harassment, some courts have only required that school officials took some reasonable steps to remedy the situation. Likewise, it could be found that school officials did not act in bad faith or display gross misjudgment because they did take steps to address the harassment.

Handout 6.1 Teacher Freedom of Expression Scenarios

1. A math teacher wrote a letter to a local newspaper, criticizing the school board's elimination of girls' softball. As a result of this criticism, the teacher was disciplined. *Did school officials violate this teacher's First Amendment rights?*
2. A special education teacher claimed that school officials retaliated against her after she filed a complaint with the state department of education. She noted that school administrators were not following special education law and failed to respond to her complaints about not receiving accurate lists of student caseloads. After she filed her complaint, school officials cancelled her extended contract. *Did school officials violate this teacher's First Amendment rights?*
3. A tenured elementary school teacher posted on social media that "after today, I am thinking the beach sounds like a wonderful idea for my 5th graders! I HATE THEIR GUTS! They are the devils (sic) spawn!" A few weeks earlier a student from another district had drowned at the beach and she was referring to this incident in her post. None of her parents or students saw the Facebook post. The teacher was dismissed and claimed her First Amendment rights had been violated. *Did school officials violate her First Amendment rights?*
4. A non-tenured teacher's contract was not renewed because she told her social studies class that she does not support the war in Iraq. The teacher claimed that her First Amendment rights were violated even though she had been told before to not give her opinion in class. *Does the teacher have a First Amendment right to tell her students that she opposes the Iraq War in class?*
5. After a non-tenured biology teacher was advised not to discuss abortion, she was not reappointed after engaging the class in a discussion about the abortion of Down Syndrome fetuses. *Did the teacher have a First Amendment right to discuss this issue in the classroom?*
6. In California, a middle school dean posted obscene photos and comments on Craigslist. These postings were discovered by a parent in the district who reported it to the administration. The teacher told the administration that he was seeking sexual relations with other adults and agreed to take the post down. *Did the teacher have a First Amendment right to post this information on Craigslist?*

Handout 6.2 Teacher Freedom of Expression Reading

As a result of a 2006 U.S. Supreme Court decision, when teachers speak, pursuant to official job duties, their speech will not be protected under the First Amendment – even if they are speaking about a matter of public concern. Thus, a math teacher who complains to an administrator that the district places a disproportionately low number of minority students in gifted math classes might not be protected under the First Amendment (if the teacher is found to be speaking pursuant to his or her job responsibilities). If the teacher is not found to be speaking pursuant to job responsibilities but rather is found to be speaking as a citizen about a matter of public concern, the speech may be protected. The U.S. Supreme Court ruled in *Pickering v. Board of Education* (1968), that teachers have a constitutionally protected right to speak about matters of public concern. Specifically, speech that is related to a matter of public concern is protected unless the speech is: 1) found to impair teaching effectiveness; 2) interferes with the relationship with superiors or coworkers, or 3) jeopardizes the operation of the school. In applying the *Pickering* balancing test, courts weigh the teacher's rights to freedom of expression against the school district's interest in maintaining an efficient school system. For example, in *Pickering* when a teacher wrote a letter to the newspaper criticizing the way school district funds were used, the Court weighed the teacher's rights to free expression against the school district's interest in maintaining an efficient system. In making this determination, the content of the speaker's statement should be assessed to determine if the speech impaired one's teaching effectiveness or other factors. The Court did not find that Pickering's letter impaired his teaching effectiveness or other *Pickering* factors such as interfering with his relationship with superiors or coworkers, or jeopardizing the operation of the school. Sometimes it can be difficult to determine whether the teacher is speaking as a private citizen or speaking pursuant to official job duties. For example, a tenured school psychologist's claim for First Amendment retaliation survived because he presented evidence demonstrating that he spoke out as a private citizen about a matter of public concern when he criticized curriculum changes for students receiving special education services (see *Koehn v. Tobias*, 2015). He had been discharged from his position shortly after making these complaints.

Teachers expressing themselves via social media have also been an issue in a few cases. A New Jersey appellate court upheld the dismissal of a teacher who posted on Facebook that "I'm not a teacher – I'm a warden for future criminals." The court noted that her speech was not related to a matter of public concern and was instead expressing dissatisfaction with her job. The court found that the teacher's speech did not deserve First Amendment protection (*In re Tenure Hearing of O'Brien*, 2013).

Whether on social media or not, speech that relates to a private grievance or has no social/political importance will not be afforded protection. For example, a high school teacher's recent statement that she wanted to bring a machine gun under a trench coat to school was not found to be protected speech. The teacher made this statement in the teacher's lounge after she had been reprimanded by her assistant principal for making inappropriate comments to a student (*Milo v. City of New York*, 2014).

Regarding expression that occurs inside the classroom, courts have generally upheld restrictions on teachers expressing their personal views. In so doing, courts have noted that teachers are hired to teach the curriculum. Thus, school boards may prescribe what will be taught and can restrict how it will be taught as long as the specifications are based on legitimate pedagogical reasons. In addition, school officials may restrict the use of certain teaching methods, if the teacher is given proper notice. Furthermore, teachers may not use

their classrooms to promote their personal agendas. Thus, when dealing with controversial issues in the curriculum, teachers are expected to present both sides and encourage students to make up their own minds. Teachers have more freedom of expression outside of the classroom, but under certain circumstances, this speech may also be curtailed. For example, if a teacher voices her support for the legalization of marijuana on the local news, this teacher's speech could not be curtailed unless there was evidence that the speech impaired her teaching effectiveness, interfered with relationships of superiors or co-workers, or jeopardized the management of the school. Again, the content of the statements should be assessed in this situation. Although highly unlikely, it is possible in weighing these different interests that school officials might be able to curtail her speech if there was strong evidence that her speech jeopardized the management of the school.

It should also be noted that whether speaking inside or outside the classroom, non-tenured teachers have fewer protections than tenured teachers. Specifically, tenured teachers are entitled to due process rights, making dismissal based on First Amendment concerns more difficult. Indeed, teachers should be knowledgeable about the legal parameters regarding speech both inside and outside the classroom and about the different consequences for tenured teachers compared to non-tenured teachers.

Handout 6.3 Teacher Freedom of Expression Scenario Ruling

Scenario	Court Ruling
1	The court found that the teacher was speaking as a citizen. The court also held that he was speaking about a matter of public concern and that his speech did not interfere with school operations. Thus, the teacher's speech was protected under the First Amendment (see *Pickering* v. *Board of Education*, 1968).
2	The court found that the special education teacher was not speaking pursuant to her official job duties and that she was speaking as a private citizen (see *Reinhardt v. Albuquerque Public School Board of Education*, 2010). The court noted that her job responsibilities did not relate to reporting any wrongdoing. The court also found that Section 504 of the Rehabilitation Act, which prohibits retaliation, protected the teacher in this instance.
3	It was determined that the teacher's posts were not protected by the First Amendment. With regard to her termination, the court found it to be too harsh of a punishment because she had an "unblemished" record with the district for 15 years, was remorseful, and because parents did not have access to the posts. She did receive a 2-year unpaid suspension (*Rubino v City of New York*, 2013)
4	The court decided that the teacher was hired to teach the curriculum and that she had no First Amendment rights to voice her personal opinions about the war in class (see *Mayer* v. *Monroe County Community School Corporation*, 2007). Of significance was that the teacher was told by school officials that she could teach arguments about Iraq from all perspectives, as long as "she kept her opinions to herself."
5	The court found that the teacher's speech could be regulated if the reason for regulation was related to a legitimate pedagogical concern. The court noted that this teacher had been provided with notice of what conduct was prohibited in the classroom (see *Ward* v. *Hickey*, 1993).
6	The case was not decided on First Amendment grounds but the court found that this teacher could be dismissed because he was unfit to teach and because his conduct was immoral (see *San Diego Unified Sch. Dist. v. Comm'n. on Prof'l Competence*, 2011). .

Handout 6.4 Teacher Freedom of Expression Assessment

A high school French teacher who was the chair of the foreign language department for her district wrote a letter to the editor of a local newspaper criticizing the district for cutting the elementary school foreign language programs. In her letter she noted that if the district had not been so irresponsible in the management of its funds, it would have been able to keep the elementary school foreign language program in place. In her role as chair, she meets with the elementary foreign language teachers two times per year. After the letter was published, the principal of the high school assigned a new chair to the foreign language department and removed the French teacher from the school policy council committee. The teacher alleged that the principal violated her rights to free expression under the First Amendment when he retaliated against her for writing the newspaper article. Did the principal violate the teacher's First Amendment rights?

QUESTION	NOTES
1. Does this teacher have a valid First Amendment claim?	
2. Was this teacher speaking pursuant to her official job duties? If not, was the teacher speaking about a matter of public concern or about a private grievance?	
3. What if the teacher in this scenario had been a math teacher complaining about cuts to the elementary foreign language program?	

Handout 7.1 Teacher Lifestyle Choices Reading

Teacher Out-of-School Conduct

State statutes and/or collective bargaining agreements identify the reasons why teachers may be dismissed. Although the laws vary by state, state laws often include immorality, unfitness to teach, unprofessional conduct as well as incompetence and insubordination as reasons for dismissal. A school board must show cause in order to dismiss a teacher who has attained tenure. Specifically, in demonstrating cause, the school board must identify under what category of the state's teacher dismissal law a teacher is being dismissed (e.g. immoral conduct, unprofessional conduct and then provide evidence supporting the board's allegations).

Interestingly, there is no national standard about what constitutes immoral or unprofessional conduct. The interpretation of these concepts often varies according to state court rulings and community standards. Behavior that could cause substantial disruption in one community may cause little notice in another. In addition to state law variations, these concepts also vary over time. As the California Supreme Court observed: "Today's morals may be tomorrow's ancient and absurd customs" (*Morrison v. State Board of Education*, 1969, p. 226).

When employment decisions are based on a teacher's out-of-school conduct, the courts generally consider the notoriety of the conduct and the impact the conduct has on the individual's teaching abilities, when making a decision about the appropriateness of the action. Courts usually require evidence of a nexus (i.e. direct connection) between the teacher's conduct and impaired teaching effectiveness in order for the teacher's dismissal to be justifiable. For example, school officials might be able to discipline a teacher who is a stripper on the weekends if her stripping job became notorious in the community and had a negative impact on her teaching effectiveness. In dismissing this teacher, the school board would, of course, also need to identify a cause for dismissal (e.g., immorality or unprofessional conduct.)

The internet and social media has called attention to teacher's private lives outside of school as well. For example, in Georgia, a teacher was allegedly coerced into resigning after school officials learned about pictures on her Facebook page that showed her photographed with two glasses of beer while visiting the Guinness brewery while on summer vacation in Ireland. The teacher claimed that she had set her Facebook page to be private and that she did not "friend" students or parents. The teacher also noted that she was bullied into resigning and later filed a lawsuit against the district when it refused to reinstate her. A state court judge held that she was not entitled to relief (*Payne v. Barrow County School District*, 2009). Had this teacher not resigned, she would likely have had a successful lawsuit against the district because having a beer during summer vacation would not impair one's teaching effectiveness.

In the past, school districts tried to discharge teachers because of pregnancy or even divorce. Although a few school districts were successful in these types of cases, courts today do not support such dismissals based on their recognition that decisions pertaining to marriage and parenthood involve constitutionally protected privacy rights. Similarly, compelled leaves of absence for pregnant, unmarried employees also have been invalidated as violating constitutional privacy rights. For example, at least one court has held that offering a single teacher parental leave without a guarantee of her position at a nonprofit upon return violates the teacher's constitutional and statutory rights (see *Ponton* v. *Newport News School Board*, 1986). Likewise, a Florida court overturned a school board's termination of a teacher

for lacking good moral character based on a personal romantic relationship (see *Sherburne* v. *School Board*, 1984). In this case, the school district questioned her choice as an unmarried woman to spend the night with an unmarried man.

It is also important to note that many teacher dismissal cases related to teacher out-of-school conduct never enter court. For example, a school district recently dismissed a teacher who had appeared in pornographic movies 10 years before becoming a teacher, and the teacher did not challenge the school-board's reasoning that her prior conduct would have a negative impact on her classroom effectiveness.

School boards have an easier time dismissing teachers who have engaged in criminal conduct outside of the classroom (e.g., drug violations). In one case, a teacher was dismissed for possessing marijuana and for smoking it in his home. The school board relied on a North Carolina law that permits a tenured teacher to be dismissed for "nonmedical use of a controlled substance." The school board upheld his dismissal even though he was never criminally charged by the police (see *In re Freeman*, 1993). In another case, a teacher who brought a loaded shotgun and a loaded pistol to a local poolroom was dismissed for immorality (*Barringer* v. *Caldwell County Board of Education*, 1996). The court affirmed his dismissal because it found the teacher's conduct to be not only immoral but also highly dangerous. The court reasoned that the teacher's out-of-school conduct violated important principles that are required in the teaching profession. Similarly, an outstanding industrial arts teacher's dismissal was upheld after he was convicted of aggravated assault with a gun (*Skripchuk v. Austin*, 1977). And in Minnesota, a business teacher was dismissed for unprofessional conduct after being convicted for theft from a company he ran with two other teachers (*In re Shelton*, 1987).

In some cases, the State Board of Education may decide to suspend or revoke a teacher's license as a result of the criminal conduct. In a recent case, while her husband's ex-wife was in a car, the teacher used a hammer to break a car window and dent the doors. After a hearing, the state department of education decided to suspend her teaching license for over a year because the conduct was unbecoming of a teacher. An Ohio trial court reversed the decision to suspend her license because there was no nexus between her conduct and her performance as a teacher. The Ohio Appeals Court affirmed (*Wall v. State Board of Education*, 2015).

Most recently, lesbian, gay, bisexual, and transgender (LGBT) teachers have been under scrutiny in some school districts. In a California case, fellow teachers and administrators subjected an award-winning high school biology teacher to years of harassment and allegedly passed her over for promotion because of her sexual orientation. The California Court of Appeals found that a state labor law protected the teacher from harassment and discrimination based on her sexual orientation (see *Murray* v. *Oceanside Unified School District*, 2000).

Similarly, a federal court in Utah held that the removal of a teacher as the girls' volleyball coach was not justified by the community's negative reaction to her sexual orientation (see *Weaver* v. *Nebo School District*, 1998). The court noted that the community's negative response to her sexual orientation was not a job-related basis for her removal. Also, an Ohio federal court awarded a teacher reinstatement, back pay, and damages when it found that his contract was not renewed because of his sexual orientation and not because of his teaching deficiencies, as the school board asserted (see *Glover* v. *Williamsburg Local School District*, 1998). Some LGBT teachers who decide to marry and then face discrimination in schools might attempt to rely on the U.S. Supreme Court's recent decision on marriage equality. In this case, the Court ruled that the U.S. Constitution guarantees a right to same-

sex marriage under both the Due Process and Equal Protection Clauses of the Fourteenth Amendment (*Obergefell v. Hodges*, 2015). However, this decision does not specifically protect teachers from sexual orientation discrimination in schools; only those teachers who live in the 19 states with state laws would have such protections.

When school officials try to demonstrate a nexus between the teacher's sexual orientation and its impact on teaching in these cases, they will most likely be unsuccessful because of privacy issues and equal protection arguments. Specifically, discrimination against LGBT teachers has been challenged using the Fourteenth Amendment's Equal Protection Clause (U.S. Constitutional Amendment XIV, 1868) and some state statutes that grant specific protections to LGBT public employees. Under basic equal protection analysis, if a school district treats a gay teacher differently from a non-gay teacher, it needs to demonstrate at least a rational reason for the different treatment.

In addition to the Equal Protection Clause, the Fourteenth Amendment's Due Process Clause may arguably provide protection for LGBT teachers. The Fourteenth Amendment requires that "no person be deprived of life, liberty or property without due process of law" (U.S. Const. Amend. XIV, 1868). As a result, certain types of governmental limits on individual conduct have been held to unreasonably interfere with important individual rights. This interference has amounted to an unreasonable denial of "liberty." Accordingly, there are certain protected zones of privacy (e.g., interracial marriage) where the government should not interfere.

Handout 7.2 Teacher Out of School Conduct Presentation Slides/ Notes

Reasons for Dismissal

- Immorality
- Unfitness to teach
- Unprofessional conduct
- Incompetence
- Insubordination

A school board must show cause in order to dismiss a teacher who has attained tenure. To show cause means that school officials demonstrate a legitimate reason to dismiss a teacher. The legitimate reason will fall under one of the categories in the causes/reasons for dismissal list, which is established by the state.

When employment decisions are based on a teacher's out-of-school conduct, the courts generally consider:

1. The notoriety of the conduct, and
2. The impact the conduct has on the individual's teaching abilities. Other factors courts might consider include the likelihood that the conduct will be repeated, the teacher's record, and any aggravating or extenuating circumstances.

Courts usually require evidence of a nexus between the teacher's conduct and impaired teaching effectiveness in order for the teacher's dismissal to be justifiable.

Protection for the Teacher

The privacy interests of the teacher must be balanced with the interests of the school board in all of the cases discussed above.
The Fourteenth Amendment's:

- Equal Protection Clause provides for the equal protection of laws.
- Due Process Clause requires that "no person be deprived of life, liberty or property without due process of law"

Handout 7.3 Teacher Lifestyle Choice Scenarios

Scenario 1: An elementary school teacher was dismissed for immorality because he had a consensual sexual relationship with a seventeen-year-old high school student. He taught this student when she was at the elementary school. The teacher argued that the student no longer attended the elementary school, that his conduct was not criminal, that the student went to school in another district, and that the relationship had not affected his professional duties. *Was the school board's action permissible?*
Outcome The State Supreme Court in Delaware ruled that the teacher was unfit to teach. The court found that the evidence demonstrated a "sufficient nexus between the undisputed sexual relationship and his fitness to teach." The court also found that the public disclosure of the relationship had a detrimental impact on the school.

Scenario 2: An art teacher painted different pictures using his buttocks. He posted a video of himself painting this way on YouTube. Although the teacher wore a disguise on the video, the school district still learned of this video and attempted to dismiss him. *Could school officials discipline this teacher?*
Outcome This teacher could be disciplined if his conduct became notorious in the community and if it had a negative impact on his teaching effectiveness. In this particular case, there was no impact on his teaching effectiveness and the school district ultimately settled the case for $65,000.

Scenario 3: An eighth-grade teacher from Oklahoma was planning to take his government class on a three-day field trip to Washington, DC. After a few of the parents learned that the teacher was gay, they demanded that the teacher not be permitted to chaperone the trip and that a straight teacher accompany the students. School officials removed the gay teacher as a chaperone and he sued, claiming a violation of his rights to equal protection under the Fourteenth Amendment. *Does the teacher have a valid claim?*
Outcome Yes. School officials could be found to have violated the teacher's equal protection rights under the Fourteenth Amendment by treating him differently than other similarly situated teachers.

Scenario 4:
A high school math teacher who also teaches the school district's driver's education course during the summer was arrested for a DUI. The math teacher was driving home from a school district holiday party. The school board would like to dismiss this teacher for unprofessional conduct. *May the school board do so?*

Outcome
The school board would most likely be able to dismiss this teacher because his out-of-school conduct is related to criminal activity, and because he is the driver's education instructor. If he did not teach the driver's education course, it would probably be more difficult for school officials to dismiss him for his out of school conduct (even though it was criminal behavior) unless it was a felony. Teachers who are convicted of a felony may be fired without evidence that the serious crime impacts their classroom effectiveness.

Scenario 5:
A teacher was terminated after photographs of her simulating fellatio with a male mannequin on a stage appeared on the web. The pictures were taken by an acquaintance at a summer bachelor/bachelorette party and were posted without the teacher's permission. After some students learned about the photographs, they were removed from the internet. The teacher was ultimately terminated because school officials believed the teacher engaged in "lewd behavior," which undermined her authority and prevented her from being a proper role model to students. *Will this dismissal be upheld?*

Outcome
The Michigan Court of Appeals found in favor of the teacher, ruling that while the teacher's conduct might be considered "coarse" it was "not inappropriate for an adult venue." The court further reasoned that the teacher's actions did not otherwise "persistently and publicly violate important and universally shared community values" or demonstrate her unfitness to teach.

Scenario 6
In Illinois a teacher was dismissed after being convicted of three misdemeanor counts of failure to file income taxes. This teacher made significant profits from commodities trading but did not file any income taxes. The teacher argued that this conduct was not related to his job at the school. *Will this dismissal be upheld?*

Outcome
Upholding the circuit court's decision, the state appellate court found that the conviction harmed the teacher's reputation and credibility as a teacher. The court reasoned that he could no longer function as a role model (*McCullough v. Illinois State Board of Education*, 1990).

Handout 8.1 Religion Hypothetical Cases

Hypothetical Cases	Constitutional?		
CASE #1: The principal of an elementary school invites student volunteers to lead the following nondenominational prayer at lunch time over the cafeteria PA system for students who wish to participate: "God is great, God is good, and we thank him for our food."	YES	NO	Don't Know
CASE #2: The school board proposes that every school in the district begin the school day with "one minute of silence for prayer or meditation."	YES	NO	Don't Know
CASE #3: The high school principal proposes that each year different community clergy give invocations at the high school graduation. He adds that no student will be required to participate.	YES	NO	Don't Know
CASE #4: A group of students petition the administration to recognize their Prayer and Bible Study organization as an official school extracurricular club that will be eligible to publicize their meetings on school bulletin boards and daily announcements and to use school facilities for their activities.	YES	NO	Don't Know
CASE #5: The music teacher proposes a Christmas assembly at which the school choir would sing the traditional hymns of the holiday season such as Silent Night and Joy to the World.	YES	NO	Don't Know
CASE #6: The school board issues a new policy that science teachers who teach about the theory of evolution must also teach students about the theory of creation science or intelligent design so that students can make up their own minds about these competing theories concerning human origins.	YES	NO	Don't Know
CASE #7: In order to teach an appreciation of different spiritual perspectives, the school board will require all high school students to complete a course in Comparative Religion (that will include readings from the Bible and the Koran) in order to graduate.	YES	NO	Don't Know
CASE #8: A group of fundamentalist Christian parents object to two required elementary school books: one is a popular novel that they believe promotes witchcraft; the second is a book that comments approvingly of gay marriage. Because the content of these books are in conflict with their basic religious values and beliefs, the parents make two proposals: A. Both books should be eliminated from the curriculum because they are anti-religious and/or promote the religion of secular humanism. B. If the books are not banned, the parents argue that compelling their children to read these books violates their free exercise of religion. Therefore, the students have a right to be excused from reading the books and be given alternative assignments.	YES	NO	Don't Know
Case #9. On Valentine's Day, Sue Pious wrote on each Valentine, "Jesus loves you." Her third grade teacher stopped Sue's distribution because she said that Sue shouldn't be promoting her religious beliefs in public schools.	YES	NO	Don't Know

The First Amendment proclaims: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof…" But it is not obvious what these historic words mean. The answers can be found in the way the federal courts have interpreted the religion clauses over the years and applied them to disputes in the public schools.

In 1947 the U.S. Supreme Court for the first time determined the meaning of the Establishment Clause. In *Everson v. Board of Education of the Township of Ewing*, (1947), all the justices agreed with Thomas Jefferson that "the clause against establishment of religion by law was intended to erect a 'wall of separation between church and state.'" Despite this unanimous interpretation, a majority of the Justices did not believe that the wall of separation prohibited a school district from reimbursing parents for bus fare for transporting their children to religious as well as public schools.

Over the years, the unanimous support for a wall of separation among the Justices began to erode. For example, in 1971 the High Court dropped the wall metaphor and established the following three-part Lemon test for determining whether a challenged government practice was constitutional: First, the activity must have a secular purpose; second, its primary effect must be one that neither advances nor inhibits religion; finally, the activity must not foster an excessive government entanglement with religion. In the *Lemon* case, the Court held that state salary supplements paid to teachers in religious schools violated the three-part test. (*Lemon v. Kurtzman*, 1971).

In *Lynch v. Donnelly* (1984), Justice O'Connor developed the Endorsement test that was a "refinement" of the test used in *Lemon*. This approach asked two questions: first, "whether government's purpose is to endorse religion" and, second, whether the policy "actually conveys a message of endorsement." In *Lynch*, Justice O'Connor explained that government endorsement of religion is invalid because it "sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community."

A year later the Court ruled on an Alabama statute that added the words "voluntary prayer" to a law that required schools to begin each day with a minute of silence. The expressed purpose of the law was "to return voluntary prayer to public schools." Therefore, the Court held that the statute clearly violated the secular purpose part of the *Lemon* test since its goal was "to convey a message of state approval of prayer" (*Wallace v. Jaffree*, 1985).

The following decade, the Court confronted the question of whether invocations and benedictions at public school graduations violated the Establishment Clause. In *Lee v. Weisman* (1992), a divided Court struck down the school-sponsored prayers and wrote: "if citizens are subjected to state-sponsored religious exercises, the State disavows its own duty to guard and respect" the diversity of religious belief. This is especially true in public schools where prayer exercises "carry a particular risk of indirect coercion." Similarly, in 2000, the Supreme Court ruled that it was unconstitutional for schools to authorize students to vote on whether invocations should be delivered before football games. In *Santa Fe Independent School District. v. Doe* (2000), the Court explained that the Constitution does not prohibit an individual student from praying before, during or after school. However, the Establishment Clause *is* violated when a public school sponsors or endorses a religious practice such as organizing an election to select a student to say a prayer at an athletic event. As the Supreme Court explained in an earlier case, the problem with such an endorsement is that "when the power, prestige, and financial support of government are placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain" (*Engel v. Vitale*, 1962).

In addition to prohibiting school-sponsored prayers, the courts also prohibit curricular proposals that promote religion. Thus the Supreme Court voided a law that required schools that teach evolution to also teach "creation science." The law violated the Establishment Clause because it advances a religious doctrine (based on the first chapter of the Bible) "by requiring either the

banishment of the theory of evolution from public school classrooms or the presentation of a religious viewpoint that rejects evolution in its entirety." (*Edwards v. Aguillard*, 1987).

While the Establishment Clause prohibits public schools from encouraging religion, the Free Exercise Clause protects students in their personal religious expression. Thus individual students may say prayers in school and share their religious views with classmates as long as they do not cause disruption. Furthermore, the Free Exercise Clause and the Equal Access Act permit groups of students to organize religious groups in school. Congress passed the Equal Access Act to allow secondary students to form student-led, non-curricular clubs to meet during non-instructional time. The Act was upheld by the Supreme Court in the case of a Christian club that was denied the right to meet at a public school for Bible study and prayer. The school argued that recognizing a religious group would violate the Establishment Clause. But the Supreme Court disagreed and upheld the federal Equal Access Act that prohibited discrimination against voluntary student organizations based on their political or religious views. The Court noted that the proposed meetings were voluntary, student initiated, and not sponsored by parents, the school, or its staff. According to the Court, "If a state refused to let religious groups use facilities open to others, then it would demonstrate not neutrality but hostility toward religion." The Court further explained that, "there is a crucial difference between government speech endorsing religion which the Establishment Clause forbids, and private speech endorsing religion which the Free Speech and Free Exercise Clauses protect. We think that secondary school students are mature enough and are likely to understand that a school does not endorse or support student speech that it merely permits" (*Board of Education of the Westside Community Schools v. Mergens*, 1990). Therefore, the Court ruled that the religious club should be allowed to meet.

Handout 8.3 Religion Hypothetical Cases Answers for Moderator

Cases	Consti t- utional ?	Why?
CASE #1:	No	As the Supreme Court explained, it is unconstitutional for government officials to encourage or endorse a religious practice. Therefore, when a public school principal, who is a government official, invites students to say prayers, she is thereby encouraging religion and violating the Establishment Clause. However, as the Court also explained, students are free to say individual prayers at lunch or any other time before, during, or after school as long as they don't cause disruption.
CASE #2:	Probab ly Yes	If the school board required "a minute of quiet for silent prayer," this policy would be unconstitutional since it would only encourage prayer as the Supreme Court explained in *Wallace v. Jaffree.* But a majority of the Justices have indicated that as long as the board does not state that its purpose is religious, and the only activity that is required is silence (for prayer *or* meditation), then students can use that minute of silence for any purpose they wish – whether religious, nonreligious or even antireligious. Thus most moment of silence policies would be upheld if they have a secular purpose such as starting the school day with a time for silent reflection.
CASE #3:	No	As the Court ruled in *Lee v. Weisman*, school-sponsored invocations or benedictions violate the Establishment Clause. The practice is equally unconstitutional if the principal asks a teacher, student, or parent to say the prayer even if participation is voluntary. What makes this practice unconstitutional is that a public school principal, who is a government official, is promoting a religious practice. Instead, the government should be neutral concerning religion – neither endorsing nor inhibiting religion.
CASE #4:	Yes	Under the federal Equal Access Act, secondary schools that permit extra-curricular clubs can't refuse to provide equal access to a group because of its religious or political speech. This would include the use of bulletin boards and other school facilities like any other extra-curricular club. Discrimination against a student religious group would also be a violation of the Free Exercise Clause of the First Amendment.
CASE #5:	Probab ly Not	How to handle Christmas in a public school can be a delicate matter. One approach is for schools to have "holiday," rather than Christmas, assemblies. But since Christmas is a national as well as a religious holiday, it is not unconstitutional to have a Christmas assembly where the school chorus sings the nonreligious songs of the season. The constitutional problem arises if the chorus only sings traditional Christmas hymns –which typically include explicit religious affirmations. In that case, there would probably be a violation of the Establishment Clause since such an assembly would appear to be an endorsement of religion. This does not mean that students can never sing or be taught about religious music. For example, such music can be taught objectively as part of a course on the history of western music. But most judges probably would conclude that a program of religious hymns at a Christmas assembly just before Christmas would constitute an unconstitutional endorsement of religion. (However, the songs might be ok if they were part of a larger, objective curriculum about comparative religious celebrations.)
CASE #6:	No	As the Supreme Court ruled in the *Edwards* case, such a policy would violate the Establishment Clause because it promotes a religious view since it requires schools either to stop teaching evolution or to present a religious view that rejects evolution. Furthermore, creationism is based on the first book of the

Cases	Consti t- utional ?	Why?
		Bible and rejects scientific methods. Even though intelligent design is a more sophisticated theory than creationism, the proponents and goals of intelligent design are similar to those of creationism, and it has been rejected by a federal court for the same reasons (see *Kitzmiller v. Dover*, 2005).
CASE #7:	Yes	The courts distinguish between courses and activities that **promote** religion which is unconstitutional and courses that teach **about** religion which is permitted and can be required if it is taught objectively as part of the curriculum. Furthermore, reading and teaching about the Bible could be appropriate not just in a course on comparative religion but also in other courses such as literature, history, or music.
CASE #8:	A: No B: Probab ly Not	A. The parents have no constitutional right to require schools to ban books that are in conflict with their religious beliefs as long as schools have a legitimate educational goal in assigning the books. As one federal court explained, if schools were required to eliminate everything objectionable to every parent's religious views, this would "leave public education in shreds" (see *Grove.v. Mead Sch. Dist. No. 354*, 1985). B. In cases such as this, many schools choose to excuse students from classes such as sex education or reading assignments that are in conflict with their religious beliefs and, where feasible, provide alternative assignments. But most courts have not found "excusal" to be a parental right under the Free Exercise Clause since merely exposing students to controversial ideas does not interfere with the parents' freedom to educate their children in the religion of their choice.
CASE #9:	No	Sue has a constitutional right to distribute her valentines with her personal message like any other student. The outcome would be entirely different if Sue's teacher distributed valentines to her pupils with the words "Jesus Loves You." This is because the teacher's valentines would constitute a government endorsement of religion that is prohibited by the Establishment Clauses. In contrast, Sue's individual religious views are protected by the Free Exercise and Free Speech Clauses of the First Amendment.

Handout 8.4 Religion Assessment

Case	Circle One	Decision and Reasoning
While Gail Good is saying her rosary prayers after lunch in the school cafeteria, her fifth grade teacher quietly explains to Gail that she should say her prayers in church or at home but not in a public school.	Free Exercise Or Establishment Clause Principles	
Sixth grade teacher Sam Saint gives his students a flyer that announces a special Youth Prayer Service at a local church. He explains that all students are welcome but that they should get their parents' permission to come to the service.	Free Exercise Or Establishment Clause Principles	

Handout 9.1 Student Records Hypothetical Cases

Hypothetical Cases	Was FERPA Violated?		
CASE #1: In order for teachers to have access to all of their students' records, FERPA requires that they must have permission from the principal (or his designee) or a parent/guardian of the student.	YES	NO	Don't Know
CASE #2: In order for a noncustodial parent to have access to their child's records, this person must have permission from the parent who has legal custody.	YES	NO	Don't Know
CASE #3: If parents believe that something in their child's records is false or misleading, the parents have the right to a hearing to present their evidence to challenge anything they believe is inaccurate.	YES	NO	Don't Know
CASE #4: Parents must be notified every year of their rights under FERPA.	YES	NO	Don't Know
CASE #5: A parent's consent is not required before schools share information from student records to protect the health or safety of the student or others.	YES	NO	Don't Know
CASE #6: Parents have the right to see teacher's personal notes about their children.	YES	NO	Don't Know
CASE #7: FERPA prohibits teachers from giving recommendations about their students to prospective employers over the phone without parental permission.	YES	NO	Don't Know
CASE #8: Teachers can be sued for defamation for critical comments they put in a student's records if the negative statements cause economic or emotional harm.	YES	NO	Don't Know
CASE #9: FERPA gives parents the right to file complaints with the U.S. Department of Education for failures to comply with the Act.	YES	NO	Don't Know

Handout 9.2 The Five Features of FERPA

1. The Right to be Informed.
The Act requires school districts to inform parents of their rights under the Act each year. This includes the right to be informed about the kinds and locations of education records maintained by the school and the officials responsible for them. Usually this information is included in a school's student handbook. FERPA also requires schools to effectively notify parents whose primary language is not English of their rights under the Act.

2. Protects Confidentiality.
The Act protects the confidentiality of student records by preventing disclosure of personally identifiable information to outsiders without prior written consent of the parent. The consent must be signed dated and include the specific records to be disclosed the purpose and the individual or group to whom the disclosure may be made. Schools must keep a file of all requests for access including who made the request and why.

3. The Right of Access.
The Act guarantees parents the right to inspect and review the educational records of their children. This includes the right to receive an explanation or interpretation of the records if requested. Schools must comply with a parent's request to inspect records "within a reasonable time but in no case more than 45 days after the request." *Code of Federal Regulations* Title 34 Part 99 (2004). Either parent (including a noncustodial parent) has the right to inspect their child's records unless prohibited by a legal document or court order.

Education records include any information maintained by a school (or a person acting for a school) that is directly related to a current student regardless of whether the record is in handwriting, print, tape or computer file. The information may be in a teacher's or principal's desk as well as in an official file. However, FERPA does not give parents the right to see the personal notes of teachers, counselors, or administrators if these notes are used only as a "personal memory aid," and are not shared with any other individual except a substitute.

Exceptions: Consent Not Needed. There are several exceptions where student records can be shared without parental consent. For example, prior consent is not required when education records are shared with (1) teachers, other school staff, and administrators in the district who have "legitimate educational interests," (2) with officials of another school in which the student seeks to enroll (provided parents are notified), (3) with individuals for whom the information is needed "to protect the health or safety of the student or other individuals," (4) pursuant to a court order, and (5) in connection with financial aid for which a student has applied. (FERPA, 2000).

The Act requires each school district to adopt a policy specifying which school people have a legitimate educational interest in accessing student records. In addition, FERPA was amended in 1994 to explicitly allow schools to share information with teachers about disciplinary action taken against a student for conduct that posed a significant risk to any member of the school community.

If they wish, schools also have the option of sharing directory information from students' education records without a parent's consent. Directory information includes such facts as a student's name, address, email address, phone number, date and place of birth, dates of attendance, awards received and photographs. Before releasing such information, a school should try to notify parents of what facts it considers directory information and their right to refuse to release the information. A school may release information about former students without trying to notify them.

4. The Right to Challenge.
The Act establishes procedures through which parents can challenge a student record they believe is "inaccurate or misleading or violates the privacy or other rights of the student." (FERPA, 2000). In such a case, parents first should request that the school amend the record. If the school refuses, it must advise the parents of their right to a hearing where they must be given an opportunity to present their evidence and may be represented by counsel, at their own expense. The school must make its decision in writing based solely on the hearing and include the reasons and evidence to support its decision which is final. If the school decides the information is correct, it must inform parents of "the right to place in the education records of the student a statement…setting forth any reasons for disagreeing with the decision" of the school. (FERPA, 2000). The statement must be maintained by the school as part of the student's record, If the contested part of the record is disclosed to anyone, the parent's explanation must also be disclosed. This procedure includes the right to challenge an incorrectly recorded grade, but it does not give parents the right to contest whether the teacher should have given a higher grade.

5. The Right to File Complaints.
The Act gives parents the right to file complaints with the U.S. Department of Education concerning failures to comply with the Act. The Family Policy Compliance Office of the Department has been established to "investigate, process, and review violations and complaints." After receiving a complaint, the Office notifies the school involved, and the school has an opportunity to respond. After its investigation, the Office sends its findings to the complainant and the school. If there has been a violation, the Office indicates the steps the school must take. If the school does not comply, a review board could terminate federal education funds.

Over the years, the Office has received thousands of complaints, and about 80% have been resolved informally. Furthermore, there have been over 1,000 formal investigations, but in no case has a review board terminated federal funds for noncompliance. Moreover, individuals cannot sue for violations; only the Department of Education has authority to compel compliance. In addition to enforcing FERPA, the Office staff will consult with teachers and administrators by letter or phone to answer questions concerning the Act and its application in specific school situations.

In addition to their rights under FERPA, special education students have additional rights concerning their records under IDEA (the Individuals with Disabilities Education Act). Because special education services often involve sensitive personal information, IDEA requires staff who use such information to receive training about confidentially requirements. Although FERPA allows schools to destroy student records at any time (except when there is a request to inspect them), IDEA requires schools to maintain IEPs (individual educational programs) and evaluations for at least three years to document compliance.

Handout 9.3 FERPA Scenarios

True or False
1. **False.** FERPA does not require that teachers get permission from an administrator or parent before accessing their students' records. Instead the Act requires each school district to adopt a policy indicating which school people have a "legitimate educational interest" in seeing student records. Teachers certainly have such an interest. If there are schools that don't include teachers among those having a legitimate educational interest in viewing the records of students they teach or advise, this is the fault of the school district, not the Act.
2. **False.** Custodial parents do not have authority to prohibit noncustodial parents from accessing their children's records. On the contrary, according to FERPA, noncustodial parents have the same right to access their children's records as custodial parents unless such access is prohibited by a legal document or court order. As one judge wrote, schools should make educational information "available to both parents of every child fortunate enough to have two parents interested in his welfare" (*Page v. Rotterdam-Mohonasen Central School*, 1981).
3. **True**. FERPA gives parents the right to a hearing to challenge any of their children's school records they believe are inaccurate or misleading. Even if the hearing officer concludes that the challenged records are not inaccurate or misleading, parents still have the right to place a statement as part of the disputed record about why they disagree with the hearing officer's decision.
4. **True**. FERPA requires that parents be notified each year about their rights under the Act including their right to be informed about the kinds of student records kept by the school and how they can review those records.
5. **True**. A parent's consent is not required before the school can share information from student records with anyone if, in the judgment of school officials, the information is needed to protect the health or safety of the student or other individuals.
6. **False**. Parents do not have the right to see the personal notes of teachers, counselors, or administrators if these notes are only used as a personal memory aid and are not shared with anyone except a substitute teacher.
7. It **depends** on the facts of the case. FERPA only applies to student records. Therefore, if a teacher gives a recommendation (verbally or in writing) that is not based on information in the student's school records, FERPA does not require parental permission. But if the recommendation is based on the student's records, then prior parental permission is clearly required.
8. **False**, if the information is true. Truth is a defense to charges of defamation. Therefore, even in the unlikely event that critical or negative comments about a student's behavior in school caused emotional or economic harm, they would not be grounds for a defamation suit if true.
9. **True.** The U.S. Department of Education has established the Family Policy Compliance Office to answer questions about FERPA and to investigate complaints from parents (or teachers) about alleged failure to comply with the Act.. Most complaints are about misunderstandings or misinterpretations of the Act and can be resolved informally. Where this is not possible and a school does not comply with the Act, the Office can order compliance.

Handout 9.4 FERPA Summary Cards

1. Inform. FERPA requires schools to inform parents of their rights under the Act each year.
2. Inspect. It gives parents the right to inspect and review the educational records of their children.
3. Challenge. It provides procedures that allow parents to challenge records they believe are incorrect or misleading.
4. Confidential. It prohibits disclosure of personally identifiable student records to outsiders without parental permission.
5. Complain. It gives parents the right to file complaints with the Department of Education if they believe that there have been failures to comply with the Act.

Handout 10.1 Talking with Students about Abuse and Neglect

Take the child seriously, remain calm and reassuring, find a private place to talk, and position yourself at the child's eye level. Children who disclose abuse are likely to feel anxious and unsure of whether or not they will be believed. Giving the child a sense of comfort and control will facilitate disclosure.
Speak on the child's level, listen intently, use minimal prompts, and respond with the language that the child uses. Using general prompts, such as "Tell me what happened," allows the child to retain control of the situation and reveal only as much information as he or she feels comfortable sharing. In addition, responding using the child's chosen vocabulary helps to ensure that the child's credibility is not damaged; when children use language that does not sound like an ordinary part of their vocabulary, they are often disbelieved.
Obtain only the information necessary to make a report. It is likely that the child will need to repeat the same information to investigators and/or social service workers. Minimizing the extent to which a child must relive painful experiences is important.
Be responsive the child's feelings while reassuring him or her that the abuse is not his fault, that you are willing to help, and that he or she is not alone.
Tell the truth. Let the child know about the process that you must follow, and do not make false promises. For example, tell the child if you will need to inform the proper authorities.
Thank the child for confiding in you. Let them know that confiding in you may have been difficult but that it was the right thing to do.

Talking with students about abuse or neglect from Association for Childhood International's Resource for Teachers (Austin, 2000).

Handout 10.2 Abuse and Neglect Scenarios

SCENARIO 1
A student tells you (her teacher) that her volleyball coach has tried to kiss her on several different occasions after practice. You tell your principal what you learned and she responded with "Oh Emily…she loves to make up stories to get attention. Coach Pedo would never try to kiss her." You feel a bit uneasy about this conversation because you know the principal is very good friends with Coach Pedo. You have also heard other rumors around the school that Coach Pedo dated one of his volleyball players after she had graduated from high school.
QUESTION
Do you report this directly to a child care agency official as possible abuse?

SCENARIO 2
Larry is a first-grade student in your class. He was also in your class last year but was held back. Last winter, there were many days when it was below freezing that he came to school without a winter coat. Today, it was 10 degrees and Larry came to school without socks, in short sleeves, and his hair was still wet. You know his family is facing hard times ever since his dad was laid off work. At the same time, you're worried that he is not being cared for properly. The other day, he mentioned that because he has to share a single bed with his two brothers, he usually ends up sleeping in the bathtub.
QUESTION
Do you report this to a school or child care agency official as possible abuse or neglect?

SCENARIO 3
You teach kindergarten. The children are given free time to play when they finish their morning work. During this time, Abby is playing with one of the dolls. When she thinks no one is looking, she moves towards a corner and starts putting the doll down her pants and begins humping the doll. You have never seen this behavior before.
QUESTION
Do you report this to the school or child care agency official as possible abuse or neglect?

SCENARIO 4
Sixteen-year-old Heather has been a quiet student. One day her nose starts to bleed in class and some of the other students inexplicably laugh at this. When you approach her and start to write up a pass for her to go to the nurse's office, she tells you that her parents are Christian Scientists, and it is against the beliefs of her religion to seek medical help. The student further explains that she has not seen a doctor since she was born and that when she had a seizure last year, her parents simply prayed for her recovery.
QUESTION
Do you report this to the school or child care agency official as possible abuse or neglect?

SCENARIO 5
One day, you accidentally brush against fourteen-year-old Shelly as you walk by her, and she jumps. You reach out to steady her by taking hold of her arm, and she flinches and looks nervous. After class, when the students are leaving, you casually apologize to Shelly for startling her. She waits until the classroom clears and then blurts out that she knows a girl who gets hit by her dad and that her friend's situation is making her jumpy. She then admits that her dad often hits her with his belt if she makes too much noise in the house. He tells her not to tell anyone.
QUESTION
Do you report this to the school or child care agency official as possible abuse or neglect?

Handout 10.3 Case Scenario Guidance

Scenario	Principal Guidance
1 Report	You should report this to a child care agency.
2 Report	It is always best to error on the side of caution but in this situation it might be best to first discuss with the school social worker. Many school social workers have access to food, clothing and other resources to help families with financial need. Alternatively, a teacher could report and allow officials from Child Protective Services to investigate. One of the outcomes may be additional resources for the family.
3 Report	Touching dolls sexually is one of the warning signs in identifying abuse and neglect. However, kindergarten students are also curious about bodies. In this case, it is more than touching, and it would be prudent to discuss with the school psychologist and perhaps to call Child Protective Services.
4 Report	Probably not in the case of a nose bleed, but you should report in the case of a serious condition that might be life-threatening. Parents have a right to freely exercise their religion without government interference, but courts have permitted intervention when the parents' behavior puts the safety of the child at risk. In some cases, courts have found it unacceptable for parents to neglect a child because of religious beliefs and they have ordered medical treatment. These cases have come to be known as "religious-based medical neglect." Scenarios such as this one are difficult; however, it is always best to error on the side of caution and report.
5 Report	Although many parents engage in corporal punishment in home, it is still probably best to report this situation. Despite her request that you not tell anyone, you have a legal duty to report abuse.

Handout 10.4 Abuse and Neglect Plan of Action

Common scenarios of abuse and neglect:	What you will do about it: