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EDUC 6740
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Week 4 – Law Case Analysis #3

You are assuming the role of a legal advisor for the Adams County School District #14. Using the following anecdotal case, respond to it in terms of the “district's position”. Justify your remarks using data and information we discussed in class or that was found in this course. Try to respond fully, yet keep your responses succinct and to the point.

Teacher Freedoms - The Right to Privacy

It is commonly held that teachers enjoy a measure of privacy in their personal lives. These rights should be respected to the extent that they do not violate the integrity of the community or render the teacher ineffective in performing professional duties.

JoAnn and Charles Dunn were both employed by the Adams Co. School District #14 as teachers, Joyce, at Brown Elementary School and Charles, at Mapleton High School. Both have been employed in the district for over 15 years with successful teaching records. JoAnn was selected teacher of the year in 1990 and Charles was involved at the High School as coach of a successful debate squad. During the summer of 1999 a member of the community reported to the school board that both JoAnn and Charles were practicing nudists. The community member provided the board with “confirming evidence” and stated to the board that this was unbecoming of the teachers in this community and that they should be dismissed.

When the board queried the Dunns, they stated that what they did at home or in private was personal and not privy to the board or community. They would not confirm or deny the allegations and sought legal counsel. While the board acknowledged the work the Dunn's had provided to the district they were concerned about these allegations and the effect it could have on school/community relations. The board met in executive session to discuss this matter and the future employment of the Dunns.

Does the board have any legal grounds for dismissing the Dunns based upon these allegations? What does current case law say about teachers and their right to privacy? What action should be taken?

My Response: Many questions remain regarding this issue. For one, do Mr. and Mrs. Dunn have Morals / Morality Clauses written into their contracts, or do any other teachers have such clauses? If they do not, and state law does not mention “immorality” or anything of the like, then as your legal counsel I do not believe that we as a district have any just cause or legal grounds to fire the Dunns. If there is such a clause or mention in state law however, then things get much hazier.

By all accounts, the Dunns have been outstanding educators in the field of education. Until this recent allegation, nothing has been presented or made known to the district or the school board of anything else “unbecoming” in their behavior as teachers or otherwise in the community. With only the “alleged evidence” and single source saying otherwise, we cannot in good conscience fire them right now with just cause. Nevertheless, I believe that the board is correct in being concerned about the potential public backlash that might result if word of this situation were to get out (and we took no action at all), and so I do suggest that our first action is to put the Dunns on paid leave, pending further investigation, while still affording them due process. This will hopefully give us a bit of time to consider the facts, conduct an independent investigation, and then take appropriate action regarding this case.

In the meantime, we have a lot of questions, and not a lot of answers. The evidence that we have seen and heard from their students, teacher colleagues and administrators shows pretty clearly that the Dunns are almost assuredly not guilty of educational malpractice, incompetence nor insubordination, all clear reasons to dismiss a teacher. We do have alleged evidence however from someone who believes they are, due to their alleged practice of nudism, unfit to be teaching in the classroom. Yet 15+ years of working in that field stands as evidence to the contrary. The Dunns are well known and beloved in our community, and have received numerous accolades and honors in the pursuit of filling their duty as educators to our children. I believe it would be unwise and imprudent to simply dismiss them at this moment, without knowing the results of the investigation. In fact, such an action may be worse for the district's public image, especially if the allegations prove false / fabricated, or worse motivated by deceit and deception.

There are several courses of action that we might take, once more is known. If their contracts do specify such behavior and / or have morality clauses (or whether the district is in an "at-will" state), then perhaps legally the district does have just cause to dismiss the Dunns. Or, if it were to be revealed that the Dunns have been using social media or other public means to promote their unique lifestyle, then this would certainly be seen as an issue that the district cannot ignore, and likely ought to end in termination or at least probation. Most court cases have required that in order for such a termination to be justified, the school / district must prove that a "nexus" or connection exists "between the off-duty conduct and a teacher's duties or the learning environment" (Duff & White, 2015). There have been multiple interpretations of these sort of issues (including the use of social media in promoting or discussing ideas or actions), and this muddies the water considerably (Miller, 2011).

However, perhaps the better question isn't whether you, the board, *can legally* dismiss the Dunns, but the question of whether you *should*. Many people and judges in recent years have called for review or termination of morality clauses, citing that such actions may violate constitutionally protected rights of speech, privacy, and thought (Abril & Green, 2017; Burge, 2015; Fleming, Harman-Cooly, & Mcfadden-Wade, 2009; Lynch, 2017; Miller, 2011; and Turley, 2012), with one lamenting that k-12 teachers often "live under the transparent conditions of celebrities without any of the benefits, with parental paparazzi eager to catch them in an unguarded moment. They deserve better" (Turley, 2017).

Frankly, I agree. Given the evidence we have, I believe that while it may be legal to dismiss the Dunns, it would most likely be a mistake to do so. Good teachers are hard to come by, and the Dunns have more than proven themselves. Even if the investigation proves that they do indeed occasionally practice such a lifestyle in private, the fact that they have given so much of their life and time to our students without ever having once mentioned or promoted said lifestyle speaks volumes. The individual that "revealed" this "unbecoming" behavior may believe that they are doing a public good, but the investigation might also prove that their accuser, able to hide behind anonymity, while their targets cannot, is the one that is in fact guilty, of bullying, harassment, slander and libel, and they ought to be litigated accordingly.

Regarding the question of whether the Dunns do or do not practice nudism is a private affair, as long as they keep it that way, and for 15 years, they have done exactly that. The Dunns, backed by their many years of public service deserve more than a reactionary dismissal. They deserve due process, and whether or not they are "guilty" of the "indecent" of nudism, the evidence we do have suggests that whatever they may do in their private life has not negatively affected their ability and gift for teaching, and that ought to weigh heavily in the board's decision. The decision remains yours of course, but that is my advice, and I hope that you will seriously consider it. Thank you for your time.

Sources:

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