

Please note that there are eleven (11) pages to this two-part, closed book, examination. You may not use or in any way refer to your notes, text, or other materials during the examination.

You have three hours to complete this examination.

Please read the directions and questions carefully.

Unless otherwise noted, questions refer to public, rather than non-public, schools.

Part I **Total Value: 64 points** Each correct answer is worth 2 points.

Mark each of the statements in this section as either true or false.

If an answer is false, briefly correct it into a true statement in the space provided; you may continue on the back of a page if necessary. In making a correction, do not simply restate that something is or is not true. Instead, provide a brief, but substantive, explanation.

Please return these sheets with your essay answers.

1. False An enthusiastic young high school teacher who briefly compliments a student's attire, after having complimented many others in the same fashion over the course of a school year, is likely to be liable for sexual harassment.

Not pervasive

2. False Section 504 of the Rehabilitation Act of 1973 imposes an affirmative obligation on educators to identify, assess, and serve students with disabilities.

IDEA does

3. True If challenged, a court is likely to permit a school board to offer an elective course on the Bible as literature for high school students.

4. True Entering into a contract to construct a new school building is an example of a school board's mandatory duty.

5. False When a student with a disability graduates high school prior to the age of 21, her IEP continues to apply when she attends college.

No IDEA rights, but 504 applies

6. False Courts will probably defer to school officials in school systems that institute random, suspicionless drug testing policies and practices for all students regardless of whether they participate in athletic activities.

So far limited to extra-curricular

7. True Pursuant to Section 504, school officials could probably refuse to permit a student who is significantly visually impaired, but not qualified for services under the IDEA, from participating in the dissection of animals in a biology class because the child's presence would present a health or safety risk.

8. False The answer to the previous question would be the same for a child who has an IEP.

Zero Reject

9. False If a school board enacted a residency requirement that out-of-state residents who moved into the district had to wait one year before enrolling their children in public schools, its policy would be likely pass constitutional muster.

Cannot use wealth; discriminatory

10.False If a high school senior submits a grammatically well-written article on a topic that is causing controversy in a school community that was approved by student editors for publication, the faculty moderator of the school's general circulation newspaper can, based on his political disagreement with what the author had to say, forbid the piece from being published

Must be rationally related to legitimate pedagogical concern

11. False The IDEA's least restrictive environment provisions mandate inclusive placements for all children with disabilities, regardless of their conditions.

Continuum of options

12.True Non-public schools are free to integrate religious instruction into all of the courses in their curricula, regardless of state curricular standards.

13. False School officials have the authority to permit students to choose whether to pray prior to the start of extracurricular activities.

Santa Fe

14. False When IEP teams discuss where children with disabilities should be placed, their parents are required to accept the team's final recommendation as binding.
- Parents are part of the team
15. False If a student who was sexually harassed by peers at a mall while shopping on a Saturday informed a teacher three weeks later, but the teacher did not notify the principal or the district's Title IX coordinator, the board is probably still liable if the student files a lawsuit.
- Not under school control
- 16.False Schools are prohibited from employing the practice of released time since it violates the Establishment Clause.
- Zorach v. Clauson
17. False As part of voucher programs, states have the option of providing salary supplements for teachers of specified subjects that are in high demand (such as mathematics and science) in religiously affiliated non-public schools.
- Lemon
18. False School officials are free, under the Equal Access Act, to prohibit a student-sponsored branch of the National Rifle Association from forming in their public high school on the basis that the discussions about guns (they have no plans of bringing any to school) would be disruptive to the school environment, which is designed to "promote peace, love, and joy for all in the world."
- Must be reasonable forecast of material or substantial disruption; covers religious, philosophical, political ideas

19. False Where a student allegedly sold drugs in school, the school board that affirmed a superintendent's decision to suspend him pending the completion of a police investigation, is likely to be found to have exceeded its authority in later voting to expel him for this offense.

Quasi-judicial authority

20. False States that reimburse religiously affiliated non-public schools for costs associated with standardized testing and record keeping for daily attendance are likely to have violated the Establishment Clause by providing financial support to these schools.

PEARL v. Reagan

21. True It is probably permissible for a social studies teacher to post same-sized copies of the Beatitudes of Jesus, along with similar statements from other major religions, when dealing with the place of religion in the development of various cultures and societies.

22. False Pursuant to the IDEA, student IEPs need only provide general information about the educational services and programming that children will receive.

Must be specific

23. False Typical residency requirements only address the element that children must be physically present within school district boundaries.

Intent to remain with parent or guardian

24. False When students with disabilities are removed from school as part of long term suspensions or expulsions, regardless of whether their misbehavior is a manifestation of their disabilities, school systems are free to terminate their access to all educational programming.

IDEA requires on-going services consistent with IEP

25. False The answer to the previous question would be the same for children who are not disabled (excluding, of course, the manifestation of disability issue), namely that school officials can terminate all rights to education during long term suspensions and expulsions.

Can exclude without services

26. False Educational officials are free to prohibit students from distributing “underground” newspapers and publications in schools.

Time, manner, place restrictions only

27. True According to the IDEA, a student with disabilities is entitled to related services such as a sign language interpreter throughout the entire school day (and year) if one is needed to help her receive some educational benefit from her placement.

28. True School officials are free to institute reasonable dress codes for students.

29. True Students who participate in extra-curricular activities can be held to higher standards of conduct than their peers who are not involved in these activities.

30. False Officials in public schools are generally free to exclude religious, but not other, groups from using district facilities on the basis that permitting them to gather would violate the Establishment Clause.

See, e.g., *Milford*

31. False A court is likely to uphold school officials who expelled a senior honors student for cheating by allowing another student to look at, and ultimately copy, without her knowledge (the other student said that he looked at her notebook after she left her seat in the school library so that he could check an answer) her homework assignment because they wanted to “make an example” of cheaters.

Punishment must fit the “crime” (substantive due process)

32. False Two teachers who used only enough force to separate high school students who were fighting in the school cafeteria are likely to be liable for having used impermissible corporal punishment in a state that prohibits corporal punishment.

Can use reasonable force to defend self and/ or others

Part II:

Total Value: 36 points

In answering the essay questions, please note that it is not necessary to use case names. However, if you do use a case name, be sure that it is correct.

Please write clearly in complete sentences AND skip lines in your answers as this makes them easier to read. Thank you.

Essay 1 **Value: 20 points**

One January day, Coca-Cola and other private sponsors supported a “Winter Festival Day.” Students were released from school so that they could watch the festivities, including a televised parade. A high school senior never made it to class that morning because he got stuck in the snow in his driveway, but he made it to the sidewalk, across from the school, to watch the parade. He and some friends waited until the television cameras would catch it, then unfurled a banner reading “Pot-heads for Jesus.” The school’s principal, crossed the street, grabbed and crumpled up the banner, and immediately suspended the student, on the spot, without allowing him to make any other comments, for ten days. In fact, when he tried to speak, she told him to “just be quiet, you are in enough trouble.”

Additional facts reveal that while there was disorder as the parade passed, the uncontradicted evidence was that it had nothing to do with the student and his fellow sign-holders. Rather, the disruption was caused when students started throwing the bottles of soda that the Coca-Cola company distributed at each other. Other students threw snowballs and started fighting. The plaintiff and his group did not participate in these disorders, saving their energy for what they hoped would be their televised sign display. Further, since the disruptions occurred before the display of the banner, the plaintiff could not have caused the problems.

Interestingly, a few days later, there was some pro-drug graffiti in the high school which the principal thought was “sparked” by the banner. Yet, the principal did not rip down the sign at the rally because she anticipated or was concerned about the possible consequences. When the principal crossed the street from the school and confronted the student about the banner, he responded “What about the Bill of Rights and freedom of speech?” The principal told him to take the banner down because she “felt that it violated the policy against displaying offensive material, including material that advertises or promotes use of illegal drugs,” and she grabbed it from him and crumpled it up. Further, school officials never claimed that the banner disrupted or was expected to disrupt classroom work.

Lemon et al.

In disputed facts, the student claimed that the principal initially told him that he was suspended for five days, but when he quoted Thomas Jefferson to her, she doubled it. The principal says that she does not remember whether he quoted Jefferson, but that was not why the suspension was ten days. The student alleges that an assistant principal told him that the Bill of Rights does not exist in schools and does not apply until after graduation, but the principal responded that the assistant principal “made some remark to the effect that students do not have the same first amendment rights as adults.”

The student, who was suspended for ten days, claimed that officials did not provide him with all of his due process rights even though he appealed unsuccessfully to the school board.

The student has now seeks to filed suit claiming that officials violated his First Amendment and due process rights, they should also expunge any reference to the ten day suspension from his school records.

As a first year associate in a large firm that is considering representing the student, your firm’s managing partner is aware that you have recently completed a course in Education Law. The partner, who does not yet have much of a background in Education Law, seeks your counsel as to whether the student has any claims and, if so, how the issues might be resolved under relevant judicial principles.

adapted from *Frederick v. Morse*, 439 F.3d 1114 (9th Cir. 2006)

In a local high school, a troublesome 14 year-old ninth grader (TS) had a history of disruptive and violent behavior throughout his educational career. One day, TS brought a hand-held Nintendo Gameboy video game to school. TS later admitted that he knew that his doing so violated school rules.

When TS's science teacher discovered that he had the Gameboy, the teacher told TS to give him the device. When TS refused to do so, the teacher sent him to the Assistant Principal's (AP) office. The AP also directed TS to turn over the Gameboy, telling him that he could have it back at the end of the day. When TS refused to relinquish the game, the AP tried to reach his mother by phone in the hope that she could reason with him. If the mother had been unable to reason with her son, the AP intended to tell her to take him home for the day. After TS's mother did not answer her phone, the AP repeated his request that TS surrender the Gameboy. When TS again refused, the AP repeated the directive to surrender the Gameboy three or four more times. Each time, the student loudly refused to do so. Finally, the AP called the liaison officer (LO), assigned to the high school by the local police department, to come to the office to assist him.

LO, who was dressed in plain clothes, came to the office. After being informed by the AP as to the nature of the problem, LO politely asked TS to turn the Gameboy over to him or AP. TS again refused, more loudly and forcefully than when he spoke to the AP. LO asked TS at least three times to turn over the Gameboy and each time he refused.

Sensing that something else was going on, at this point, LO told TS that he would have to search him. According to the AP, LO told TS that he would give him until the count of five to decide whether he wanted LO to search his pockets. LO stood in front of TS, counted to five, paused, and asked "TS, are you going to hand over what you have?" TS again refused, this time "more cocky" and "more forceful [ly]," at which point, LO assisted TS to his feet, turned him around, and had him put his hands on the office window-wall. When TS was about to be patted down, he swung at LO, who was able to block the swing and took TS to the ground where he continued to struggle and kick. As LO attempted to gain control over TS, TS bit him twice, once on his left wrist and once on his left forearm. At that point, LO requested that the school secretary call the police department for additional assistance.

Police officers responded to the call and assisted LO in handcuffing TS so that LO could search TS's pockets. When LO was finally able to search TS's pockets, he discovered a small packet containing what appeared to be marijuana in one pocket and another including a hard, white, rock like-substance in another pocket that appeared to be crack cocaine. The police then took TS into custody for alleged drug possession.

As TS's charges of juvenile delinquency were pending, he admitted that if he had agreed to relinquish the Gameboy voluntarily when the AP first asked him to do so, none of the events

would have occurred. Even so, TS and his mother retained an attorney, threatening to sue the school board, science teacher, AP, LO, and others for violating his Fourth Amendment rights.

You work for the municipal government in the locale where the school is located. Insofar as the school board does not have its own attorney on staff, the superintendent contacted your immediate supervisor and asked for someone who could offer advice on the likelihood of what might occur should the matter proceed to litigation. Aware of the fact that you have studied Education Law, you are asked to prepare a written report evaluating the claims that TS and his mother are threatening to bring (ignore the delinquency charge), namely the legality of the actions leading up to and including the search.

adapted from 434 F. Supp.2d 467

A sophomore high school student-author (SA), wrote in a notebook, in the form of a diary, from a first-person point of view, detailing his creation of a pseudo-Nazi group at his school. The stories in the notebook described incidents involving the pseudo-Nazi group, many including the use or threatened use of violence, and culminated with the group's plan to attack the school in AP's senior year. After SA told a peer about the notebook, and showed him some of its contents, the second, or informing student, told a teacher about the notebook. The teacher waited a day before notifying the Assistant Principal (AP) who called the informing student into his office and questioned him about the notebook. Shortly thereafter, the AP call SA into his office for a meeting.

During this meeting, the AP told SA that peers complained to him about his written threats. SA denied the accusations, explaining that he was writing a work of fiction. The AP then asked SA for, who gave him permission, to search his backpack. The AP then discovered the notebook.

On the inside cover of the notebook, the AP saw the title My Nazi Diary Based on a True Story. When questioned, SA claimed that his work was fiction and that the words "True Story" referred to a book about Hitler that he was reading. SA explained that he became interested in World War II because his grandfather fought in the U.S. Army during World War II. The AP continued to ask SA about specific "journal entries," to which SA continued to respond "It's all fiction." Shortly thereafter, the AP called SA's mother who agreed to his requested for a meeting. The mother came to the school immediately

When the AP informed SA's mother about the notebook, she also told him that it was fiction, adding that she, too, was engaged in creative writing. In fact, she explained that SA developed the idea to write a fictional journal from her because she was taking creative writing courses at a local college. The AP informed SA's mother that he would take the notebook home and read in detail before "calling her the next day with an administrative decision based on the safety and security of the student body." At the end of the meeting, the AP released SA back into the general school population to complete the day. The AP then informed the principal about what was taking place and kept him informed every step of the way throughout the process described below.

The next day, after reading the notebook, the AP said that he was concerned by several of its entries. As such, the AP, in consultation with the principal, decided that since SA's writing was threatening to all, and viewing it as terroristic threat, it was necessary to search his locker for any signs that he might have intended to act out the attack that was described in the stories. The search failed to disclose any evidence of an attack. However, since SA stored several half-eaten candy bars and some fresh fruit in his locker, in violation of a recently announced school rule that required students to keep all food in zip-locked bags or un-opened packages to keep insects and rodents out of the building, the AP confiscated and discarded these items.

As soon as the parents learned that the AP searched their son's locker (he was taken to the office while this occurred), but before school officials decided what to do to SA, due to the searches of SA's backpack and locker, his parents transferred him to a private school. The

parents feared that if school officials charged their son with terroristic threat, it would have become part of his permanent school record that would have followed him to any other public school to which he might transfer, limiting him to alternative educational programs, potentially affecting his ability to gain admission to the colleges of his choice. Thus, in an effort to ensure that SA could continue his education with a clean record, his parents also retained an attorney in a suit claiming that school officials violated his Fourth Amendment rights by engaging in illegal and unreasonable searches. The parents want school officials to drop all references to the incident from his record in the event that they chose to return him to the public school.

You work for the municipal government in the locale where this school is located. Insofar as the school district does not have its own attorney on staff, the superintendent contacted your immediate supervisor and asked for someone to offer advice on the likelihood of what might occur should the matter proceed to litigation. Aware of the fact that you have studied Education Law, you are asked to evaluate the two issues that the parents and their attorney are bringing forward namely the legality of the searches and actions of school officials in threatening to label SA as having committed a terroristic threat.

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