

Anti-Muslim Bias?

In the increasingly anti-Muslim atmosphere that has crystallized after 9/11 and that has been prominently spotlighted in the recent presidential primaries, principals must become vigilant in maintaining respectful school environments for students of minority faiths. The intertwining of religion or nationality and xenophobia makes school climate a particular priority for many elementary school principals, especially as they focus on safety and bullying prevention in their schools.

As the following case and the question-and-answer discussion reveal, the anti-Muslim issue may arise in litigation brought by not only elementary school students, but also elementary school teachers.

The Case

At an elementary school in Delaware, a fourth-grade teacher taught her students about the events of 9/11 from a district-approved textbook. It provided a brief overview of Islam, describing “a very small number of all Muslims” as extremists who engage in anti-U.S. terrorism. The teacher led a discussion of the text, framing 9/11 as part of a war between Christians and Muslims. Soon afterward, children in the class teased Nancy, a classmate from a family who practiced the Muslim faith. She felt too scared to complain to the teacher or other staff members, including the principal. Her discomfort increased to attendance aversion when the teacher, each day between Thanksgiving and winter break, read from Christmas books that were not part of the district-approved curriculum and that proclaimed the purity of Jesus Christ.

Her parents contacted school officials, suggesting that the teacher provide an in-class apology to and positive statement about Nancy so that she would feel welcome to return to school. The district’s curriculum supervisor rejected this request; she felt the teacher had done nothing wrong. Next, the parents and an American Civil Liberties Union attorney met with the principal and the teacher. The superintendent agreed to suspend the teacher for two

days with pay during an investigation; the teacher agreed to allow the child to make a presentation about Muslim culture; and the curriculum



supervisor agreed to send the teacher a memo advising her to “self-evaluate [her] conduct over the past few months.”

However, a few days later, the teacher loudly asked the child if she wanted to change classrooms, and, when the child declined, repeated the question later in the day. The next day, the child’s mother brought her to school and asked the principal to accompany the child to the

classroom. The principal refused, instead offering to transfer the child to another classroom.

The parents reluctantly agreed to the transfer, but it appeared to merely compound the problem. The child reported that her friends shunned and taunted her. She began seeing a private therapist for panic attacks, anxiety, depression, and school absences. At the parents’ request, the school arranged for home instruction for the remaining part of the year, and the family moved during the summer to another school district.

The parents filed a complaint with the Department of Justice’s Civil Rights Division, which arranged for the district to issue a reprimand to the teacher. The district also arranged for diversity training for teachers and character-building lessons for students.

Subsequently, they filed suit in federal court against the district and its officials, including the principal, claiming (a) violation of the state constitution’s preference clause, which parallels the First Amendment’s religion clauses; (b) retaliation for exercise of their First Amendment freedom of expression; and (c) violation of and liability under the 14th Amendment’s equal protection clause. The district and individual defendants filed a motion for summary judgment, which would resolve the case in their favor without a trial.

What do you think was the judicial outcome of the parents’ suit?

In *Doe v. Cape Henlopen School District* (2011), the federal district court partially granted and partially denied the defendants’ motion for summary judgment.

First, for the claim based on the state constitution’s preference clause, the court granted the motion as to the textbook and the related discussions based on the lack of a significant factual dispute. The textbook’s treatment evenhandedly served a secular purpose and neither enhanced nor inhibited religion. The evidence about the classroom

discussions—which didn’t surface until the parents’ deposition testimony four years after the incident—was too little and too late to establish a sufficient factual issue of a religious purpose or effect. However, the court denied the motion for the teacher’s alleged daily Christmas readings. It found that “a reasonable jury could find that phrases such as ‘Jesus is the pure Lamb of God, come to be a sacrifice for the sins of the world’ lack a secular purpose and endorse Christianity.”

Second, the court denied the district’s summary judgment motion for the retaliation claim. It concluded that a reasonable jury could find the transfer to constitute an adverse action intended to deter exercise of the parents’ freedom of expression.

Third, the court similarly denied disposing of the equal protection claim. It found triable issues as to whether the Christmas readings purposely discriminated against the child based on her Muslim beliefs. Moreover, the court rejected the individual defendants’ defense of qualified immunity, finding that applicable precedents clearly settled this matter of religious discrimination. However, the court granted the motion in terms of district liability for money damages. It concluded that the allegations failed to reach the triable level for the applicable requisite of deliberate indifference in response to the parents’ complaints.

Say the case was about an elementary teacher from a Muslim country and a new principal’s related adverse comments and actions. What would be the likely judicial outcome to the district defendants’ motion of summary judgment?

It would depend on the specific allegations. In one recent and major example, *Unal v. Los Alamos Public Schools* (2016), the 10th Circuit Court of Appeals denied the defendants’ motion for summary judgment, thus preserving this Turkish teacher’s claim for a trial or settlement. More specifically, the court concluded that

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there was a triable issue as to the two required elements for a hostile work environment claim that: (a) the alleged harassment was based on the employee’s national origin, and (b) the alleged harassment was sufficiently pervasive or severe.

For the first element, the appeals court pointed to the combined totality of:


1. Comments or conduct overtly based on the plaintiff-teacher’s nationality. For example, the principal allegedly asked during an after-school Christmas concert (in which the teacher’s own child was participating), “What are you doing here?” while thanking the other teachers for attending;
2. Harassing comments made about people of other nationalities. For example, the principal’s use of the term “little people” to refer to a Vietnamese family. The plaintiff-teacher was aware of staff members mocking an Asian family based on their surname Fu; and
3. Facially neutral conduct that demonstrated how the teacher was treated differently from her U.S.-born peers. For example, the principal asked a substitute teacher for negative feedback about the plaintiff, which she had not done to other teachers, and the principal regularly corrected the plaintiff’s pronunciation in front of other staff members.

For the severe or pervasive element, the court found no single element

sufficient but concluded that during the two years between the principal coming to the school and the plaintiff-teacher taking a leave of absence for stress-related panic attacks and depression, the harassing conduct was frequent enough that a jury could reasonably conclude that it was pervasively hostile.

Conclusion

These two published court decisions—the student one that served as the basis for the case and the teacher case that served as the basis for the second question—show that for Muslim members of a school community (a) the issues of religion and national origin intertwine; (b) the potential plaintiff may be a student or a staff member; and (c) the factual allegations and legal conclusions can be difficult to resolve, with the judicial perspective not necessarily aligning completely with either party’s perceptions. For court decisions based on pretrial motions, such as summary judgment, the readership may find the answers less than simple and clear-cut.

Nevertheless, as a proactive matter, it is indisputable that sensitivity and responsiveness to such concerns are difficult in the short run but beneficial in the long run—for not only the school but also the larger community. 

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