The Journal of Law and Education

Volume 24 | Issue 3 Article 13

Summer 1995

Law Review Digests

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The decision in Krueth v. Independent School District No. 38, *which allowed school systems to prefer American Indians during reductions in the teaching work force, should be overturned as a violation of Equal Protection.* There is a natural tension between federal American Indian preference statutes and the affirmative action laws which spring from the Equal Protection Clause. The court in *Krueth* attempted to discount this tension by classifying as politically based, rather than racially based, a state statute authorizing schools to lay off non-Indian teachers first. The states are dependent on Congress to authorize state actions which single out American Indians, and thus must respect the boundaries of the federal American Indian statutes. Congress has not authorized states to prefer American Indian teachers during layoffs. However, it appears that, under *Krueth,* the state can trample the property rights of non-Indian teachers; and these teachers have little recourse. Had the court properly viewed this case as one involving both political and racial issues, it would have been required to carefully scrutinize the state law and thus would have found it violative of the Equal Protection Clause. Patricia A. Kaplan, Comment, *When States' American Indian Teacher Preferences in Public Schools Violate Equal Protection Under the Fourteenth Amendment:* Krueth v. Independent Sch. Dist. No. 38, 17 HAMLINE L. REV. 477 (1994).

Oberti v. Board of Education *provides an appropriate test for determining placement of disabled students in regular classrooms.* This case clearly mandates that, under the Individuals with Disabilities Education Act (IDEA), a school district should place a disabled child in the regular classroom if possible. When placement of a disabled child creates a legitimate controversy, the court should follow the two-step test used in *Oberti.* First, the *Oberti* court considered whether a school district can satisfactorily educate the disabled child in a regular classroom with supplemental aids and services. In applying this first prong, the court considered the extent to which the school district attempted to include the disabled child in the regular classroom. Then, the court balanced the advantage of placing the child in a special classroom against the benefits of keeping the child in a regular classroom with supplemental aids and services. Finally, the court considered the negative effects of integration. In the second prong of the test, the court determined whether the school

district mainstreamed the child to the maximum extent appropriate. The *Oberti* approach provides courts with a useful structure for placing disabled children in the least restrictive environment. Elizabeth Jeffe, Comment, *A Structure for Legal Interpretation of the Individuals with Disabilities Act:* Oberti v. Board of Educ., 46 WASH. U. J. URB. & CONTEMP. L. 391 (1994).

Campus bans on racist speech inhibit the free exchange of controversial ideas and undermine the university's commitment to unfettered inquiry. Speech codes will not remedy the underlying causes of racial problems. Rather, they will exacerbate the latent tensions between students. In addition, campus speech codes are inconsistent with the First Amendment, which permits restrictions on the time, place, and manner of speech when the audience is captive, since college students are not a captive audience. Allowing students their freedom of expression facilitates the university's mission: to advance knowledge and encourage a search for truth. Thus, derogatory expressions should be met with forceful, thoughtful arguments and not suppressed by paternalistic ordinances. Stephen Fleischer, *Campus Speech Codes: The Threat to Liberal Education,* 27 J. MARSHALL L. REV. 709 (1994).

Federal courts should no longer supervise school districts' desegregation. Judicial frustration with school supervision, civil justice reform, and implementation of national educational goals have met at a crossroad. Congress should shape these forces into a comprehensive education plan for bringing an end to school district supervision by the federal courts and placing the responsibility for ensuring equal protection in education on Congress. Upon Congress' proper acceptance of this responsibility, an attempt to remove jurisdiction from the federal courts will be more palatable, and the courts will be more apt to defer to Congress' ability to enact education legislation that will lead to true desegregation. Chip Jones, Comment, Freeman v. Pitts: *Congress Can (and Should?) Limit Federal Court Jurisdiction in School Desegregation Cases,* 47 SMU L. REV. 1889 (1994).

In response to the growing crime rate on college campuses, courts have begun to impose new parental obligations on colleges. Traditionally, under the *in loco parentis* theory, colleges had legal duty to supervise the health and safety of students. However, in the early twentieth century, the desire to educate masses of students prompted a move away from the *in loco parentis* relationship. As a result, courts often imposed little or no supervisory duty on the college or university. Due to the recent increase in violent crime on college campuses, courts have held that a college may have a special custodial rela-

tionship with the student, depending on the facts of each case. Although such a relationship is justified, this legal duty must be imposed with caution because colleges should not be required to monitor and supervise every aspect of the students' lives. Phillip M. Hirshberg, *The College's Emerging Duty to Supervise Students:* In Loco Parentis *in the 1990's,* 46 WASH. U. J. URB. & CONTEMP. L. 189 (1994).

The Pennsylvania Supreme Court should deem the right to an education to be a fundamental right and invalidate Pennsylvania's present school funding scheme by subjecting it to strict scrutiny analysis. The state General Assembly has failed to remedy the great disparities in funding between school districts, despite provisions in the Pennsylvania and United States Constitutions requiring efficient school systems and forbidding inequalities without adequate justification. However, the Pennsylvania Supreme Court has held that if the funding scheme bears a reasonable relation to the support of a public school system, then the General Assembly has fulfilled its constitutional duty. The Pennsylvania Association of Rural and Small Schools (PARSS) has filed suit challenging the constitutionality of the state's funding scheme. PARSS should argue that the Education Clause of the Pennsylvania Constitution, which requires a "thorough and efficient" education, must be applied throughout the state and not just in isolated pockets. Further, PARSS should fight for application of strict scrutiny review, because Pennsylvania's present funding scheme would fail if it were subject to strict scrutiny. Noreen O'Grady, *Comments: Toward a Thorough and Efficient Education: Resurrecting the Pennsylvania Education Clause,* 67 TEMP. L. REV. 613 (1994).

Courts should continue to recognize the commercial component of intercollegiate athletics when determining student-athlete issues. Traditionally, courts have followed the amateur/education model when deciding student-athlete cases. The amateur/education model focuses on athletics as an integral part of the educational experience and as a means for the student to obtain an education. This model disregards the university's financial motives, viewing the athlete's relationship with the school merely as a student/university relationship. However, the commercial/education model more accurately depicts the relationship as an employer/employee relationship, realistically noting that college athletics is a commodity that the university markets, advertises, and sells. Student-athlete cases involving workers' compensation claims and antitrust claims often pivot on which model the court recognizes. Recently, courts have been willing to acknowledge the commercial factor in the student-athlete's relationship with a learning institution in workers' compensation and

antitrust claims. While this precedent provides an opportunity for courts to replace the antiquated amateur/education model, the ability of these cases to create a trend may be hindered by courts' reluctance to increase institutional liability as well as by society's idyllic view of college sports. Davis, *Intercollegiate Athletics: Competing Models and Conflicting Realities,* 25 RUTGERS L. J. 269 (1994).