

SCHOOL LAW NEWSLETTER

Constitutional Mathematics: Race + Justice + Spirituality + Love + Politics + Censorship = Protected Classroom Speech

In the case of *Evans-Marshall v. Board of Edn. of the Tipp City Exempted Village School Dist.* (C.A.6 Nov. 1, 2005), 428 F.3d 223, a high school teacher asserted that the school district, superintendent and principal retaliated against her for exercising her rights under the First Amendment by recommending the non-renewal of her teaching contract as a direct result of the teacher having assigned students in her language arts class three classic novels and a movie. The teacher asserted (1) that the board approved and purchased the three novels and (2) that the movie used in class was rated PG-13 and, accordingly, could be shown to the students in question without prior district approval. The teacher brought suit in federal court seeking injunctive relief and monetary damages.

In affirming the decision of the federal trial court to deny the school district's motion to dismiss the teacher's complaint, the United States Court of Appeals for the Sixth Circuit found that the "three well-respected novels and a movie adaptation of a Shakespeare play – are clearly protected by the First Amendment." Drawing "reasonable inferences" that the teacher "taught the main themes of the work she assigned" (including "race and justice in the American South" (*To Kill a Mockingbird*), "spirituality" (*Siddhartha*), "the intersection of love and politics" (*Romeo and Juliet*), and "government censorship of books" (*Fahrenheit 451*)), the Sixth Circuit found that such content is "clearly a matter of public concern." The Sixth Circuit also found that the teacher's factual allegations (i.e., that she received negative job evaluations from the principal due to criticism from the community related to the alleged speech, and not due to her employment performance) was sufficient to survive further fact finding at the federal trial court level.

United States Supreme Court Victory!

In *Schaffer v. Weast* (Nov. 14, 2005), 126 S.Ct. 528, the United States Supreme Court held that the IDEA burden of persuasion rests with the party seeking relief, whether that party is the disabled child or the school district. Common sense, correct? Let us see how this supreme law of the land is applied by impartial hearing officers and state level review officers in Ohio.



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"Education is an ornament in prosperity and a refuge in adversity."

Aristotle

Coming Soon to an ESC Near You!

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