

School Law for Private School Administrators



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Overview of presentation

Sources of law that affect private schools:

1. Constitutional Law
2. Federal and State statutes and regulations
3. Common Law
4. Contract Law



Free Exercise Case

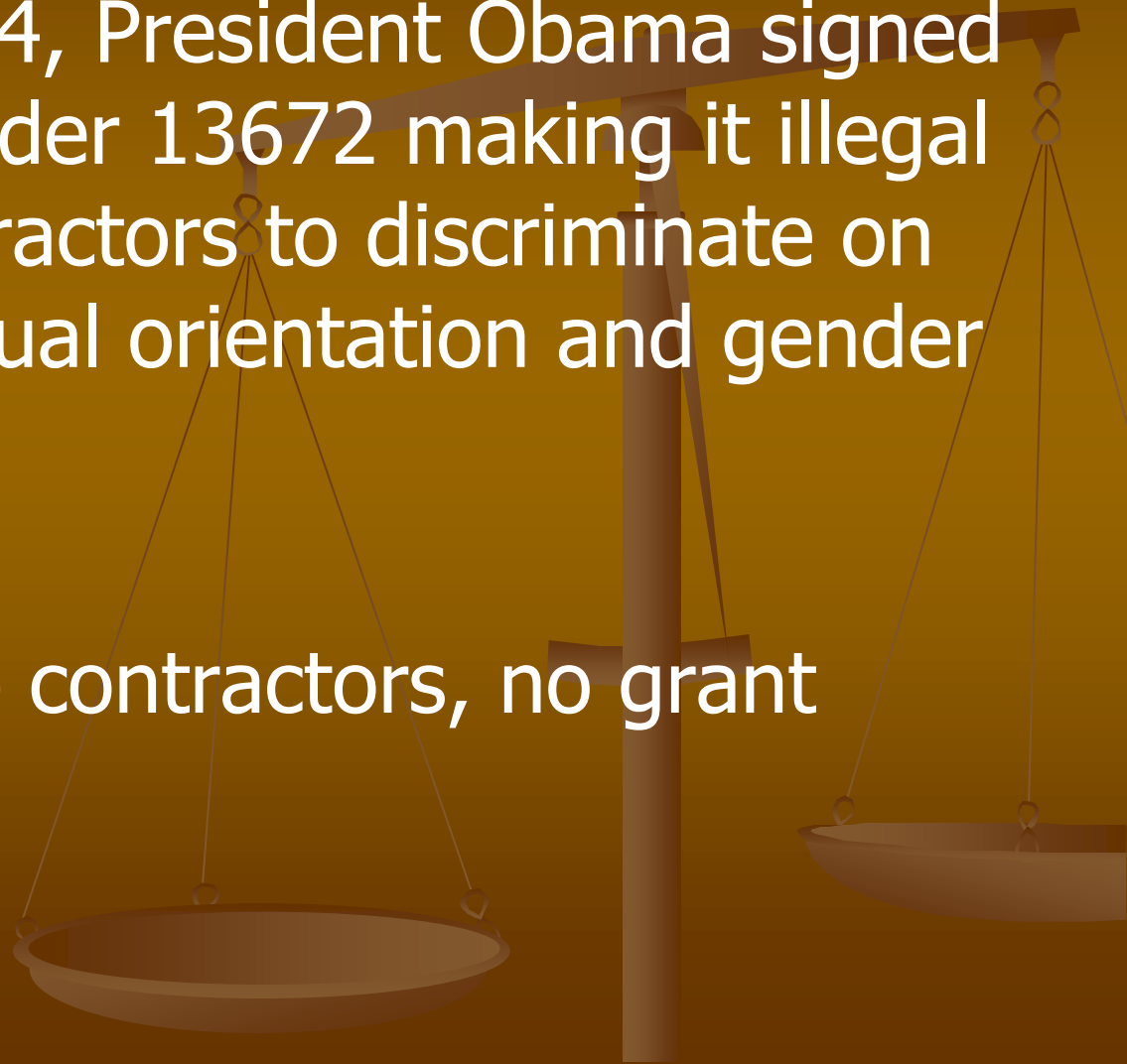
- ***Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission***, (2012), case in which the Court unanimously ruled that federal discrimination laws do not apply to religious organizations' selection of religious leaders.
"Ministerial Exception"

Violation of Church's teaching is cause for dismissal."

- For example, in *Herx v. Diocese of Ft. Wayne-South Bend, Inc.*, 2014 BL 243910, at *8 (N.D. Ind. Sept. 3, 2014), the court found a lay teacher was not subject to the exception where "Mrs. Herx has never led planning for a Mass, hasn't been ordained by the Catholic Church, hasn't held a title with the Catholic Church, has never had (and wasn't required to have) any religious instruction or training to be a teacher at the school, has never held herself out as a priest or minister, and was considered by the principal to be a 'lay teacher.'"

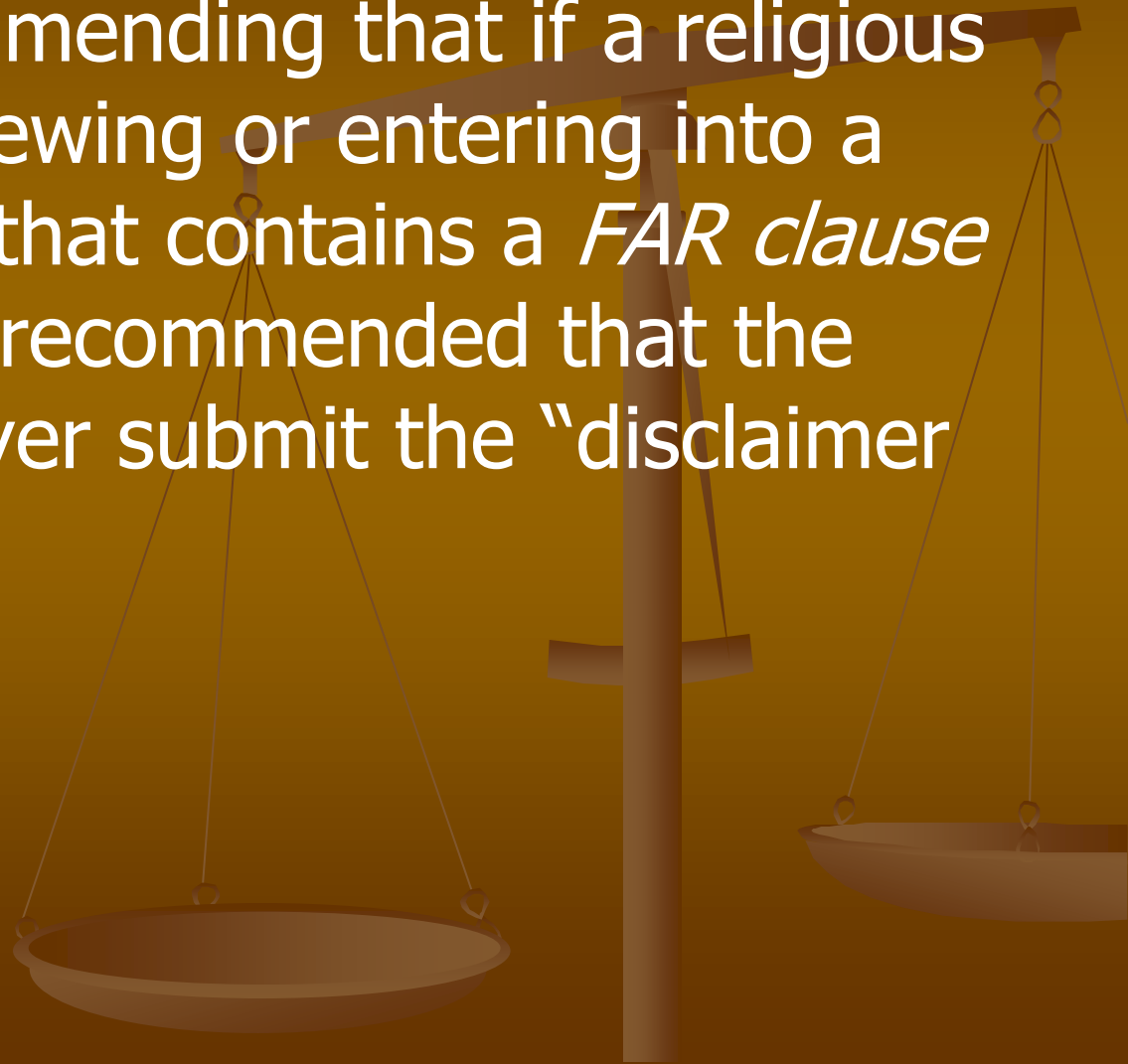
Federal Statutes and Regulations

- On July 21, 2014, President Obama signed an Executive Order 13672 making it illegal for federal contractors to discriminate on the basis of sexual orientation and gender identity.
- Only pertains to contractors, no grant recipients.



Federal Statutes and Regulations

- USCCB is recommending that if a religious employer is renewing or entering into a federal contract that contains a *FAR clause 52.222-26*, it is recommended that the religious employer submit the “disclaimer language”



Disclaimer

- *"Pursuant to federal law, including the Religious Freedom Act of 1993, we believe that we are exempt from full compliance with FAR clause 52.222-26. However, we intend to comply with FAR clause 52.222-26 to the extent that it does not require us to violate Church teaching."*

Laws Pertaining to Disabilities



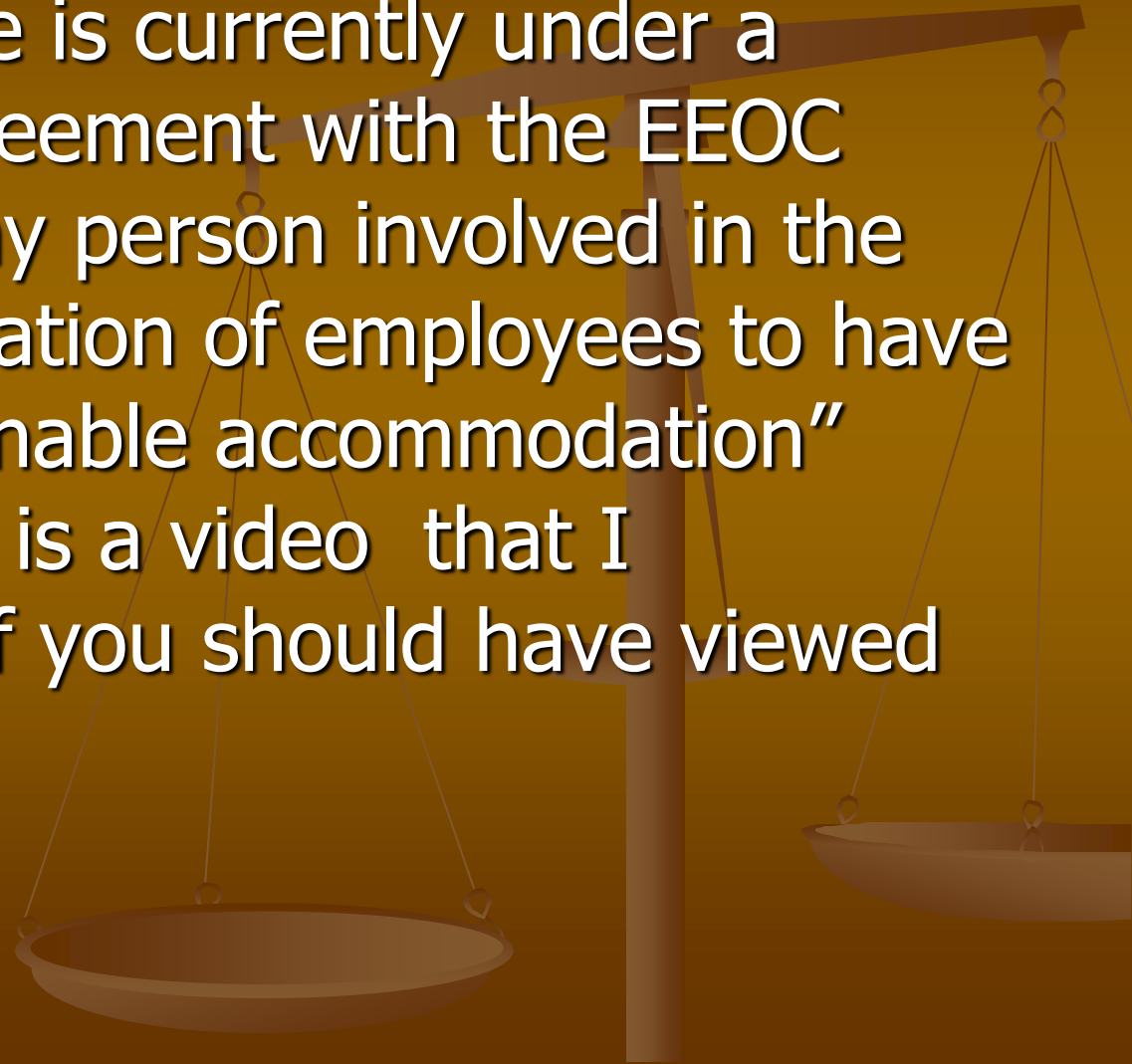
ADA: Americans with Disabilities Act (1990)
Applies to students and employees.

IDEA: Individuals with Disabilities Education
Act (1990) (IDEIA, 2004)
Applies to students.

Section 504: Rehabilitation Act of 1973
Applies to students and employees.

Laws Pertaining to Disabilities

- The Archdiocese is currently under a Compliance Agreement with the EEOC that requires any person involved in the hiring or termination of employees to have received “reasonable accommodation” training. There is a video that I prepared. All of you should have viewed by now.



State Statutes and Regulations

Examples of common regulations include:

- Mandatory attendance rules
- Registration and teacher certification
- Core Curriculum
- Student Records
- Financial Aide – vouchers, GSO, text books
- Vouchers –Choice Scholarships

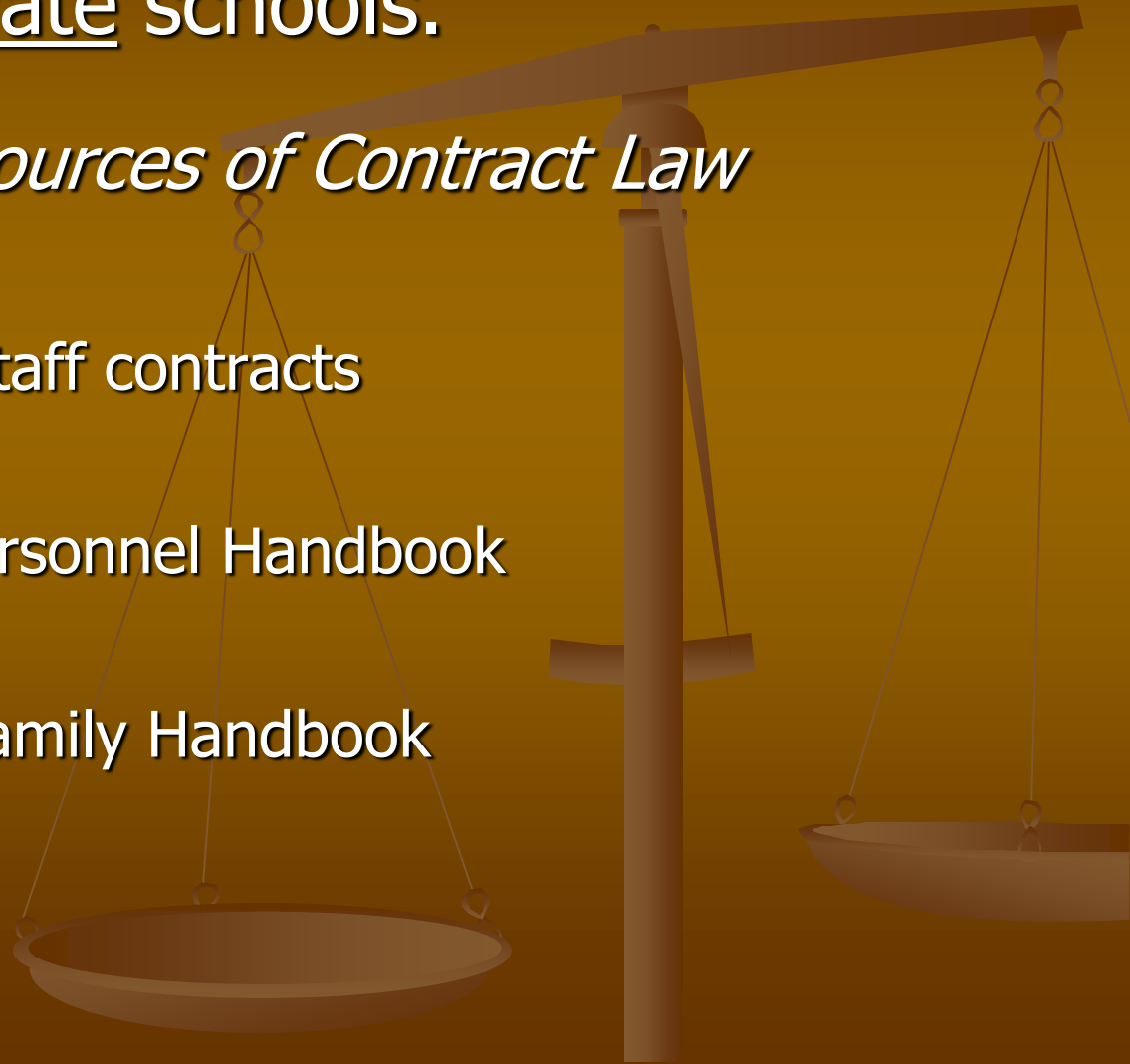


Contract Law

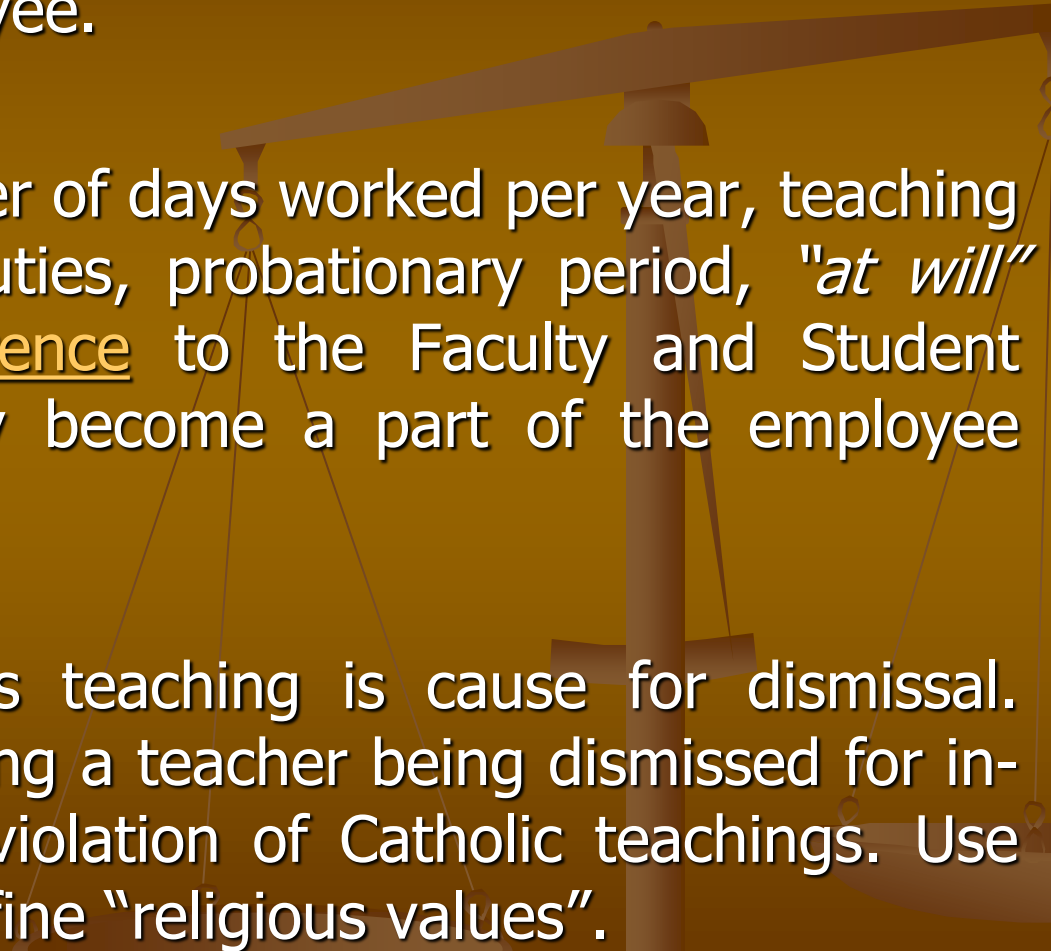
Contract law is the predominant law governing private schools.

Three primary sources of Contract Law

1. Teacher/Staff contracts
2. Faculty/Personnel Handbook
3. Student/Family Handbook



Faculty/Staff Contract

- Primary document governing relationship between employer and employee.
 - States wages, number of days worked per year, teaching and non-teaching duties, probationary period, "*at will*" clause. (Avoid reference to the Faculty and Student handbook or it may become a part of the employee contract).
 - Violation of Church's teaching is cause for dismissal. (Current case involving a teacher being dismissed for in-vitro fertilization in violation of Catholic teachings. Use job description to define "religious values").
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“Violation of Church’s teaching is cause for dismissal.”

Civil rights code of 1964 of non-discrimination against race, color, sex, and national origin stands, except for *religion* and Civil rights code of 1967 against Age discrimination.

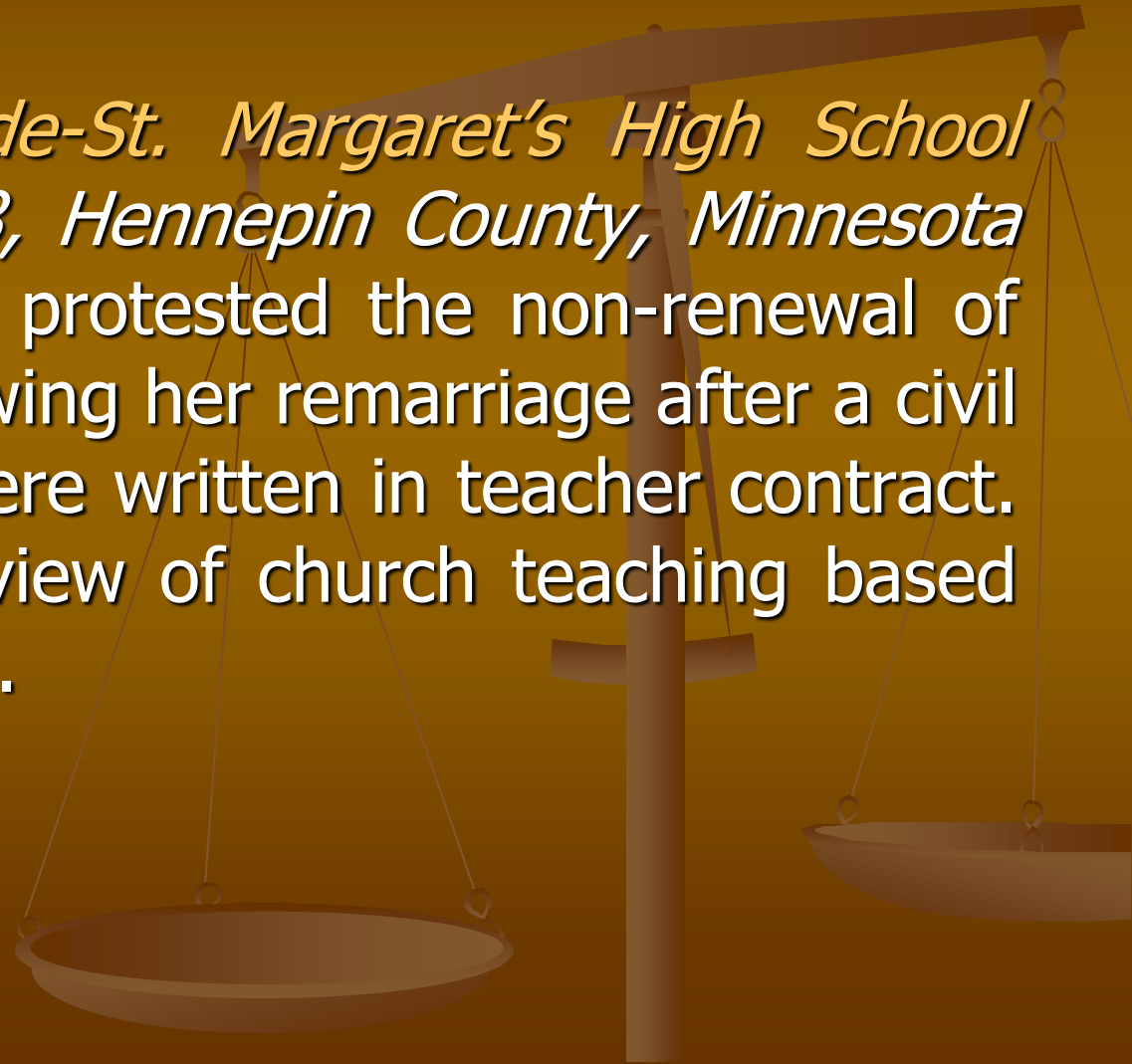
Dolter v. Wahlert High School 483 F. Supp. 266 (1980): Dolter, a female, unmarried teacher at a Catholic school became pregnant and took school to court after they refused to rehire her. Dolter presented evidence that males were rehired who also had pre-marital sex.

Court said there was no entanglement between church and state for them to rule on equal treatment for males and females. Court ruled for Dolter.

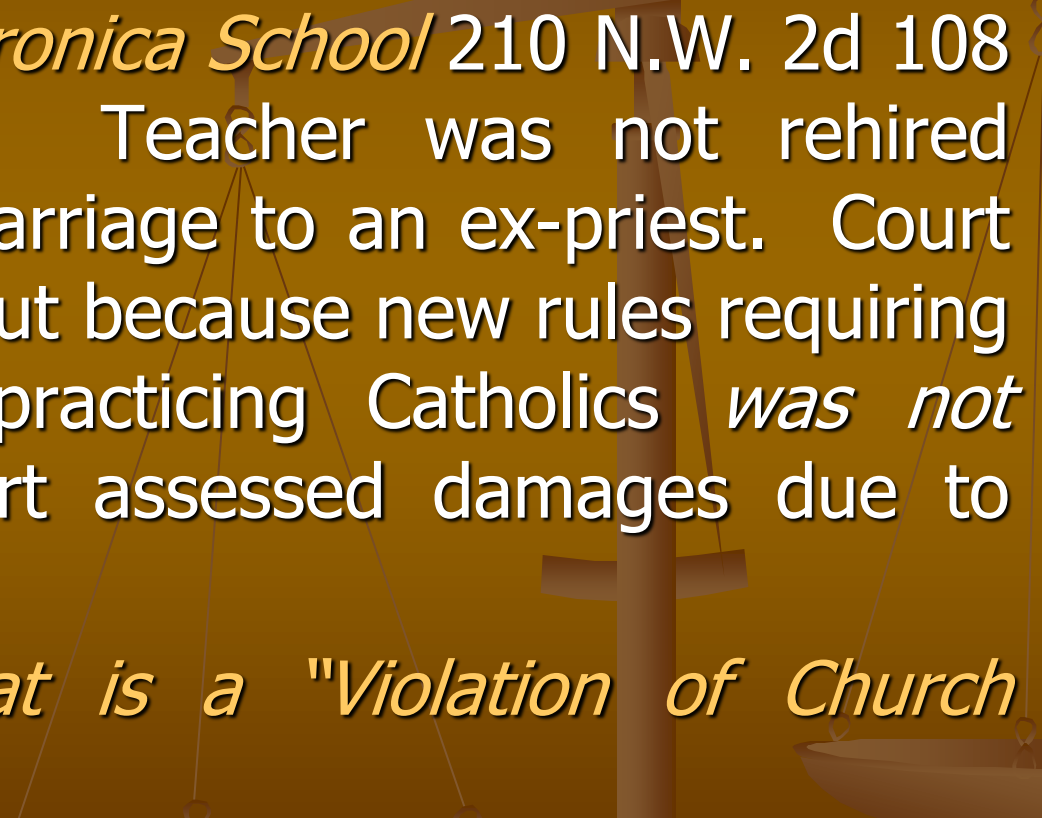
Apply rules **EQUALLY** to males and females.

“Violation of Church’s teaching is cause for dismissal.”

- *Steeber v. Benilde-St. Margaret’s High School No. D.C. 739 378, Hennepin County, Minnesota (1978)*. Teacher protested the non-renewal of her contract following her remarriage after a civil divorce. Rules were written in teacher contract. Courts ruled for view of church teaching based upon contract law.

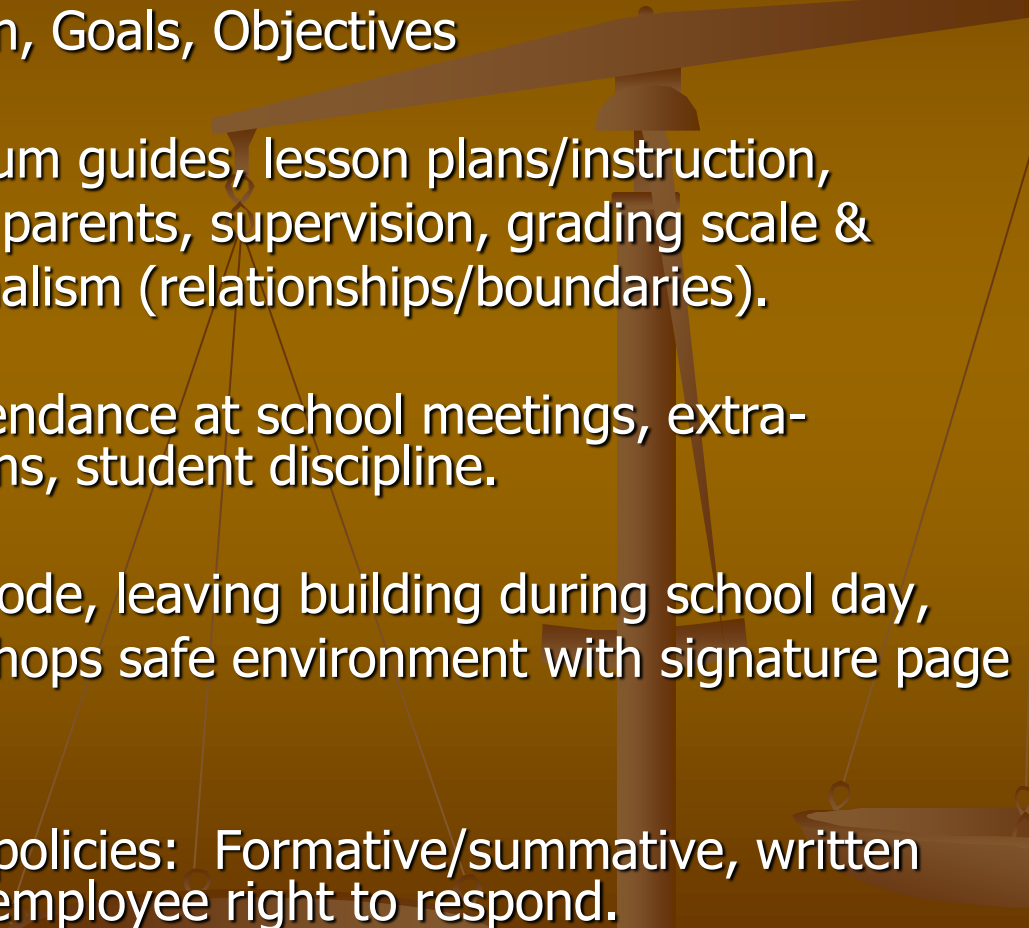


“Violation of Church’s teaching is cause for dismissal.”

- *Weithoff v. St. Veronica School* 210 N.W. 2d 108 Michigan (1973). Teacher was not rehired because of her marriage to an ex-priest. Court ruled for school, but because new rules requiring teachers to be practicing Catholics *was not promulgated*, court assessed damages due to teacher.
 - *Be clear on what is a "Violation of Church Teachings"*
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Faculty Handbooks

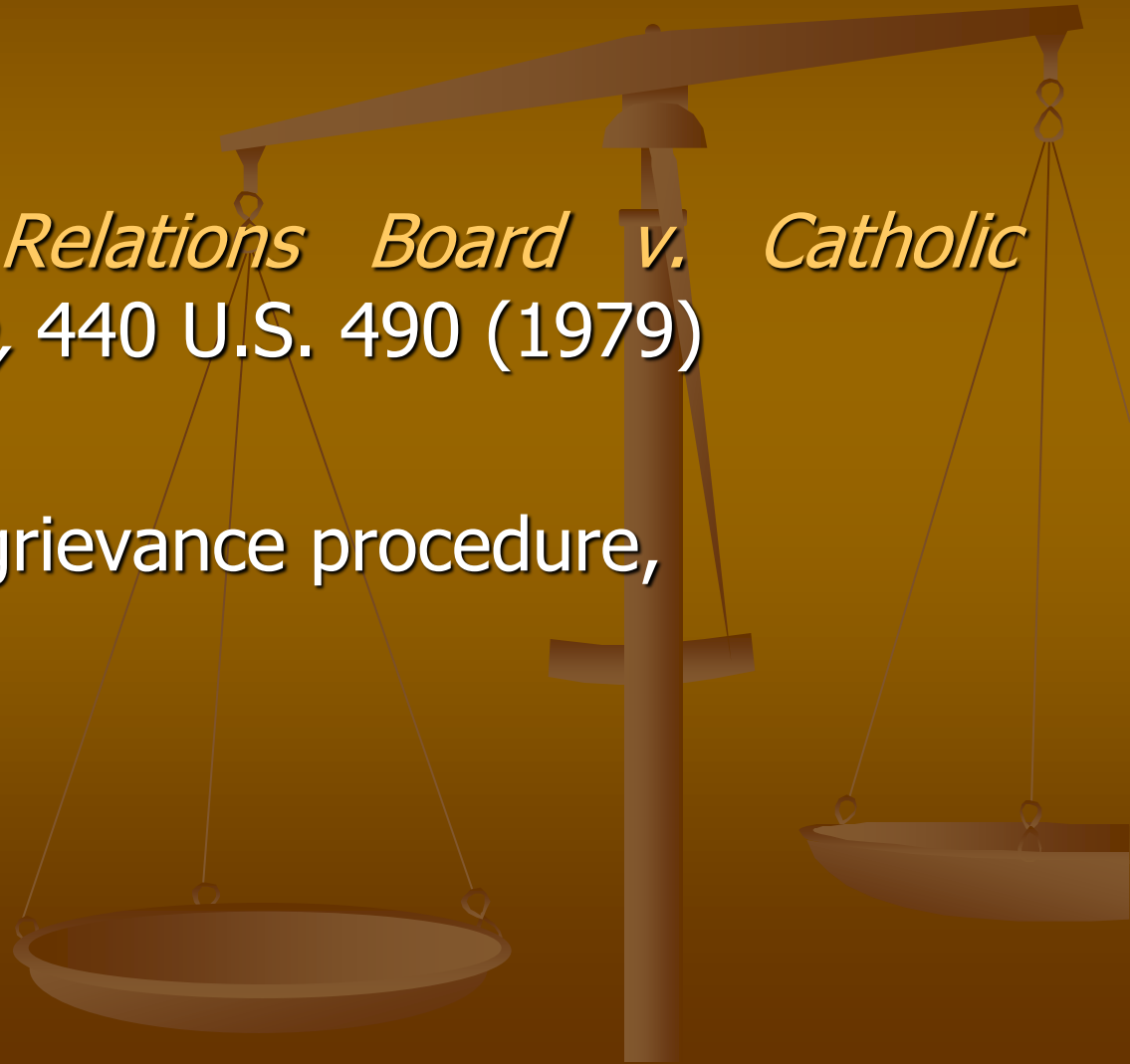
Include:

- Philosophy, Mission, Vision, Goals, Objectives
 - Teaching duties: curriculum guides, lesson plans/instruction, communication with parents, supervision, grading scale & reporting, professionalism (relationships/boundaries).
 - Non-teaching duties: attendance at school meetings, extra-curricular expectations, student discipline.
 - Personnel issues: dress code, leaving building during school day, sick leave policy, Bishops safe environment with signature page (if applicable).
 - Supervision & evaluation policies: Formative/summative, written documentation and employee right to respond.
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No unions required in Catholic Schools

- *National Labor Relations Board v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979)

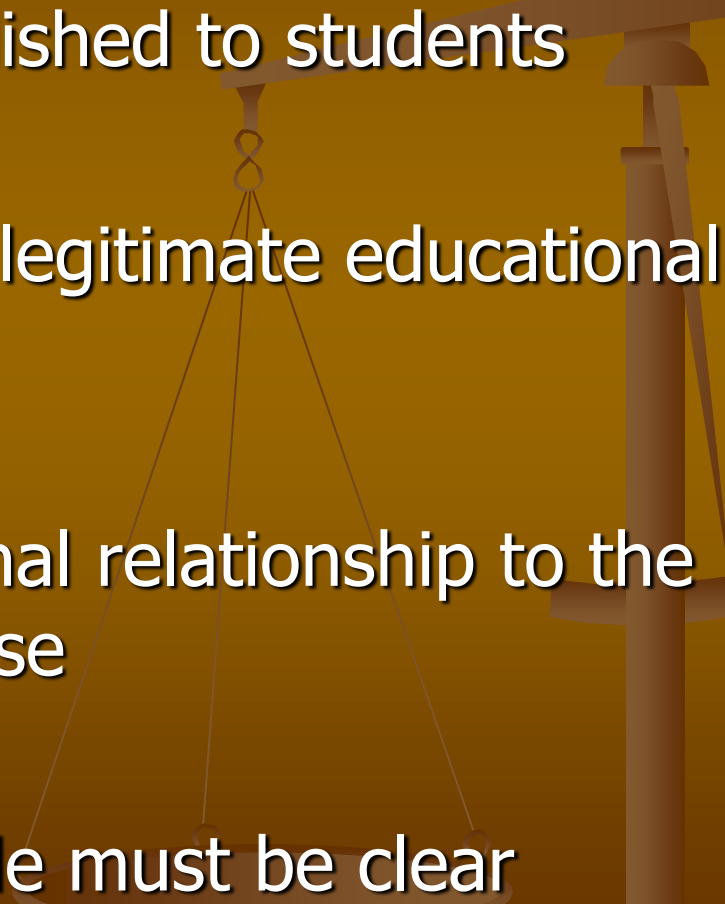
No union, no grievance procedure,
no tenure.



Student Handbooks

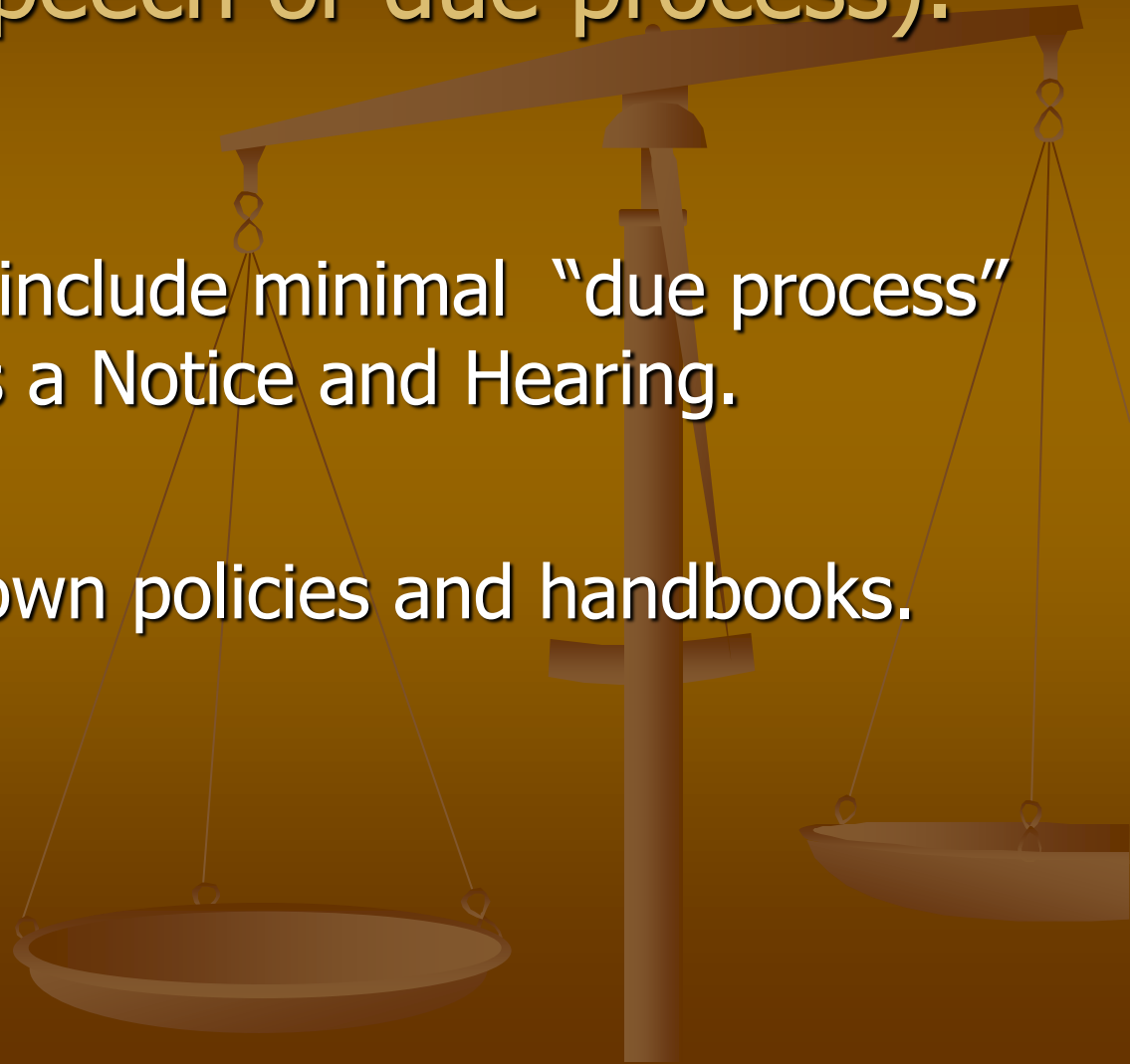
- This is contract between student/family and school. Have student/family read and sign handbook signature page each year indicating they have read and agree to handbook policies. Handbook must be *promulgated*. Policies which are not promulgated are not *enforceable*.
- Can't include everything in Handbook, so use phrase such as "the principal is the final recourse in all disciplinary situations and may waive any disciplinary rule for just cause at his or her discretion."

Guidelines for the Development of Rules of Conduct

- Rule must be published to students
 - Rule must have a legitimate educational purpose.
 - Must have a rational relationship to the educational purpose
 - Meaning of the rule must be clear
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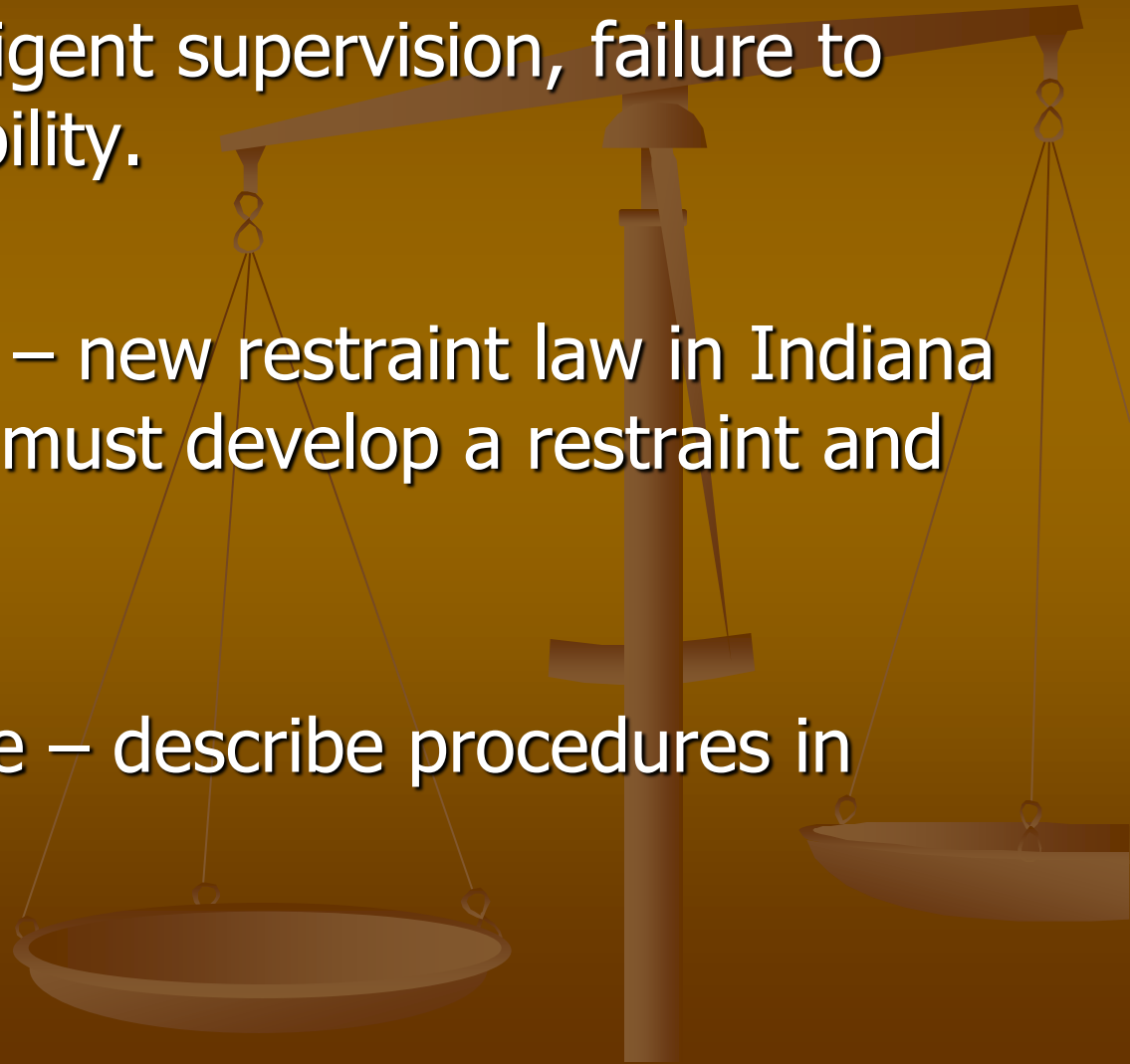
Students do not have 1st or 5th Amendment rights (Freedom of speech or due process).

- Handbook should include minimal “due process” procedure such as a Notice and Hearing.
- Must follow your own policies and handbooks.



Special Tort Cases

- Negligence – negligent supervision, failure to warn, premise liability.
- Student Discipline – new restraint law in Indiana SEA 345 (Schools must develop a restraint and seclusion plan).
- Search and seizure – describe procedures in Handbooks.

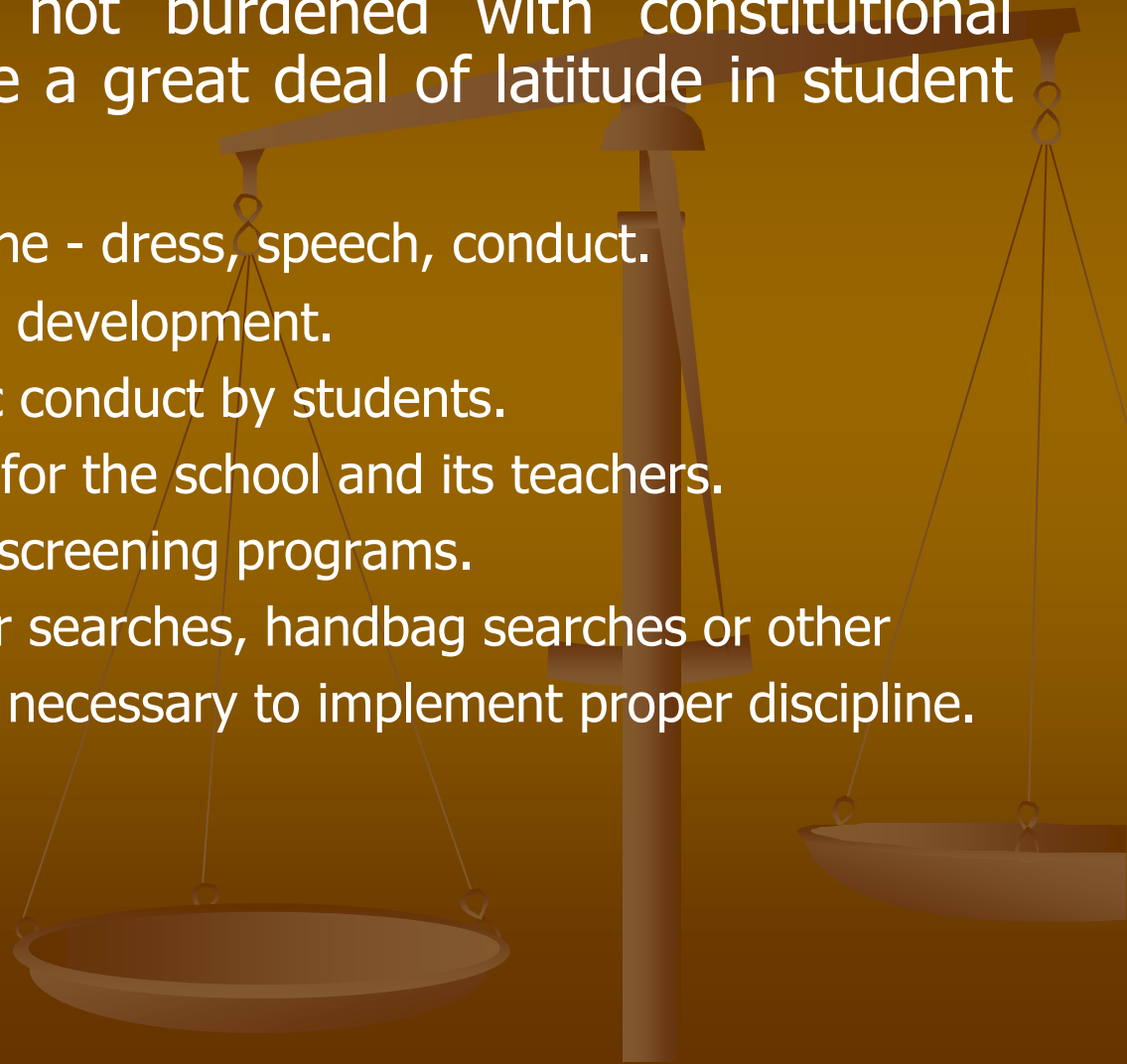


Sample case: *Titus v. Lindberg* 228 1A. 2d 65 (N.J., 1967)

- The school administrator was found liable of student injury when a student was hurt before school. The administrator was at the school and knew that students gathered before school opened. No rules were established regarding early arrivals and no supervision was provided.
- Schools are not the insurers of students' safety. *Miller v. Griesel*, 261 Ind. 604, 308 N.E.2d 701 (1974).

Student Discipline

- Private schools are not burdened with constitutional prohibitions and have a great deal of latitude in student discipline.
 1. Imposing discipline - dress, speech, conduct.
 2. Emphasize moral development.
 3. Prescribe specific conduct by students.
 4. Demand respect for the school and its teachers.
 5. Implement drug screening programs.
 6. Implement locker searches, handbag searches or other reasonable rules necessary to implement proper discipline.



Search and Seizure

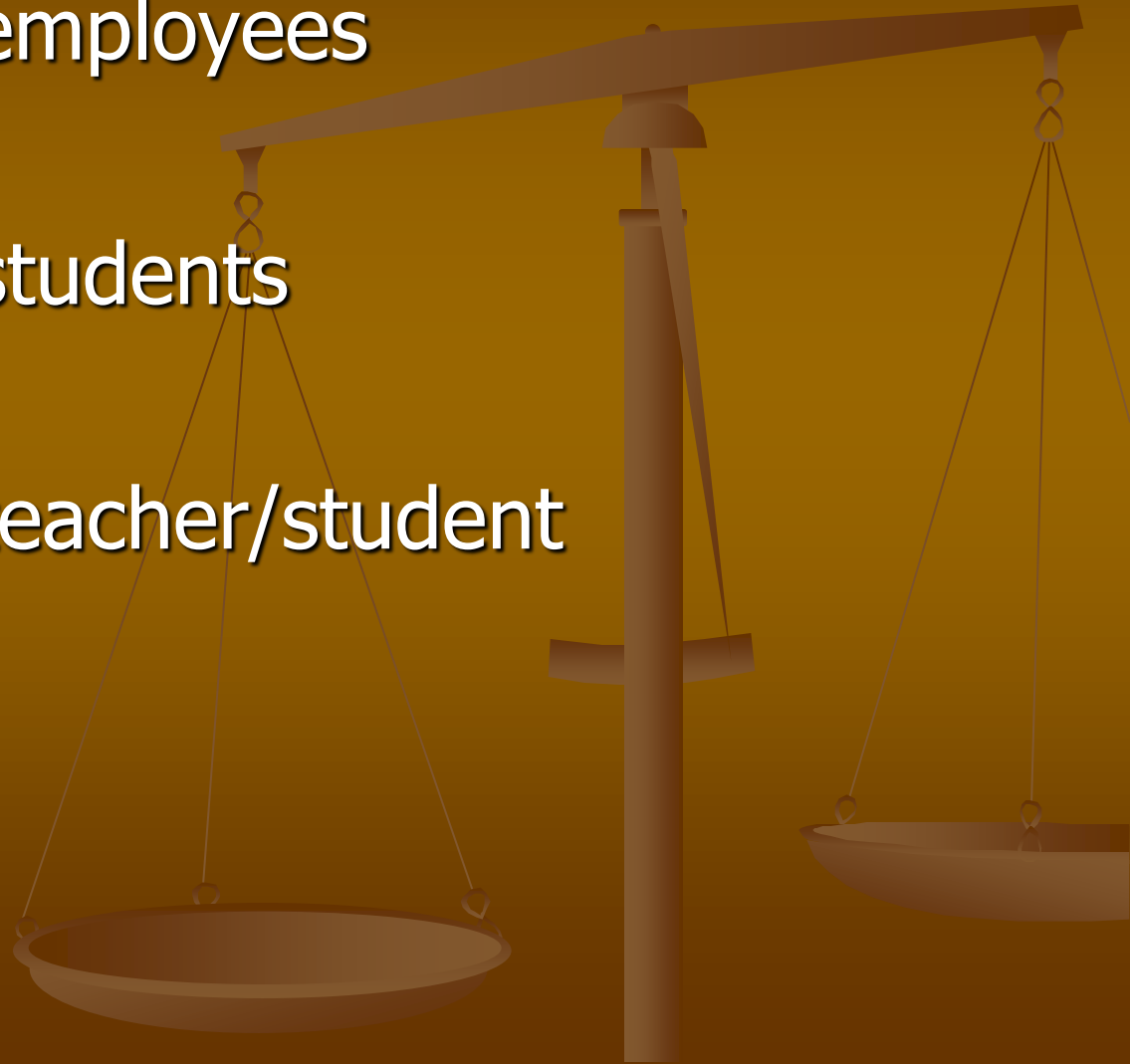
- *New Jersey v. T.L.O.* 105 S.Ct. 733 (1985)
Public school case which established that schools only need reasonable cause, instead of probable cause, to search students' possessions.

Not applicable to private schools, BUT there should be some policy in place for searches in schools. Desks and lockers are considered school property. Courts will look to 'reasonable person' rules to establish tort cases –

how was the search conducted, justification at its inception individualized suspicion.

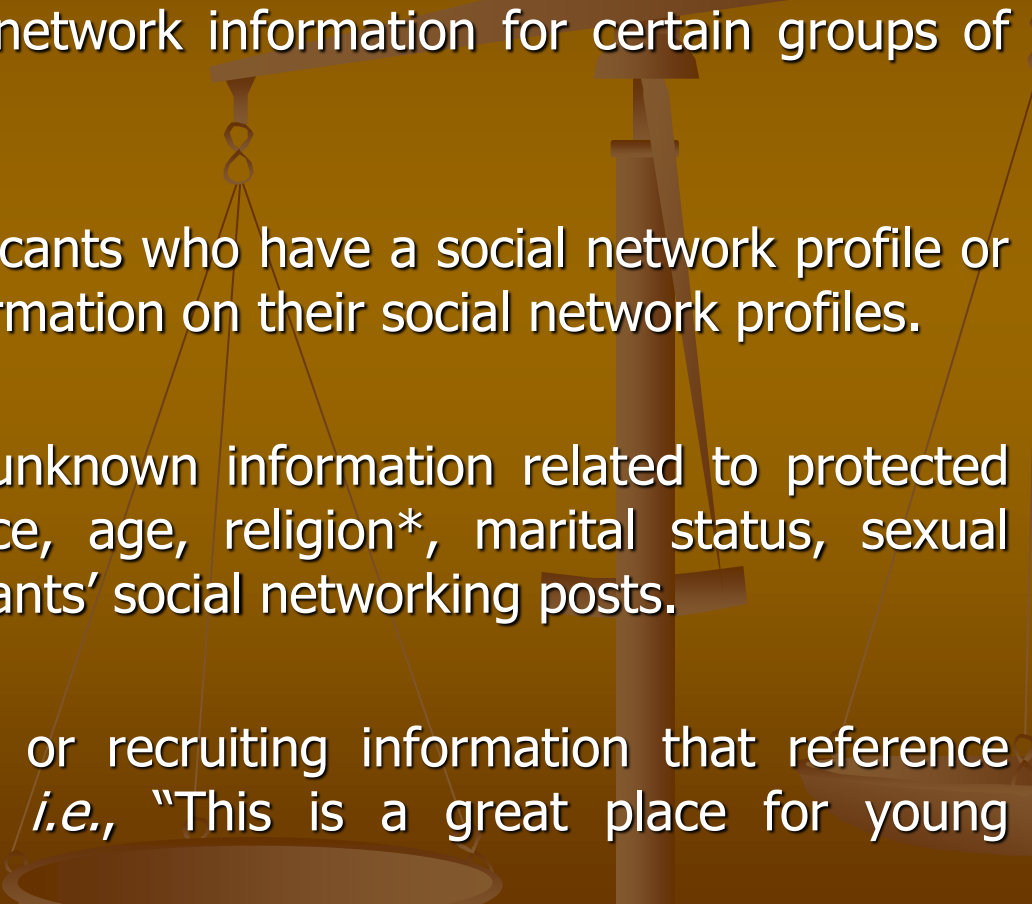
Hot Topic

- Social Media – employees
- Social Media – students
- Social Media – teacher/student



Social Media: Use in Hiring

■ Things to avoid:

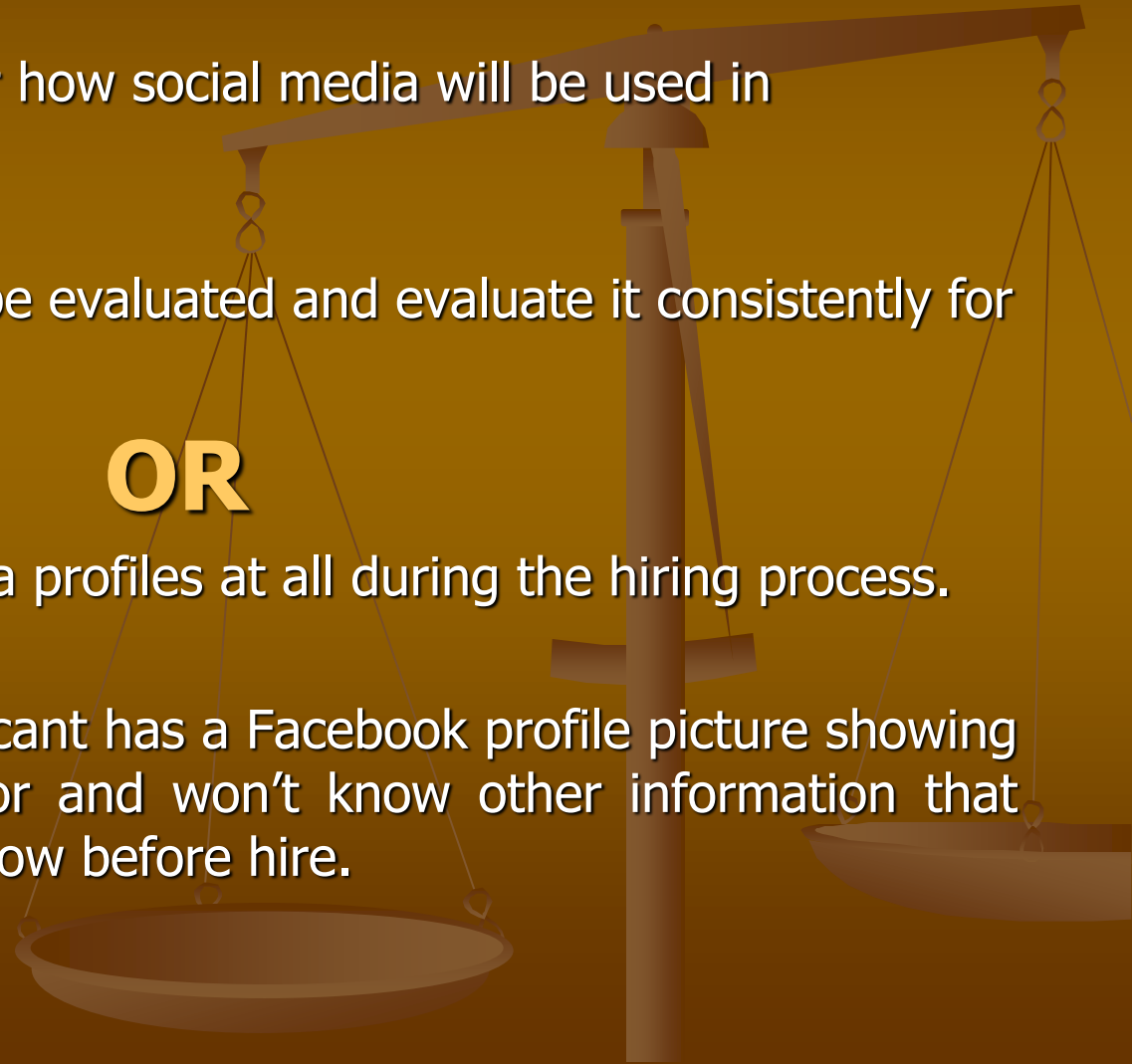
- ❖ Only checking social network information for certain groups of job seekers.
 - ❖ Only considering applicants who have a social network profile or who have certain information on their social network profiles.
 - ❖ Accessing otherwise unknown information related to protected class status (*i.e.*, race, age, religion*, marital status, sexual orientation) via applicants' social networking posts.
 - ❖ Posting job openings or recruiting information that reference protected categories, *i.e.*, "This is a great place for young people!"
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Social Media: Use in Hiring

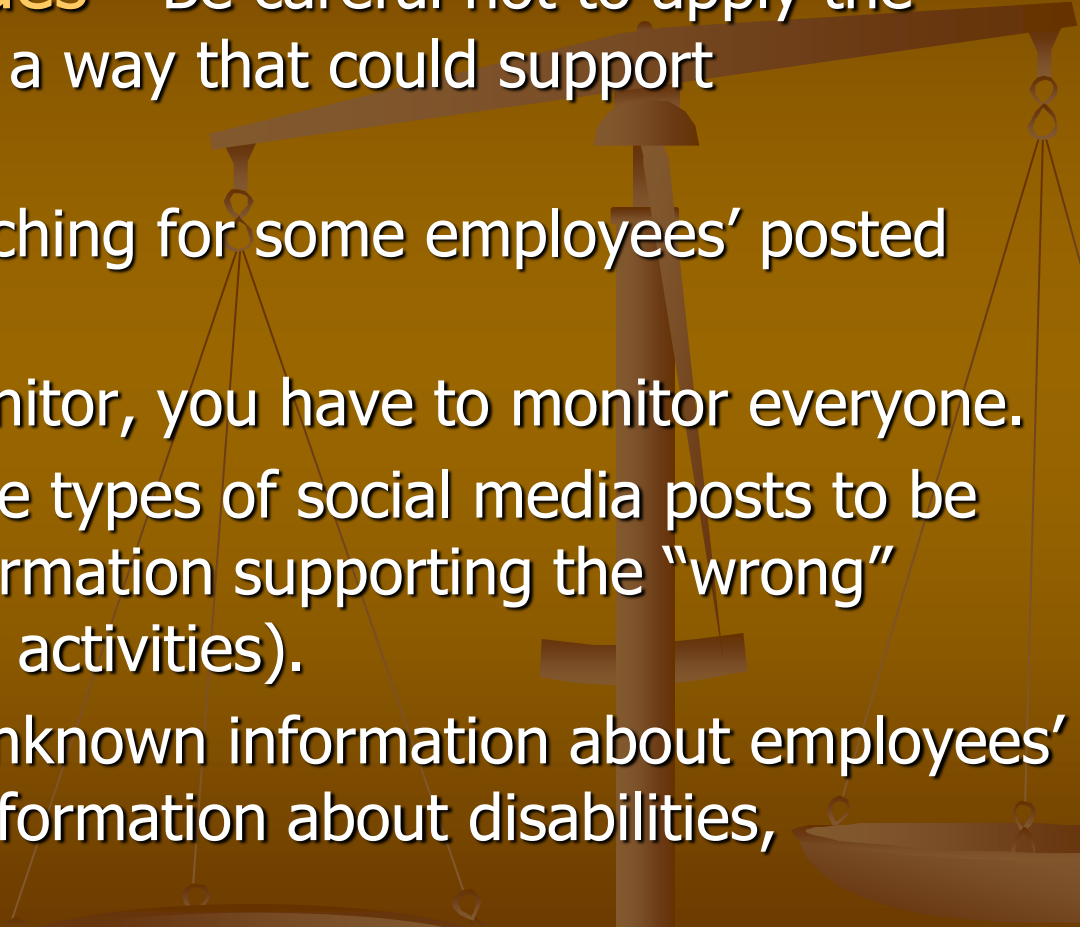
- ❖ Standardize the process if it is not already standardized.
- ❖ Create procedures for how social media will be used in recruiting/hiring.
- ❖ Determine what will be evaluated and evaluate it consistently for all candidates.

OR

- ❖ Don't use social media profiles at all during the hiring process.
- ❖ Won't know the applicant has a Facebook profile picture showing inappropriate behavior and won't know other information that would be useful to know before hire.



Social Media: During Employment

- **Discrimination Issues** - Be careful not to apply the social media policy in a way that could support discrimination claims.
 - Only monitoring/searching for some employees' posted information.
 - If you're going to monitor, you have to monitor everyone.
 - Only considering some types of social media posts to be problematic (i.e., information supporting the "wrong" viewpoint or personal activities).
 - Gleaning otherwise unknown information about employees' personal lives (i.e., information about disabilities, pregnancy).
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Social Media: Harassment Claims

- An employer can be liable for the harassing posts of its employees, if it knew or should have known about them.
- Where an employee posts harassing messages on an employer blog or other employer site, knowledge is easily imputed.
- Knowledge can also be imputed if the employer has a stated policy of monitoring content and the employee uses employer-provided equipment to publish the posts.
- Off-duty harassment by supervisors and co-workers could result in liability, if such conduct was within the “scope of employment” or, under some state laws, “occurred within a work-related context.”

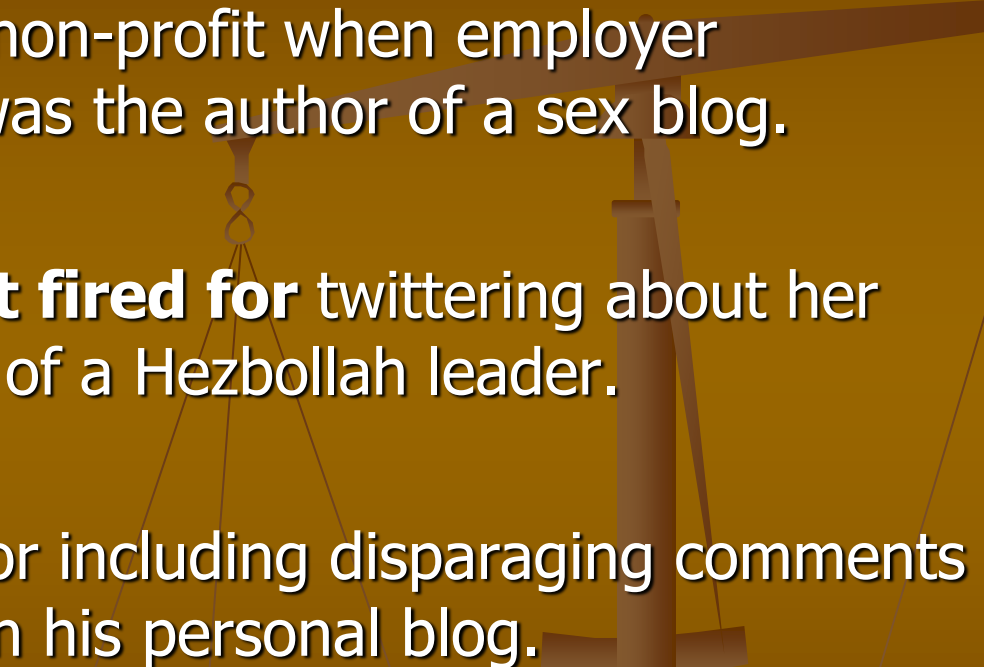
This does NOT mean avoid discipline.

- *Marshall v. City of Savannah (11th Cir. 2010)*. Female firefighter terminated after posting official photos of firefighters on the private portion of her Myspace account, on the same page she posted nude photos of herself.
- Photos were reported to the fire department by an anonymous caller who said they “may conflict” with the way the department would want to be portrayed.
- Court dismissed claims of gender discrimination and retaliation, finding no evidence that similarly situated men were treated differently.

More Examples

- Microsoft employee fired after posting pictures of Apple computers arriving in Microsoft warehouse.
<http://www.msnbc.msn.com/id/3341689>
- Student teacher lost her chance to earn a teaching certificate largely because of MySpace posting which she captioned "Drunken Pirate." *Snyder v. Millersville University, No. 07-1660, 2008 U.S. Dist. LEXIS. 97943, (E.D. Pa. Dec. 3, 2008)*
- Cisco applicant job offer rescinded after she posted the following on her blog: *Cisco just offered me a job! Now I have to weigh the utility of a fatty paycheck against the daily commute to San Jose and hating the work."*

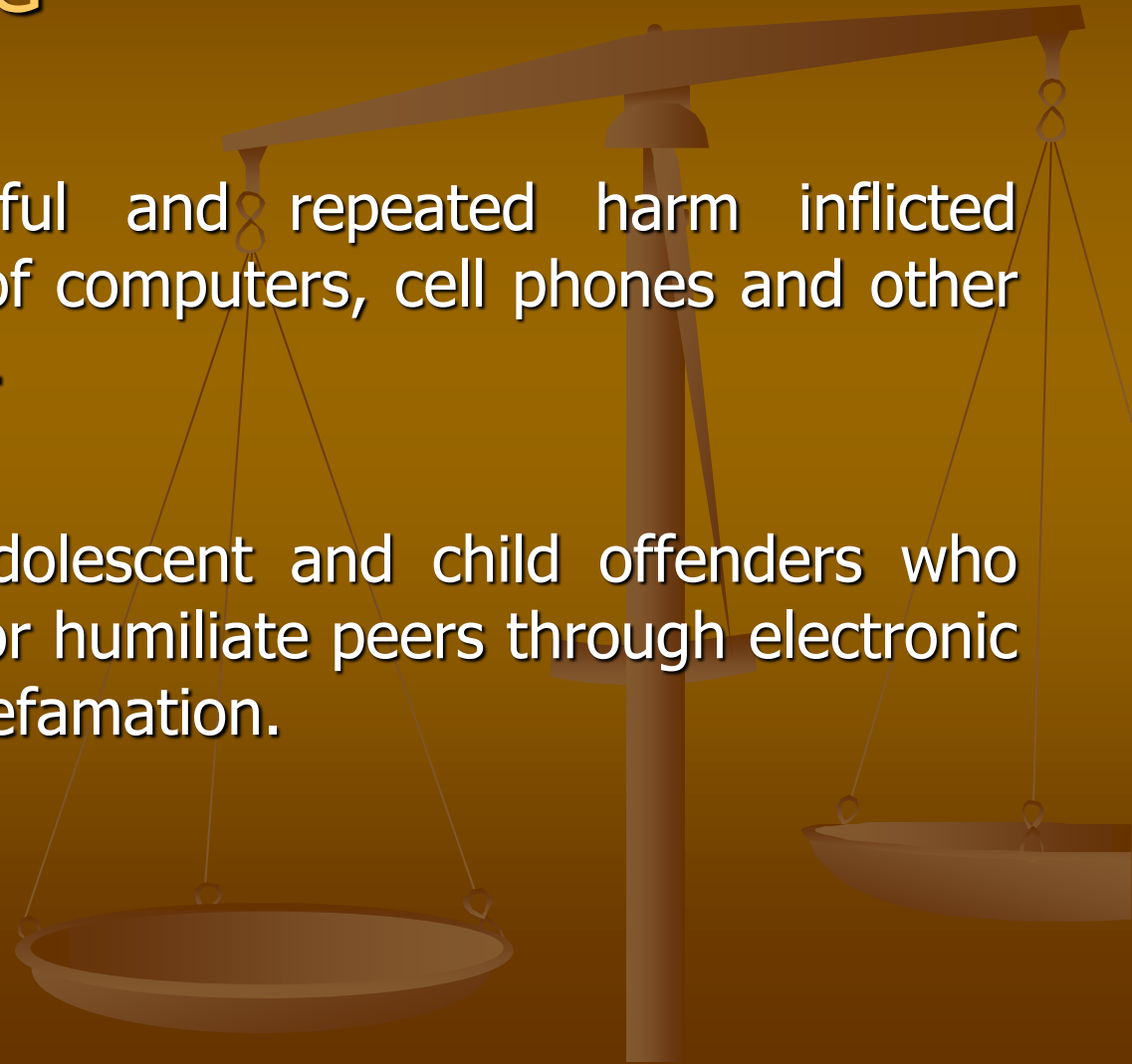
More Examples

- Employee fired from non-profit when employer discovered that she was the author of a sex blog.
 - **CNN correspondent fired for** twittering about her reaction to the death of a Hezbollah leader.
 - DeVry teacher fired for including disparaging comments about his employer on his personal blog.
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Social Media: Students

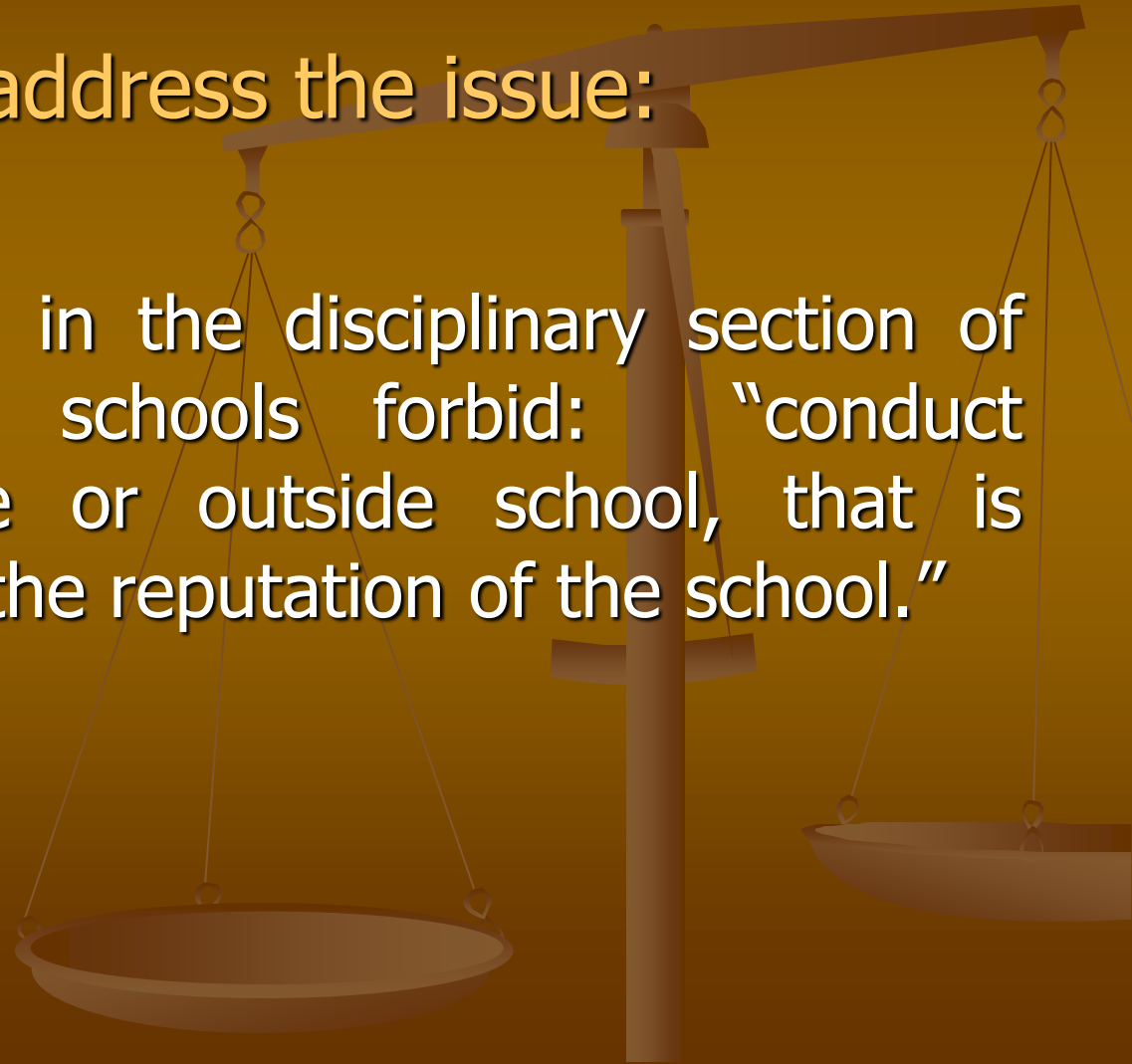
■ CYBERBULLYING

- Definition: Willful and repeated harm inflicted through the use of computers, cell phones and other electronic devices.
- Refers only to adolescent and child offenders who harass, threaten or humiliate peers through electronic media, includes defamation.



Social Media: Students

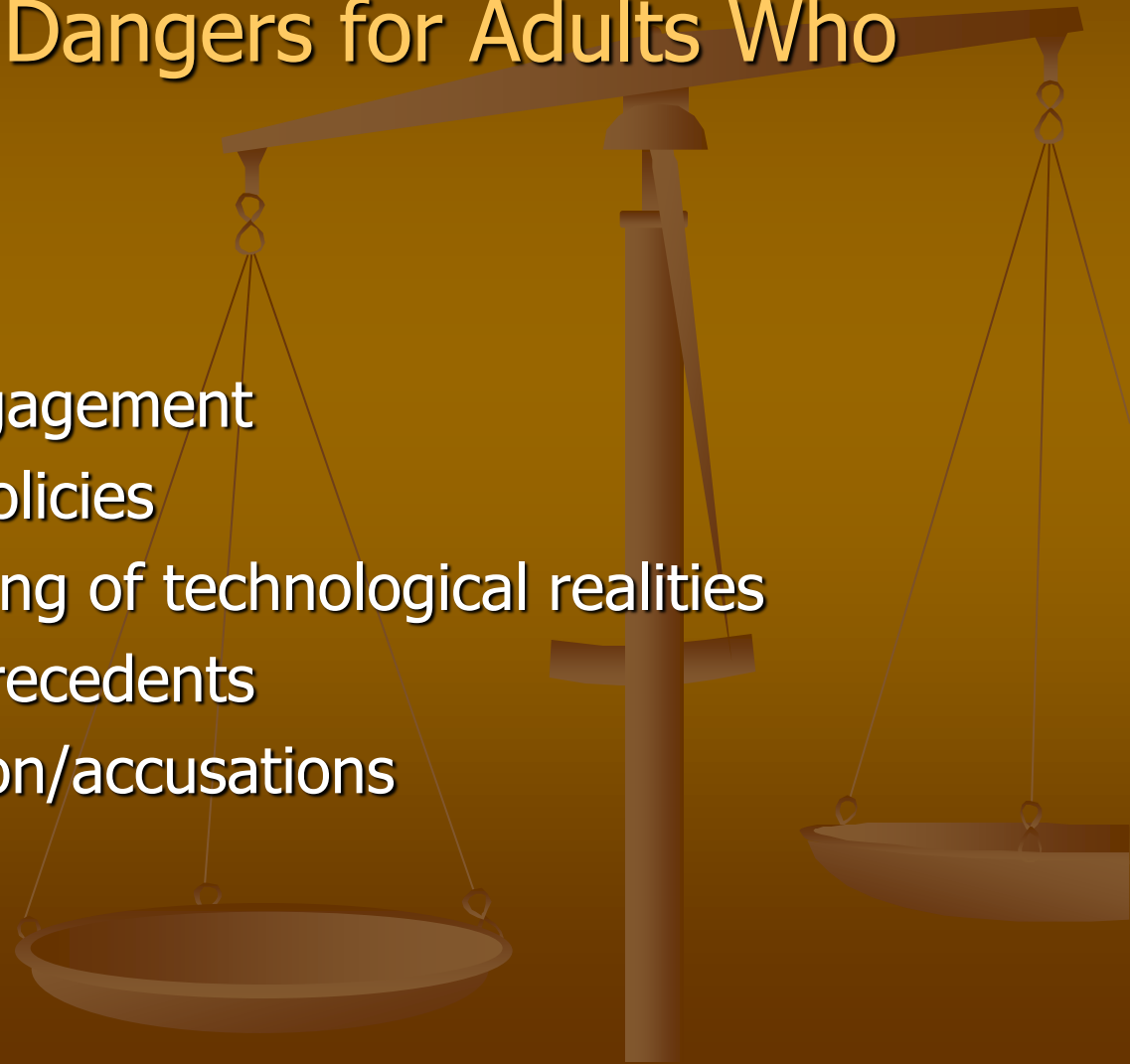
- Use policies to address the issue:
 - A policy found in the disciplinary section of most Catholic schools forbid: “conduct whether inside or outside school, that is detrimental to the reputation of the school.”



Social Media: Teacher/ Student

■ Challenges and Dangers for Adults Who Want to Help?

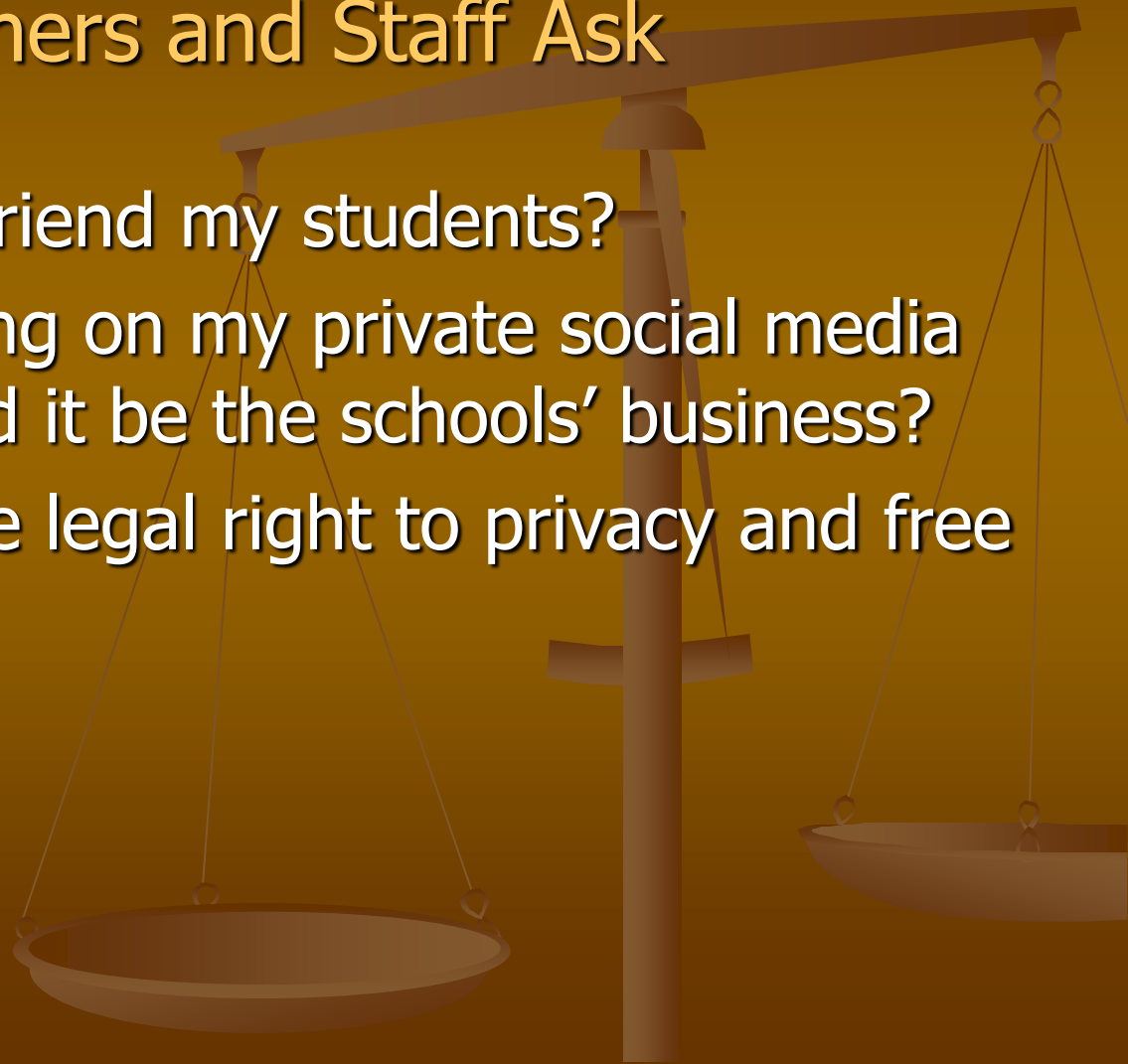
- Boundaries
- Parental disengagement
- Lack of clear policies
- Misunderstanding of technological realities
- Lack of legal precedents
- Misinterpretation/accusations



Social Media: Teacher/Student

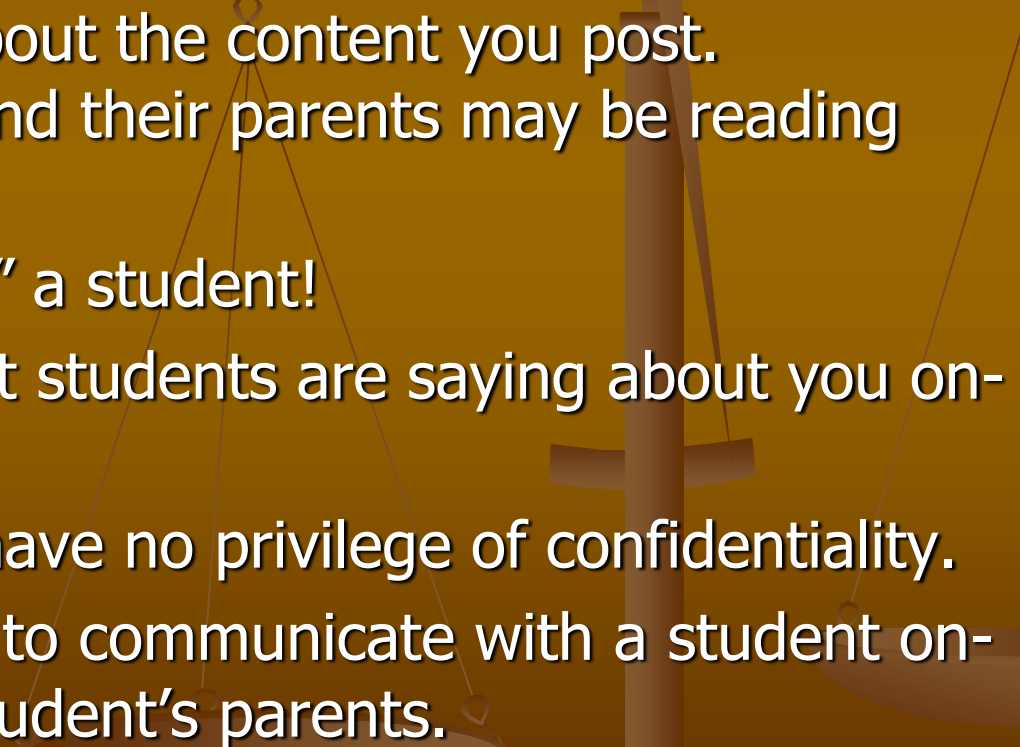
■ Questions Teachers and Staff Ask

- Why can't I befriend my students?
- If I do something on my private social media site, why should it be the schools' business?
- Don't I have the legal right to privacy and free speech?



Social Media: Teacher/Student

■ GUIDELINES RE: PERSONAL USE OF SOCIAL MEDIA (for educators)

1. Think carefully about the content you post.
(Your students and their parents may be reading it).
 2. Do not “befriend” a student!
 3. Be aware of what students are saying about you online.
 4. Remember you have no privilege of confidentiality.
 5. If it is necessary to communicate with a student online - copy the student’s parents.
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Summary

- There are many traps for principals/teachers who are not able to spot potential legal issues.



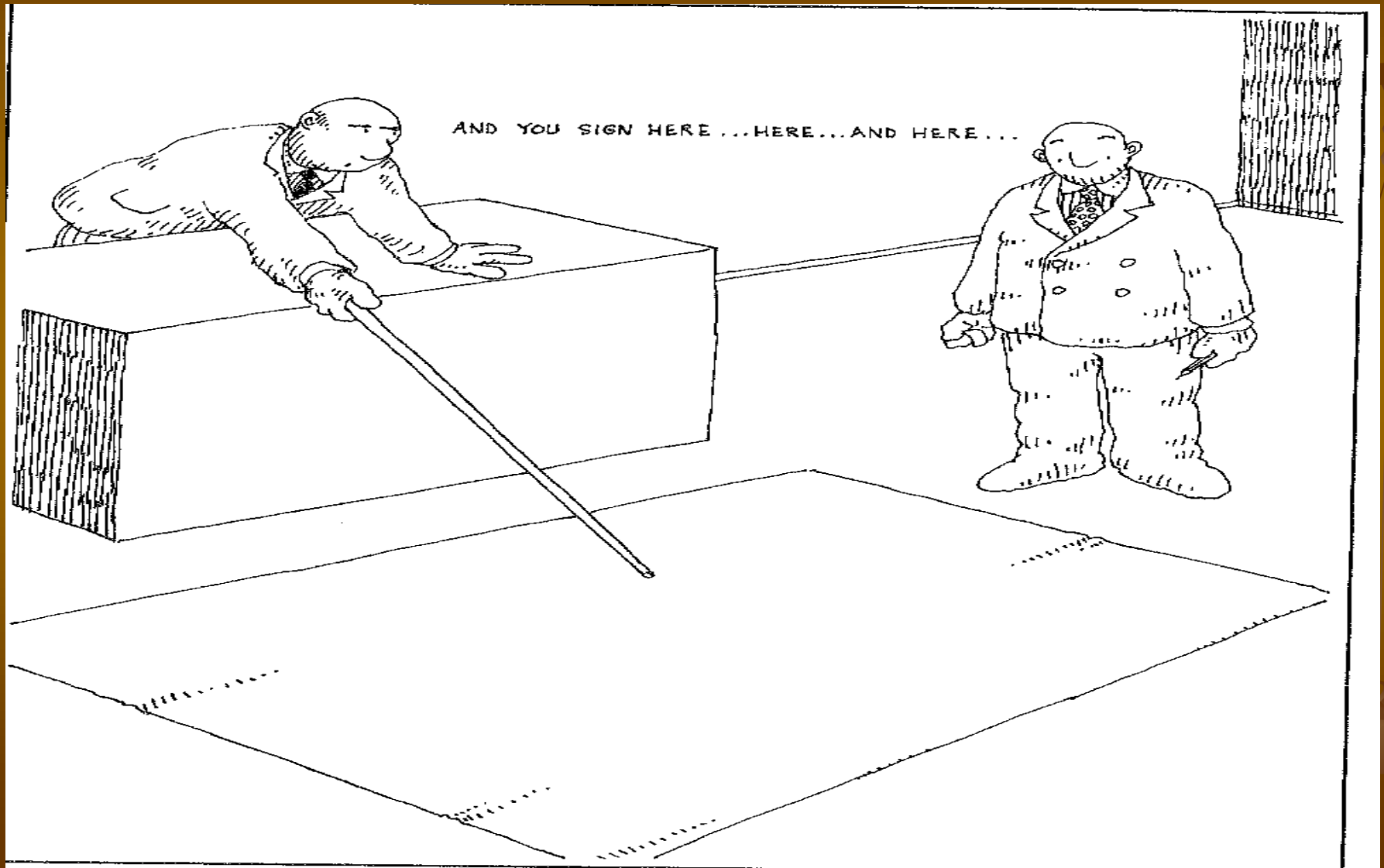
Encourage your school system to have legal issues on the in-service agenda at least once a year.

THE BOY WHO WANTED TO BE A LAWYER

'Father Desmond,
we need an exorcism!'



You do not need to know the law, just be able to spot potential legal issues.



Knowing to know when to ask for help is 90% of the risk management solution.



"YEAH, BUT LOOK AT THE MONEY WE SAVED BY YOUR ACTING AS YOUR OWN ATTORNEY."

Summary

- Hey, let's be careful out there!
- Sgt. Phil Esterhaus, Hill Street Blues (1981-1987)

