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WASHINGTON -- The National Education Association has agreed to pay the costs of appealing the case of gay school teacher Joseph Acanfora to the U.S. Supreme Court.

Acanfora's lawyer, George Cohen, said a petition for certiorari (hearing) will be filed with the court by early May. For the case to be heard, at least four of the nine justices must agree that the case raises constitutional issues that warrant the high court's consideration. A small proportion of cases appealed to the court are actually heard.

The Fourth U.S. Circuit Court of Appeals in Richmond, Va., upheld a lower court ruling that the Montgomery County, Md., school system was justified in switching Acanfora from a classroom job in a junior high school to an administrative "make-work" job, and later in refusing to renew his one-year contract.

The transfer followed publicity concerning Acanfora's homosexuality, and following the transfer Acanfora generated more publicity as he argued his right to teach through TV and radio appearances.

The original decision, in Baltimore district court, held that Acanfora had overstepped his bounds in publicly discussing his gayness on TV. The appeals court rejected that reasoning, but found a new ground for refusing to rule in Acanfora's favor. ~~On his job application~~ ~~He had failed to list campus gay organizations,~~ ~~Homophiles of Penn State, one among the organizations of which he was~~ ~~member, the appeals court ruled.~~

It ruled that the transfer was justified because of Acanfora's failure to list a gay campus organization among the groups of which he was a member when he filled out his job application.

The appeals court based its decision on Supreme Court verdicts which have held that applicants for public employment cannot refuse to answer questions they think are unfair or irrelevant, but must answer them and then go to court if they want to challenge the validity of the question.

Cohen said the petition for a Supreme Court hearing would raise two questions: Whether the appeals court correctly interpreted Supreme Court ^{earlier} rulings on the question, and whether the/Supreme Court rulings themselves should be allowed to stand. The rulings came in a series of cases over the past several years, some involving government employment of alleged Communists.

To ~~make~~ hold that ~~xxx~~ an applicant for public employment must answer questions "even though he will be treated unconstitutionally" as a result of his answers is to set up a "totally impractical situation," Cohen said.

"The school board will find 19 reasons besides the constitutionally ^{if it had to do so,} impermissible one" for firing Acanforay, he commented.

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who had undergone surgery to change from a man to a woman.

Gewirtz noted that the NEA spent thousands of dollars on the Acanfora case despite opposition by some homophobic teachers in the association. One ~~xxxxxxx~~ boy's physical education teacher went so far as to tear up his NEA membership card and write a letter ~~saying~~ urging not only firing gay teachers, but shooting them all, Gewirtz recalled wryly.

When the NEA was first ~~xxxxxxx~~ entering the case last winter, Gewirtz estimated that the association's costs for a Supreme Court appeal could mount as high as \$25,000.

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