

CHAPTER 1

The School and the Legal Environment

The U.S. Constitution provides particular protections of individual rights. Various state and federal statutes protect the general welfare of society and implement the constitutional rights of individuals. School districts develop policies, procedures, and regulations that ensure that necessary steps are taken to provide a safe place for employees to work, students to learn, parents to interact, and visitors to feel welcome. With such district policies, procedures, and regulations in place, principals should ask three questions:

- *Am I implementing the regulations?*
- *Am I monitoring the regulations?*
- *Am I assessing foreseeability when it comes to preventing the violation of regulations?*

Although it is next to impossible to keep up with the day-to-day changes in the laws, it is important to remember the foundations on which laws are made and how such laws affect the decision-making processes of the courts and school district counsel.

For those who teach education law classes for aspiring principals, an unfortunate truth often comes to the forefront: there are many students who are in need of a “civics” refresher class, oftentimes because several years have passed since they took high school government class. But such a foundation is important to help understand the basic concepts of education law. This text does not serve as a “civics 101” book, but this chapter helps to provide some of that essential information.

CONSIDERATIONS RELATED TO COVID-19

The text will include in the following chapters considerations related to COVID-19 and significant implications for school leaders conducting school during the pandemic. Such issues will include

effects on human resources, adapting to a virtual environment, and the challenges of reducing and avoiding liability as schools attempt to teach school and keep everyone safe.

SUGGESTED GUIDELINES FOR PRACTICE

This chapter provides the foundation for the guidance that principals should follow in their practice. A key that will be emphasized throughout the text is that the state where a principal is employed must always be considered because under the U.S. Constitution, the Tenth Amendment reserves for the states the right to legislate and regulate public education. Public educators' contract law, for example, is different from state to state. Graduation requirements are different not just between the states, but even between different school districts within a given state.

As an additional example, although federal laws such as the Individuals with Disabilities Act (IDEA) cannot be contradicted by the states, frequently there are guidelines that allow states to interpret how they will implement such laws.

Therefore, principals must always be aware of not only federal laws, but laws within their own state as well as their own district master contract, school board policies, and school district-level policies.

SECTION A. THE SCHOOL'S RELATIONSHIP TO THE LEGAL ENVIRONMENT

This section reviews several sources of law and their relationship to the structure and operation of schools and school districts. This review of the structure of law and operation of the state and federal courts provides the foundation for understanding the manner in which our legal system monitors the education enterprise.

Compulsory education laws in the United States have origins from the *parens patriae* doctrine, where the education of citizens is viewed as in the best interest of the public and democratic institutions. In part because of compulsory school laws, it also follows that if students are required to attend school, such school employees and school boards have great responsibility to follow all respective laws governing the education system and to fulfill their mission to educate and protect students. In other words, if students are required to be at school, those working in the school have requirements as well. Those requirements are accompanied by responsibility and accountability.

When school districts and schools did not provide a safe place—a place that not only observes the rights of individuals but also protects those rights—the courts will intervene. Our nation's court system provides the structure that determines the exact relationship between the individual and the law in question. In other words, if schools do not do it, the courts will.

Hierarchy of Laws That Influence Public Education

Public schools in the United States are guided by a hierarchy of laws that affect all educators (Schneider, 2014). Policy and practices are derived from these sources, with each source possessing some type of authority and precedent over lower authorities. This hierarchy includes

- The U.S. Constitution
- Federal statutes
- Federal regulations
- State constitutions
- State statutes
- State regulations
- Collective bargaining agreements
- School board policies
- District administrative policies and directives
- School-level rules
- Department-level rules
- Classroom-level rules

At each level, from the text of the U.S. Constitution or a law passed by Congress, down to a school-level parent/student handbook, different people with potentially conflicting interests frequently disagree with the interpretation of a law or policy.

In theory, a lower authority cannot conflict with a higher authority, and should a conflict exist, there are administrative and legal processes which settle the dispute. On a basic level, this means the classroom policies of a teacher cannot conflict with school policies, school board policies, or the collective bargaining agreement. On a grander scale, a classroom policy or practice cannot conflict with state or federal law or violate the constitutional rights of individuals.

Public education is a mirror of society at large, and disputes and disagreements about policy interpretation and implementation occur on a daily basis. The vast majority of such disputes are resolved without involvement of the judicial system, but avoidance of such involvement isn't always possible, no matter the level of care taken to prevent that from happening.

A point of emphasis is also on order as a reminder for principals and other educators. While the majority of potential legal disputes are settled outside of the judicial system, hundreds, if not thousands, of such disputes do end up involving the judicial system in some way. Not only does this fact have potential negative financial and time outcomes for everyone involved, there is always the possibility of reputational and career damage that could follow any litigation.

Additionally, while only a minuscule number of legal disputes result in precedential court decisions at any level, the potential for that to occur is always present. Your actions or inactions as a principal in response to some event that has occurred in your school could be a determining factor whether a lengthy and potentially highly publicized legal proceeding takes place. One purpose of this book is to provide educational advice to minimize that potential.

Our system of government provides a structure of laws that protects individual rights and guarantees freedom of religion, speech, press, assembly, and the right of each individual to call on the courts or government to correct injustices.

A law is a rule of civil conduct prescribed by local, state, or federal mandates commanding what is right and prohibiting what is wrong. Laws, then, are simply collections of those rules and principles of conduct that the federal, state, and local communities recognize and enforce.

There are separate legal systems for each of the fifty states, the District of Columbia, and the federal government. For the most part, each of these systems applies its own body of law.

All laws are based on the assumption that for each action, there is an expected consequence. Laws are society's attempts to ensure that there are consequences that ought to result if certain prohibited acts are committed. Our system of laws is based on the assumptions that all citizens should be judged by the same standards of behavior, and for every wrong, an inescapable penalty follows.

In our legal system, the principle of due process of law allows people who have been accused of breaking a law, been harmed by other individuals, or been accused of harming another person to bring their side of the issue before a court for a decision as to whether they must submit to the force of government or will be protected by it.

Our government is based on the consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority is to be controlled by public opinion, not public opinion by authority. This is the social contract theory of government; consequently, law is not a static set of printed documents but is, rather, a living and changing set of precepts that depend on the courts for interpretation.

Constitutional Law, Common Law, Statutory Law, and Administrative Law

Constitutional Law

Whether at the federal or state level, a constitution is the basic source of law for the jurisdiction. A constitution specifies the structure of the government and outlines the powers and duties of its principal officers and subdivisions. It also designates the allocation of power between levels of government—between the federal government and the states in the U.S. Constitution and between state and local government bodies in state constitutions. In addition, constitutions spell out the exact limitations of government power. In both the U.S. Constitution and state constitutions, these proscriptions are contained in a bill of rights.

Constitutions are broad philosophical statements of general beliefs. The U.S. Constitution is written in such broad and general language that it has been amended only twenty-six times in more than 200 years. State constitutions are more detailed and specific, with the result that most are frequently amended. Just as the U.S. Constitution is the supreme law in the United States, state constitutions are the supreme law within each state. State constitutions may not contain provisions, however, that conflict with the U.S. Constitution.

Because the U.S. Constitution contains no mention of education, Congress is not authorized to provide a system of education. The Tenth Amendment to the U.S. Constitution stipulates that “the powers not delegated to the United States by the

Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” The U.S. Supreme Court has repeatedly and consistently confirmed the authority of states to provide for the general welfare of their residents, including the establishment and control of their public schools. However, the U.S. Supreme Court has applied various provisions of the U.S. Constitution to jurisdictions to ensure compliance.

Common Law

Many legal experts believe statutes are not law until they are actually tested and adjudicated in a court of law. A court, when confronted with a problem that cannot be solved by reference to pertinent legislation (statutory law), decides that case according to common law. The English common law is defined as those principles, procedures, and rules of action enforced by courts that are based on history or custom, with modifications as required by circumstances and conditions over time. Common law is not automatic but must be applied by a court. Courts decide specific disputes by examining constitutional, statutory, or administrative law. The court determines the facts of the case and then examines prior judicial decisions to identify legal precedents (if any). The tradition of abiding by legal precedent is known as the principle of *stare decisis* (Latin: “Let the decision stand”).

Statutory and Administrative Laws

Statutory laws are laws passed by a legislative body. These laws may alter the common law by adding to, deleting from, or eliminating the law. The courts under our system of government are the final interpreters of legislative provisions. Administrative laws are regulations promulgated by administrative agencies. An administrative agency is a government authority, other than a court or legislative body, that affects the rights of private parties through adjudication or rule making. In many cases, the operations of schools are affected more by the administrative process than by the judicial process. It is not uncommon for a state to have several hundred agencies with powers of adjudication, rule making, or both.

How Laws Are Made and Enforced

It is the American ideal that the power to control the conduct of people by the use of public will is inherent in the people. By adopting a constitution, the people delegate certain power to the state. Constitutions divide this power and assign it to three branches of government. Although no one branch performs only one function, each has a generally defined area of influence. The responsibilities belong to three separate but equal branches of government. The legislative branch makes the laws. The judicial branch interprets the law. The executive branch enforces the law.

The Legislative Branch

The primary function of the legislative branch is making laws. It is limited in its function only by the state and federal constitutions. Each state legislature has the absolute power to make laws governing education. It is important to understand that this state-held power makes education a state function, makes school funds

state funds, and makes school buildings state property. Although it is an accepted principle of law that the state legislature cannot delegate its law-making powers, it can delegate to subordinate agencies the authority to make the rules and regulations necessary to implement those laws. One such subordinate agency is the state board of education. State boards of education are the policy-making and planning bodies for the public school systems in most states. They have specific responsibility for adopting policies, enacting regulations, and establishing general rules for carrying out the duties placed on them by state legislatures. Local school districts and local boards are created by the state legislature and have only those powers that are specifically delegated by the legislature or that can be reasonably implied.

The power of individual states to legislate their public education systems is an important concept to remember. Such state autonomy is what accounts for the differences in teacher licensure requirements, teacher contract laws, curriculum and graduation requirements, and all other aspects related to the function of public education.

The Executive Branch

Although each state has a unique government structure, the typical executive branch includes a governor, a lieutenant governor, a secretary of state, a treasurer, and an attorney general. The governor is the chief executive officer of the state and is responsible for the enforcement of the laws of the state. The attorney general is a member of the executive branch of government who often has significant impact on the operation of schools in the state. This person represents the state in all suits and pleas to which the state is a party, gives legal advice to the governor and other executive officers on request, and performs such other duties as required by law.

The Judicial Branch

Courts interpret law and settle disputes by applying the law. However, a court can decide a controversy only when it has authority to hear and adjudicate the case. The appropriate jurisdiction emanates directly from the law. Court names vary from state to state. For example, trial courts are called “supreme courts” in New York, “circuit courts” in Missouri, and “district courts” in Kansas. The principal function of the courts is to decide specific cases in light of the constitution and the laws.

In each state, two judicial systems operate simultaneously: the federal court system and the state courts. Courts in both systems are classified as having either original or appellate jurisdiction. Original jurisdiction refers to the right of a court to hear a case for the first time. A trial on the facts occurs in a court of original jurisdiction. Once the initial trial is over and a judgment rendered, the appellate process may begin. Appellate jurisdiction refers to the right of a court to hear cases on appeal from courts of original jurisdiction. In appellate courts, matters of fact are no longer in dispute; instead, questions of law or proceedings from the lower courts serve as the basis for review. The appellate process can proceed to the state’s highest court and, under certain circumstances, to the U.S. Supreme Court.

The federal court system of the United States includes district courts, special federal courts, courts of appeals, and the U.S. Supreme Court.

The Supreme Court of the United States The U.S. Supreme Court consists of the chief justice of the United States and eight associate justices. At its discretion, and within certain guidelines established by Congress, the Supreme Court hears only a limited number of the cases. Those cases usually begin in the federal or state courts, and they most likely involve questions about the Constitution or federal law.

U.S. Courts of Appeals The ninety-four U.S. judicial districts are organized into twelve regional circuits, each individually served by a U.S. court of appeals. A court of appeals hears appeals from the district courts located within its circuit, as well as appeals from decisions of federal administrative agencies. In addition, the Court of Appeals for the Federal Circuit has jurisdiction to hear appeals in specialized nationwide disputes, such as those involving patent laws and cases decided by the Court of International Trade and the Court of Federal Claims.

U.S. District Courts The U.S. district courts are the trial courts of the federal court system. Within limits set by Congress and the Constitution, district courts have jurisdiction to hear most categories of federal cases, including both civil and criminal matters.

As previously noted, there are ninety-four federal judicial districts, including at least one district in each state, the District of Columbia, and Puerto Rico. Three territories of the United States—the Virgin Islands, Guam, and the Northern Mariana Islands—have district courts that hear federal cases, including bankruptcy cases.

Each district court has a chief judge and other federal judges appointed by the president. These courts have original jurisdiction in cases between citizens of different states in which an amount of money over \$10,000 is in dispute and in cases involving litigation under federal statutes or the U.S. Constitution. The district courts have no appellate function. Appeals from the district courts are made to the courts of appeals in the respective circuits.

The first level of appeal in the federal court system is in the courts of appeals. These courts provide an intermediate level of appeal between the district courts and the Supreme Court. These courts have only appellate jurisdiction and review the record of the trial court for violations of legal proceedings or questions of law rather than questions of fact. The courts of appeals operate with several judges. There is no jury; a panel of three or more judges decides the cases before them. In some cases, the judges may sit *en banc* (together) to decide the case. As noted previously, there are twelve federal circuits in the United States, each with a court of appeals. A thirteenth federal circuit exists to hear appeals regarding certain types of cases (those regarding copyrights, customs, and other matters mostly pertaining to commerce).

The U.S. Supreme Court, alone among the federal courts, was created directly by the Constitution rather than by congressional legislation. This court consists of the chief justice and eight associate justices. Six justices constitute a quorum. The

Supreme Court meets for an annual term beginning the first Monday in October. It has limited original jurisdiction and exercises appellate jurisdiction to review cases by appeal of right and writ of certiorari (an appellate proceeding directing that the record from an inferior court be moved to a superior court for review) over federal district courts, federal courts of appeals, and the state supreme courts. The Supreme Court is the nation's highest court. It is often referred to as "the court of last resort" because there are no appeals to its decisions. A constitutional amendment ultimately could be used to reverse this court's decision; however, this has occurred in only four instances. Typically up to 8,000 cases are appealed to the Supreme Court each year, yet the Court accepts fewer than 100 cases and will deny certiorari in the others, refusing to review the decisions of the lower courts. The denial of certiorari has the effect of sustaining the decisions of the lower courts.

Court Functions

A court is an organizational structure that assembles at an appointed time and place to administer law judicially. The primary purpose of courts is to ensure that every person has a fair and unbiased trial before an impartial arbiter. It is assumed that there are always conflicting interests and that the courts must weigh one against the other. Often, the decision is not between good and bad but between the greater good and the lesser evil. The courts seek to determine legal liability. For a liability to exist, there must be a law and a set of facts that the law defines as illegal. Courts have three general functions: deciding controversies, interpreting enacted law, and performing judicial review.

- *Deciding controversies* consists of determining the facts of the dispute and the applicable law. One or more statutes or regulations may apply. If none do, the court must decide the controversy based on previous decisions of the appellate courts of the state in similar situations. If the case presents a new situation, the court's job is more difficult. When a court does not wait for legislative action and makes a decision, it has, in fact, made a new law. In this process, *stare decisis*, or the adherence to precedent, creates a new foundational common law.
- *Interpretation of enacted law* occurs when a statute does not provide a clear answer to the question before the court. Because it is not always possible to draft legislation that is unambiguous when applied to specific controversies, the court may be forced to strike down a statute that it feels is vague, ambiguous, or contradictory. The courts tend to use the following four approaches, or a combination of these approaches, in interpreting legislation and making their decisions:
 - *Literal*: The courts look to the ordinary interpretation of words to determine their meaning.
 - *Purposive*: The courts attempt to ascertain what the legislature intended the law to mean.
 - *Precedent based*: The courts look to past, similar cases and laws to find support for one interpretation of the law.
 - *Policy based*: The courts interpret the law in relationship to the courts' own views of what is best for society.
- *Judicial review* is a supreme court's power to declare that a statute is unconstitutional. However, this power is not without its limits. Judges at all

levels are expected to base their decisions on precedents under the legal doctrine of *stare decisis*. In other words, the court must look to other decisions in similar cases to find direction in dealing with new cases.

SECTION B. CONSTITUTION CLAUSES AND AMENDMENTS THAT AFFECT EDUCATION PRACTICE

Certain clauses and amendments to the U.S. Constitution repeatedly appear as the basis for court decisions regarding specific education issues. Any examination of school law needs to begin, at a minimum, with a solid grounding in these constitutional elements that form the legal environment in which schools operate. Although we can find issues that relate to the education enterprise throughout the U.S. Constitution, the following are the most commonly cited.

Article 1 Section 8

Under Article 1 Section 8 of the Constitution, Congress has the power to “lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare of the United States.” Congress has often used the general welfare clause as the rationale for the enactment of legislation that directly affects the operation of public schools. Article 1 Section 8 also includes the Commerce Clause, which forms the basis of many decisions affecting the states.

First Amendment

The First Amendment states,

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

This amendment affords pervasive personal freedom to the citizens of this country. It has been used as the basis for litigation involving the use of public funds to aid nonpublic school students, separation of church and state in curriculum matters, students’ and teachers’ freedom of speech, press censorship, and academic freedom issues. It is from this amendment come the concepts of the Free Exercise Clause and the Establishment Clause with respect to the separation of church and state. It is also where the foundation of “freedom of speech,” “freedom of the press,” and “freedom of assembly” originates.

Fourth Amendment

The Fourth Amendment protects the rights of citizens “to be secure in their persons, houses, papers and effects against unreasonable search or seizure.” This

amendment emerged in the late 1960s as the basis for litigation concerning the search of students' lockers and personal belongings. This Amendment has been interpreted differently for searches conducted by law enforcement and those conducted by school officials.

Fifth Amendment

The Fifth Amendment protects citizens from being compelled in any criminal case to be a witness against themselves. Although most due process litigation concerns the Fourteenth Amendment, several self-incrimination issues have been raised in cases concerning teachers being questioned by superiors regarding their activities outside the classroom. Due process for students and teachers originates from the Fifth Amendment.

Fourteenth Amendment

The Fourteenth Amendment provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” This amendment is frequently cited in education cases that deal with race, gender, or ethnic background issues.

Cases regarding individuals with disabilities, school finance, gender equity, and other civil rights issues also have been based on this amendment. As a corollary, this amendment guarantees the right of citizens to due process under the law and thus has been used to support school employees' claims of wrongful discharge and parents' claims of unfair treatment of their children by school officials. From the Fourteenth Amendment comes the concept of the Equal Protection Clause.

Other Provisions of the U.S. Constitution of Interest to Educators

Amendment VI

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence [*sic*].” This amendment forms a part of the basis for the due process required in cases of student discipline.

Amendment VIII

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

Corporal punishment in schools, while prohibited in many states, has been ruled as constitutional.

Amendment IX

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

Amendment X

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” This amendment forms the basis of what are known as “reserved powers” for the states, such as the responsibility of public education reserved for the states.

SECTION C. SELECTED FEDERAL STATUTES THAT AFFECT EDUCATION PRACTICE

State legislatures have plenary power to make laws that direct how education shall be provided within their states. However, Congress also enacts statutes that guarantee certain rights and protections to students, parents, and school personnel. This section highlights some of the federal legislation that dictates certain practices and protections in the education enterprise. Further details of specific statutes are also included in subsequent chapters.

The Federal Role in Education

The purpose of this text is not to serve as a history of public education; however, the history of federal legislation directly relates to education law. Although the Constitution reserves the power of the states to establish and implement public education and school districts are governed locally by school boards, the federal government has extensive influence and roles in public education in all states.

Such roles can be traced through a history of legislation, including the creation of the Office of Education in 1867, designed to assist states in establishing school systems. Legislation in the mid-1900s helped to ease burdens placed on communities affected by the presence of military bases. In 1944, the GI Bill provided education assistance to veterans returning from military service. In response to the Soviet Union launch of the Sputnik satellite, in 1958, Congress passed the National Defense Education Act with the goal to improve the teaching of science, mathematics, and foreign language.

Changes in societal attitudes brought a wave of sweeping legislation in the 1960s and 1970s that is still in place today. School reform efforts in the 1980s and 1990s have been extended or revised throughout the 2000s. What should be kept in mind is that federal statutes are merely the framework of the intent of the law; the regulations that result from those statutes by federal and state governments determine how those laws are implemented in schools. When keeping in mind the hierarchy of laws that influence education, it is often not only a misapplication or misinterpretation of a law that can end up in litigation, but the regulations and how they are implemented may be challenged as well.

The following includes some of the most significant federal legislation that impacts public schools. Some of the laws were specially written to address schools, while others are broader laws affecting the nation that schools must follow. The intent of many of these laws was to increase educational opportunity, removing barriers based on race, gender, disability, and age. Note also that the intent of some legislation is to improve teaching and learning, with others more directly related to improving the conditions for those who work in education.

The Civil Rights Act of 1871

The Civil Rights Act of 1871 is a law passed by Congress designed to provide protections for former slaves under the Fourteenth Amendment. The act was also known as the Third Enforcement Act or the Second Ku Klux Klan Act. What makes this act important today is that the law was made part of the U.S. Code as 42 U.S.C. § 1983 and more commonly referred to as “Section 1983” and used as a legal tool to seek relief by those who believe state actors have discriminated against them in violation of their constitutional rights.

Those who work in public education are considered state actors, and although the use of Section 1983 is also used in suits against law enforcement and municipalities, Section 1983 lawsuits are very prevalent in the field of public education. Section 1983 will be further discussed in Chapter 3.

The Civil Rights Act of 1964

Title IV of the Civil Rights Act of 1964 had a profound effect on schools. Although segregated schools were outlawed in *Brown v. Board of Education of Topeka* in 1954, the act required schools to take measures to end segregation. The act outlawed discrimination in public schools because of race, color, religion, sex, or national origin. This landmark law also formed the basis of the 2020 U.S. Supreme Court decision that prohibited discrimination of gay, lesbian, and transgender employees in *Bostock v. Clayton County, Georgia* 590 U.S. 207 (2020).

Elementary and Secondary Education Act of 1965

The Elementary and Secondary Education Act of 1965 (ESEA) P.L. 89-10, 79 Stat. 27 (1965) was signed into law by President Lyndon Johnson and was part of the overall sweeping legislation passed in the 1960s.

From its inception, the ESEA was designed as a civil rights law providing grants to school districts serving low-income students, and other funding to educational agencies in order to improve elementary and secondary education. The ESEA established a system of federal support for school districts based on the congressionally established proportion of school-age children of families living below the poverty line. Since first enacted, programs included under the umbrella of the ESEA multiplied, and as a result, Congress used its power under Article 1, Section 8, of the U.S. Constitution (i.e., the spending clause that requires recipients of federal funds to comply with certain obligations) to increase the scope and amount of state and local accountability for federal funds.

Title 1 funding for schools originated in the ESEA and is still the largest federally funded educational program. States determine eligibility for funding using varying measures, including student demographics of homelessness, limited English proficiency, and other at-risk categories.

Every Student Succeeds Act

The Every Student Succeeds Act (ESSA) 20 U.S.C. § 6301 (2015) was the eighth reauthorization of the ESEA of 1965. The ESSA is the primary federal law governing K-12 general public education. The ESSA replaced the controversial No Child Left Behind Act (NCLB), Pub. L. No. 107-110, H.R. No. 108-446, 118 Stat. 265, signed into law in 2002.

The NCLB Act extended federal expectations of schools by requiring each state to implement plans to raise student achievement in general, close achievement gaps, raise the standards of teacher quality, and set adequate yearly progress (AYP) targets that, if not met, would allow parents to transfer their students to other schools. With the passage of NCLB, the involvement of the federal government in local school improvement efforts reached a new level and altered accountability in schools by changing its focus from equal opportunity to learn to the expectation of equal outcomes, primarily as measured on standardized tests.

The ESSA was designed in part to remedy the difficulties school districts encountered to meet the prescriptive requirements of NCLB, which in many states were being administratively waived during the time NCLB was in effect. The ESSA provides more flexibility for states to set their own goals for student achievement. And whereas NCLB focused solely on test scores to measure and evaluate student success, the ESSA allows for additional factors to measure school quality, including academic factors such as graduation rates, or school quality factors such as kindergarten readiness and school climate and safety.

The ESSA also has its share of controversy, with the potential use of the Common Core State Standards. Although a majority of states use the Common Core Standards in some form, the standards became a political hot button issue that remains today.

With the change in presidential administrations in 2021, there will no doubt be changes in how President Biden's administration will revise the administrative regulations based on the ESSA.

Americans with Disabilities Act of 1990

The Americans with Disabilities Act (ADA), Pub. L. No. 101-336, 42 U.S.C. §§ 12101–12213 requires educational institutions to make every reasonable accommodation to ensure access to all facilities, programs, and activities by students and employees, without regard to disability. The ADA is a civil rights law intended to prohibit discrimination based solely on a disability in all areas of public life, including schooling. These requirements apply to private schools and institutions that do not receive federal aid as well as to schools and institutions that are recipients of federal funds. The purpose of

the ADA is to ensure that people with disabilities have the same rights and opportunities as those without disabilities.

Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA) was amended in 2004 as Pub. L. No. 108-446 and reauthorized as part of the ESSA in 2015. The original law was signed in 1975 as the Education for All Handicapped Children Act. The law guarantees that all children with disabilities receive a free, appropriate, public education consisting of special education and related services designed to meet their individual needs. The IDEA is an education act that provides assistance to state and local education agencies to guarantee special services to eligible students. In addition, IDEA ensures that the rights of children with disabilities and their parents or guardians are protected and directs states and localities to provide for the education of all children with disabilities. The IDEA and issues related to students with disabilities will be discussed in Chapter 8.

Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 (Rehab Act), 29 U.S.C. § 794 (§ 504) is of particular importance for students and educators. The act prohibits discrimination on the basis of disability in programs including those receiving federal assistance. An individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities. Students may qualify for accommodations and services under Section 504 who do not qualify for or receive services under the IDEA.

Section 504 of the Rehabilitation Act is a civil rights law that is enforced by the Office for Civil Rights (OCR) in the U.S. Department of Education. A significant difference between the IDEA and Section 504 is that IDEA provides protections and services up to age 21, while Section 504 covers an individual throughout the individual's life.

Equal Educational Opportunities Act

The Equal Educational Opportunities Act (EEOA) Section 1703, 20 U.S.C. § 1703, passed in 1974, was another in a series of civil rights legislation designed to prohibit discrimination against students and those who work in public education. The EEOA requires school districts to provide that no state shall deny equal educational opportunity to an individual on account of race, color, sex, or national origin by the deliberate segregation of students on the basis of race, color, or national origin within schools, or assignment of students to a school other than the one closest to their place of residence if the assignment results in a greater degree of segregation. Among the most important provisions of the law are the requirement to provide classes for those students who are not proficient in the English language and the requirement to communicate in a language understood by the parents. Bilingual education has been interpreted by Congress to be a requirement of school districts.

The Equal Access Act

The Equal Access Act, P.L. 98-377 § 802 (1984), forbids school districts that receive federal funding from denying students to conduct meetings based on “religious, political, philosophical, or other content of the speech at such meetings.” The act only applies to schools that allow students to form groups not specifically linked to the curriculum. The act also applies only to groups that meet during noninstructional times, and specifies that such meetings must be voluntary and initiated by students. School employees serving as advisors may attend but not participate in religious content. Such meetings cannot interfere with the educational purpose of the school, and public funding is limited to the cost of providing space for the meetings.

The McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act, P.L. 100-77, 101 Stat. 482 (1987) covers education and youth programs for homeless children. The act was reauthorized as part of the ESSA in 2015, and requires public school districts to identify and provide support and appropriate services to homeless children. School districts must ensure such students are provided services through outreach and coordination with appropriate entities and agencies.

Title IX of the Education Amendments of 1972 and the Title IX Regulations

Title IX of the Education Amendments of 1972, 34 C.F.R. § 106–1 *et seq.* is a federal civil rights law which prohibits discrimination on the basis of sex in all federally funded educational institutions and applies to all K-12 and post-secondary institutions that receive any kind of federal financial assistance. The protections of Title IX exist for all students in those educational institutions as well as all employees of the institutions. In 2020, new Title IX regulations were updated, and the new regulations explicitly state that all individuals, including those who identify as LGBTQ+, are protected. Title IX requirements will be outlined in Chapter 7.

Family Educational Rights and Privacy Act of 1974

The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232G (FERPA) is also referred to as the Buckley Amendment and requires educational agencies and institutions to provide parents of students attending a school of the agency or institution the right to inspect and review the education records of their children. Each educational agency or institution may establish its own procedures for granting parents’ requests for access to the education records of their children but must make the records available within a maximum of forty-five days after the parent’s request is made. Agencies and institutions that did not provide parental access to records will lose federal funding for their programs. The law further provides that educational agencies or institutions must provide the parents with an opportunity for a hearing to challenge

the content of a student's education records, and the law prohibits the release of education records (or personally identifiable information contained therein other than directory information) of students without the written consent of their parents. FERPA will be further discussed in Chapter 9.

Age Discrimination in Employment Act of 1967

The Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. § 621 (§ 623) prohibits employers from failing or refusing to hire, discharging, or otherwise discriminating against any individual with respect to compensation, terms, conditions, or privileges of employment because of the individual's age. The law covers all employees who are forty or older. Passed over fifty years ago, this law has been subject to different interpretations by the courts, including the U.S. Supreme Court. The topic of age discrimination and the ADEA is further discussed in Chapter 11.

The Family and Medical Leave Act of 1993

The Family and Medical Leave Act of 1993 (FMLA), Pub. L. No. 103-3, 29 CFR § 825 is designed to help employees balance their work and family life, with the underlying philosophy that promoting the economic security of families served the national interest including the overall economy. FMLA is administered by the U.S. Department of Labor through a complex set of regulations that integrate its provisions with those of the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336, 29 CFR Part 1630) and state workers' compensation laws. An additional description of FMLA is included in Chapter 11.

SECTION D. SUPREME COURT RULINGS THAT AFFECT EDUCATION PRACTICE

In the third edition of this text we stated: *Desegregation, school finance, student and teacher rights, special education, and the separation of church and state emerged as the notable issues defining elementary and secondary education for the current and previous centuries.* While still true, social and political changes as well as new legislation, regulations, and court decisions have altered the landscape and raised new issues, many of which are unresolved or ongoing.

This section has been revised from previous editions by moving narratives regarding key decisions into other chapters. What follows are selected U.S. Supreme Court decisions affecting major themes in education. Keeping in mind the hierarchy of laws that are interpreted and enforced by the judicial branch, recognize that although Supreme Court cases set the precedents for the entire nation, state courts will resolve the majority of disputes in their state related to education, with most federal issues determined within the U.S. federal circuits. This means that such decisions at the state and federal circuit level are no less important and take precedence unless overturned by higher courts or relevant laws are changed by legislatures.

Major Themes of Court Rulings

The major legislation prescribed in the previous section and the interpretation of the language of the Constitution become subject to significant legal challenges. Many of what are considered landmark U.S. Supreme Court (SCOTUS) decisions that are noteworthy for school principals can be grouped into a few categories, and several such decisions are discussed throughout the text. Longstanding societal issues not only directly affect the operation of public schools but also become reflected in what occurs on a daily basis within the schools.

Such issues start with “who goes to school” and “what schools can students attend” and these questions are reflected in school desegregation, school choice, and charter school cases. School finance cases attempt to answer questions of “who pays for schools” and “how do we pay for schools,” which are also based on fundamental questions based on the right to an education. School finance cases at times also combine with issues related to the separation of church and state—how school vouchers using public tax dollars are used in private religious schools or what special services are required to be provided by public school districts for students with special needs who choose to attend private schools.

Cases involving students with special needs are a major area of caselaw and strongly related to the “who goes to school” question as well as “what services must be provided and what do those services look like” for those students. Students with special needs are not the only students who face access and equality issues. Although the SCOTUS has not ruled on a transgender student case, it has as recently as December 2020 declined to hear an appeal of a case that was decided in favor of a transgender student. Other students with access needs include undocumented students, non-native English-speaking students, and those with economic or other challenges.

The COVID-19 pandemic has significantly added additional burdens to students regarding access issues as well as “what school looks like” for all students. Although SCOTUS has not ruled directly on an educational case due to COVID at the time of this publication, the probability that they may eventually have a related case they accept is not out of the question.

Additional categories related to student and teacher rights have significant impact on the daily operation of public schools. Students and teachers retain constitutional rights at school, with certain limitations. What has changed and continues to evolve are how social media and actions committed off school grounds are impacted by those rights. In the case of teachers and other employees, as public employees they retain certain rights that may not be afforded to those who work in the private sector; but at the same time, as public employees they also have different expectations placed on them.

Finally, please note that the cases are referenced here from a historical perspective, *not from a current legal perspective*. In fact, many of the cases listed have by 2022 been modified or even overruled by later decisions. However, think of the impact on education these cases had or continue to have in terms of the context of their time and how each may have impacted future decisions.

Plessy v. Ferguson, 163 U.S. 537 (1896). A law requiring the segregation of races in railway cars was upheld as constitutional. The Court held that the Thirteenth Amendment banned slavery but not other burdens based on race. They also held that although the Fourteenth Amendment required equality under the law, it did not ban segregation and commingling of races or abolishing social distinctions based on skin color.

Gong Lum v. Rice, 275 U.S. 78 (1927). The Court upheld a state law that classified a Chinese student as a Black student for the purposes of education; therefore, it was legal to deny admission to a school reserved for the white race.

Brown v. Board of Education, 347 U.S. 483 (1954). Students cannot be denied admission to public schools on the basis of race. The policy requiring separate schools violates the Fourteenth Amendment guarantee of equal protection under the law. Schools that are separated are inherently unequal.

Bolling v. Sharp, 347 U.S. 497 (1954). The Court ruled that the federal government could not deny admission to public schools on the basis of race. The Court stated that there was no essential government purpose served by separating races and that, because the Fourteenth Amendment applies to the states, it would be unthinkable that it would not also apply to the federal government.

Cooper v. Aaron, 358 U.S. 1 (1958). Citing intense public opposition to desegregating schools under *Brown* and with the support of the governor and legislature who wished to maintain law and order, Arkansas school board members filed suit to delay the implementation of a desegregation plan. The Court stated that officials were bound by the decision in *Brown*, and because the Supremacy Clause of Article VI made the Constitution the supreme law of the land, and *Marbury v. Madison* made the Supreme Court the final interpreter of the Constitution, the decision in *Brown* was the supreme law of the land. The decision in *Brown* was binding in all states, regardless of any state laws that attempted to contradict it.

Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964). Although the decision in *Brown* mandated school district desegregation with “all deliberate speed,” many school districts ignored the mandate. In this case, the school board refused to provide funding for public schools but allowed for tax credits for white students to attend private schools. This policy was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

Green v. County School Board of New Kent Cnty., 391 U.S. 430 (1968). In a town that was not geographically segregated, the school district still operated two schools: one for Black students and the other for white students. The district adopted a “freedom-of-choice” plan, yet no white students chose to attend the Black school, and only 15% of the minority group attended the white school. The Court ruled that states must discontinue plans that are shown to be ineffective and adopt plans that are effective. Green established what became known as the “Green factors” as criteria courts would use to evaluate the progress of desegregation efforts. Those factors were related to faculty, staff, transportation, extra-curricular activities, and facilities.

Swann v. Charlotte-Mecklenburg, 402 U.S. 1 (1971). A desegregation plan implemented in 1965 that did not achieve racial balance by 1969 prompted a federal court to impose a plan. The Court held that when school districts did not

provide remedies to segregation, federal courts have broad discretion to implement a plan.

Keyes v. Sch. Dist. No. 1 of Denver, 413 U.S. 189 (1973). The Court ruled that for actions taken by a school board that result in a significant portion of the district to be segregated, the entire district can be determined as segregated. The lower court may order an entire district desegregation plan when segregation in one part of the district results in segregation of another part of the district.

Milliken v. Bradley (Milliken I), 418 U.S. 717 (1974). This case came about after a desegregation plan was implemented. Although the city did not have a history of *de jure* segregation, discrimination of both public and private created residential segregation, and the school board plan to create attendance zones created a dual school system based on race. The Court held that absent showing that outlying school districts had policies that fostered discrimination in other school districts, a court-ordered desegregation plan cannot cross school district lines to implement their plan.

Milliken v. Bradley (Milliken II), 433 U.S. 267 (1977). After *Milliken I*, a court ordered a new city only plan that shared the cost of the plan between the school district and the state. The state challenged the authority of the court to impose a financial burden on the state. The Court held that a court can order remedial and supportive programs for children who have been subjected to past segregation, especially when local school boards propose such plans, and those plans can be ordered funded by the state.

Missouri v. Jenkins (Missouri I and II), 495 U.S. 33 (1990). The Court held that a federal court must allow the local school district the opportunity to devise its own remedy before it imposed a local tax to pay for the desegregation plan.

BOE of OKC v. Dowell, 498 U.S. 237 (1991). A federal court ordered the Board of Education of Oklahoma City to implement a school busing desegregation plan. Five years later, the court withdrew the enforcement of the plan, and seven years later the board lessened the amount of school busing. The original plaintiffs sought to reinstitute the original court order. The Supreme Court held that such court injunctions were always intended to be temporary and that a court could remove the injunction when it determined the school district was in compliance and “unlikely to return to its former ways.”

Freeman v. Pitts, 503 U.S. 467 (1992). When federal courts are supervising desegregation plans, the court has the authority to relinquish such supervision in incremental stages before the school district has reached compliance in every area of the operation of the district. The Court acknowledged the *Green* factors in the decision.

Missouri v. Jenkins, 515 U.S. 70 (1995). The Court held that a federal court order to approve salary increases to improve “desegregation attractiveness” to mitigate white flight exceeded their authority. The Court also noted that the order requiring funding by the state could not be sustained and the focus should be on the *Freeman* factors, outlined in *Freeman v. Pitts*.

Gratz v. Bollinger, 539 U.S. 244 (2003). The use of racial preferences in admission is impermissible if there is a less restrictive measure that could be used to achieve the compelling interest of a diverse student body.

Grutter v. Bollinger, 539 U.S. 306 (2003). The use of race in an applicant's file does not violate the Fourteenth Amendment if the process is "narrowly tailored" to achieve a compelling state interest. Diversity in the student body in public higher education settings can be a compelling interest.

Parents Involved in Community Schools v. Seattle School District No. 1, 127 S. Ct. 2738 (2007). Although diversity can be a compelling state interest in K-12 student assignment plans, two school districts' use of race in public school assignment violated the Equal Protection Clause because the policies were not narrowly tailored. The use of race had a minimal effect on student assignments and the districts did not consider other race-neutral methods instead.

Meredith v. Jefferson County, 551 U.S. 701 (2007). In a 5–4 decision, under a "strict scrutiny" framework, the Court held that a plan to achieve racial diversity in a school district violated the Equal Protection Clause of the Fourteenth Amendment. The plan allowed students to choose schools but not all schools could accept all applicants. Chief Justice John Roberts noted in the opinion, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."

Compulsory School Attendance

Meyer v. Nebraska, 262 U.S. 390 (1923). The Court held that a statute prohibiting teaching in a language other than English was not constitutional. The state has the power to prescribe a curriculum, but this law was arbitrary and "without reasonable relation to any end within the competency of the state."

Pierce v. Society of Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510 (1925). Parents cannot be required to have students attend public schools rather than private schools, and such a statute unreasonably interferes with the liberty of parents to direct the upbringing and education of their children.

Plyler v. Doe, 457 U.S. 202 (1982). A Texas law was passed to deny funding for the education of students who were "illegal aliens." School districts were also authorized to deny enrollment to such children. The Court held that denying funding and admission to children deprived them of their rights under the Fourteenth Amendment. The Court reasoned that although the children were not citizens, they nevertheless were people who should be afforded protections.

Bilingual Education

Lau v. Nichols, 414 U.S. 563 (1974). The Court held that any school district receiving federal funds must provide special instruction for non-English-speaking students when the language barrier hampers the education of students. Title VI requires that students are provided a meaningful opportunity to participate in public education.

Students With Disabilities

BOE v. Rowley, 458 U.S. 176 (1982). This case concerned what is considered "appropriate" in FAPE. The Court concluded that the purpose of the Education for All Handicapped Children Act (now IDEA) was to open the door for students rather than provide a floor for qualifying students. The Court held that an individualized education plan (IEP) should be reasonably calculated for the student

to achieve passing grades and advance from grade to grade. An “appropriate” education was to provide instruction and support services sufficient enough to permit the child to benefit educationally from the instruction.

Irving ISD v. Tatro, 468 U.S. 883 (1984). The Court held that a student who required clean intermittent catheterization (CIC) during the school day was entitled to have the service provided by the school district. The CIC qualifies as a “related service” required under IDEA. Without such service the child would not be able to attend school and receive FAPE.

Burlington School Community v. Department of Education, 471 U.S. 359 (1985). Parents who enrolled their child in a private school during legal proceedings regarding the child’s IEP and services are entitled to reimbursement of tuition if it is determined that the placement of the child is appropriate and the placement by the district was inappropriate. The school asserted that the “stay put” provision called for the child to remain in place during the proceedings but the Court held that cutting off the reimbursement would defeat the principal purpose of the Education for All Handicapped Children Act.

Honig v. Doe, 484 U.S. 305 (1988). School authorities may not exclude disabled students for longer than ten school days without following the due process procedures under the Education for All Handicapped Children Act (now IDEA). The language of the “stay put” provisions are unequivocal. The Court also determined that the act allows for procedures and remedies regarding “dangerous” disabled students.

Cedar Rapids Com. Sch. Dist. v. Garrett F., 526 U.S. 66 (1999). The Court held that school districts that receive funding under IDEA must fund one-to-one nursing assistance for qualifying students if the services are “related services” necessary to enable the child to access educational services. Nursing is considered a “related service” while “medical services” are those that require a physician.

Winkelman v. Parma City, 550 U.S. 516 (2007). In an IDEA case, after exhausting administrative remedies, parents sought action in federal court acting as their own counsel. IDEA provides rights to not only children with disabilities but also to parents. The Court ruled that parents are entitled to proceed *pro se* in federal court to enforce at least the rights they hold as parents under IDEA.

Forrest Grove v. T.A., 129 S. Ct. 2484 (2009). The Court held that the lack of previous enrollment in a special education program does not bar tuition reimbursement under IDEA. A court or hearing officer may require reimbursement of tuition to parents for private school enrollment if it is found that previously the student was not provided FAPE or had previously received special education and related services.

Fry v. Napoleon Cmty. Schools, 137 S. Ct. 743 (2017). The Court ruled that the IDEA’s requirement that plaintiffs exhaust administrative remedies before suing under the ADA and the Rehabilitation Act is not required if the plaintiff’s claims are not based in the denial of FAPE. If a lawsuit is not seeking relief for denial of FAPE, then it is not seeking an available remedy under the IDEA, and the exhaustion requirement does not apply. The case involved a student who was not allowed to bring her service dog to school, and they sued for damages under the ADA. Lower courts held that the IDEA did not provide for relief they sought, and that the parents had not exhausted remedies under the IDEA.

Endrew F. v. Douglas County School District, 580 U.S. ____ (2017); 137 S. Ct. 988 (2017). The Court ruled that in order to provide children an appropriate public education guaranteed under IDEA, school districts must provide an IEP that is reasonably calculated to enable each child to make progress appropriate to the child's circumstances. This requirement is substantially more than a "de minimus" benefit.

Gender Equality

Gloucester County School Board v. G.G. (no citation). This case centered around the issue of transgender student rights. The Supreme Court remanded the case to the Fourth Circuit due to a change in guidance from the Department of Education in 2017. In 2021, the Supreme Court declined to hear the appeal of the state, signifying the end of the litigation in favor of the student.

SCHOOL FINANCE

Educational Finance of Public Schools

San Antonio v. Rodriguez, 411 U.S. 1 (1973). The Court ruled that a state funding system based on local property taxes that provided a minimum educational service to all students was constitutional. Despite the large disparities in per-pupil funding between districts, the Court held that there was no violation of the Fourteenth Amendment because all students of all incomes and races suffer alike. The case is significant because the Court ruled that the Constitution does not protect education as a right, and a minimum education guaranteed to every student was sufficient. The Court left it to the states to determine more strict standards.

Mueller v. Allen, 463 U.S. 388 (1983). A state statute allowing income tax deductions for expenses related to tuition, textbooks, and transportation to attend elementary or secondary schools does not violate the Establishment Clause.

Aguilar v. Felton, 473 U.S. 402 (1985). Using Title I funds to pay the salaries of teachers working in public and parochial schools was ruled unconstitutional. Public school employees worked in parochial schools to provide remedial instruction and other services in a clearly sectarian environment.

Edwards v. Aguillard, 482 U.S. 578 (1987). The Court held that it was a violation of the Establishment Clause to prohibit the teaching of the theory of evolution in public schools unless accompanied by instruction of creation-science.

Agostini v. Felton, 521 U.S. 203 (1997). A publicly funded program that provided supplemental instruction and materials on the premises of a parochial school with proper safeguards for neutrality is constitutional. The ruling reversed the decision in *Aguilar v. Felton*.

Mitchell v. Helms, 530 U.S. 793 (2000). The loaning of public school educational materials and equipment to parochial schools as part of a neutral program for all K-12 schools was not in violation of the Establishment Clause. The decision reopened the debate surrounding vouchers. The ruling of the Court that some federal aid for private and parochial is permissible opened the question of how broadly the decision can be applied.

Zelman v. Simmons-Harris, 536 U.S. 639 (2002). A school voucher program that allowed parents a choice between private, religious, and public schools was

constitutional because the primary effect of the program was secular and was neutral with respect to religion.

STUDENT RIGHTS

Student Speech Rights

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943). A statute requiring students to salute the flag of the United States was ruled unconstitutional. The case was decided on free speech even though the refusal to salute the flag by the plaintiffs was for religious reasons. The case reversed *Minersville School District v. Gobitis*, 310 U.S. 586 (1940) from just three years earlier.

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). This is a landmark freedom of speech case that famously states students do not “shed their constitutional rights at the schoolhouse gate.” Schools may not restrict student private speech absent imminent or material substantial disruption or infringes on the rights of others.

Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986). The case modified *Tinker* stating that schools can regulate speech that is “lewd or vulgar” and the Constitution does not prevent school officials from determining if the speech would “undermine the school’s basic educational mission.”

Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988). The case modified *Tinker* again by ruling that school officials do not violate constitutional rights of students when they regulate the style and content of school-sponsored student publications or other speech that is reasonably related to pedagogical concerns or connected in some way to the school.

Morse v. Frederick, 127 S. Ct. 2618 (2007). An additional modification of *Tinker* was created when the Court held that schools’ educational need to prevent illegal drug usage permits them to restrict student speech at school that might be protected outside of the school setting.

Mahanoy Area School District v. B.L., (594 U.S. ____ 2021). The Supreme Court held that students retain First Amendment protections for speech that is initiated off-campus, although the school retains an interest in regulating such speech that may be bullying or threatening to staff or students. The case centered around an angry and profane rant posted on the social media platform Snapchat by a student who was upset after not making the varsity cheerleading team.

Student Due Process

Goss v. Lopez, 419 U.S. 565 (1975). This is the landmark case relating to due process rights for students. The right to attend school is protected by the Due Process Clause, and exclusion from school requires some kind of notice and an opportunity to refute the allegations. This decision provides guidance surrounding short-term suspensions of fewer than ten days as well as longer suspensions and expulsions.

Wood v. Strickland, 420 U.S. 308 (1975). A school board member or other education employee is immune from liability for damages under Section 1983

unless they knew or reasonably should have known the action would violate the constitutional rights of the affected student.

Ingraham v. Wright, 430 U.S. 651 (1977). The Cruel and Unusual Punishment Clause of the Eighth Amendment does not apply to disciplinary corporal punishment in public schools. Students do have a liberty interest for the purpose of due process when they are subjected to corporal punishment.

J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011). The age of a child can be a relevant factor when determining whether a juvenile suspect merits a *Miranda* warning. The age of a child will not be a significant or determinative factor in every case, but the reality of the age of the suspect can't be ignored.

Student Search and Seizure

New Jersey v. T.L.O., 469 U.S. 325 (1985). The Fourth Amendment applies to searches of students but school officials need to only meet a “reasonable suspicion” standard rather than the higher “probable cause” standard required of police. A search of a student is legal if it is (1) reasonable at its inception and (2) permissible in scope.

Vernonia School District 47J v. Acton, 515 U.S. 646 (1995). The Court held that drug testing by random urinalysis of student athletes does not violate the Fourth Amendment.

United States v. Lopez, 514 U.S. 549 (1995). A high school student was caught carrying a concealed weapon into his school and was charged with violating the Gun Free Zones Act of 1990. The Court invalidated the act, ruling that it exceeded the authority of Congress.

Board of Education of Independent School District No. 92 v. Earls, 536 U.S. 822 (2002). A district policy requiring the drug testing of all students who participate in competitive extracurricular activities does not violate the Fourth Amendment.

Safford Unified School District No. 1 v. Redding, 129 S. Ct. 2633 (2009). Public school officials' strip search of a student violates the Fourth Amendment where they do not have reasonable suspicion that items being sought posed a danger to the student or others. The content of the reasonable suspicion needs to match the degree of intrusion, and to make the “quantum leap” requires the support of danger.

Riley v. California, 573 U.S. 373 (2014). Although not a school case, because of the force of the rare 9–0 decision, it may be instructive for school officials. The Court ruled that, in general, absent a warrant, law enforcement cannot search the digital contents of a cell phone confiscated upon arrest. The Court noted that modern cell phones are not just for technology convenience but hold the “privacies of life” and the fact that technology allows a person to carry such information in their hand does not make the information less worthy of Fourth Amendment protections.

Title IX

Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992). The Court held a private damages remedy under Title IX permissible. The case stemmed from the sexual harassment and abuse by a male teacher toward a female student.

Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998). Damages for teacher-on-student sexual harassment under Title IX are available only when a school official had actual notice of the harassment or was deliberately indifferent to the conduct. The notice must be to a school official who has the authority to take corrective action.

Davis v. Monroe County Board of Education, 526 U.S. 629 (1999). A school district may be liable for damages under Title IX for student-to-student sexual harassment only where the district is deliberately indifferent and has actual knowledge of harassment that is so severe, pervasive, and objectively offensive that it deprives the victim of educational benefits or opportunities provided by the school.

Jackson v. Birmingham Board of Education, 544 U.S. 167 (2005). The Court ruled that retaliating against a person who complained about gender discrimination against others creates a private right of action and is intentional discrimination on the basis of sex under Title IX.

TEACHER RIGHTS

Teacher Speech and Other Rights

Pickering v. Board of Education, 391 U.S. 563 (1968). A teacher's First Amendment right to speak out is balanced against the school's interest for efficient operation of the school. If the comments by the teacher in the public interest do not impair the daily operation of the school, the teacher should enjoy the same protection as any other member of the public. The case stemmed from a letter to the editor of a newspaper written by the teacher that was critical of the school board.

Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972). In the area of procedural due process, the Court determined that a school system is not required to establish cause for the nonrenewal of a probationary teacher's contract.

Perry v. Sinderman, 408 U.S. 593 (1972). A governmental benefit may not be denied because of the exercise of protected rights. Public criticism of supervisors on a matter of public concern is protected speech and cannot be the basis for termination regardless of tenure status.

Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974). Public school teachers challenged the constitutionality of mandatory maternity leave that required them to leave work before they desired. The Court held that mandatory maternity leave that has an absolute, early exit date and an absolute belated return date is unconstitutional because it violates the Fourteenth Amendment. The Court held that freedom of personal choice in matters of family is a liberty protected by the amendment.

Mt. Healthy City School District v. Doyle, 429 U.S. 274 (1977). The Court determined that even if a teacher's expression is constitutionally protected, school officials are not precluded from disciplining or discharging the employee if sufficient cause exists independent of the protected speech. This decision modified the finding in *Pickering*.

Givhan v. Western Line Consolidated School District, 439 U.S. 410 (1979). Two years after *Mt. Healthy*, the Court concluded that as long as a teacher's expression pertains to matters of public concern, in contrast to personal grievances, statements made in private or through a public medium are constitutionally protected.

North Haven Board of Education v. Bell, 456 U.S. 512 (1982). The Court held that employment was within the scope of intent of Title IX, concluding that Title IX prevented discriminatory employment practices.

Connick v. Myers, 461 U.S. 183 (1983). The Court held that when a public employee speaks as an employee on matters of only personal interest and not as a citizen of matters of public concern, there is no First Amendment protection. If the employee does speak as a matter of public concern, the government interest in efficiency can still outweigh the challenge. The content, form, and manner of speech help determine if such speech is a matter of public concern.

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). The Court held that public employees dismissed only for cause are entitled to oral and written notice of the charges against them, an explanation of the evidence, and an opportunity to present their side of the story prior to termination.

Ansonia v. Philbrook, 479 U.S. 60 (1986). A teacher required six days of leave per year to observe religious holidays but the collective bargaining agreement permitted only three days per year for religious holidays but not sick or personal leave. The Court held that Title VII must provide religious accommodations that do not provide undue hardship to the school district. If there is more than one reasonable accommodation possible, the district does not have to provide the preferred alternative of the employee. The alternative of unpaid leave is a permissible option as long as other leave is available without discrimination based on religion.

Garcetti v. Ceballos, 547 U.S. 410 (2006). In a case with significant implications for educators, the Court held that when public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, meaning in such circumstances the Constitution does not prevent discipline by their employer. The employer can restrict speech if such speech has some potential to affect the employer's operations. The decision was concerning for educators regarding academic freedom because teachers are nearly always speaking and writing pursuant to their official duties. The concern still exists in spite of the fact that the majority opinion noted, "We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching."

Janus v. American Fed. of St, Cnty, and Muni. Employees Council 31, 138 S. Ct. 2448 (2018). The Court overturned a 1997 decision in *Abood v. Detroit Board of Education* that allowed a public employer whose employees were represented by a union but did not join the union to nevertheless be required to pay union fees because they benefited from the collective bargaining agreement. This decision held that withholding such fees from nonconsenting employees was a violation of their First Amendment protections.

Bostock v. Clayton County, 590 U.S. ____ (2020). In a landmark decision that did not involve education but is far reaching, the Court held in favor of a gay man who was terminated from his public employment after he participated in a gay recreational softball league. Although he had received positive evaluations over a period of ten years, he was fired for “conduct unbecoming of its employees.” The Court ruled that an employer violates Title VII of the Civil Rights Act of 1964 when they fire an employee for merely being gay or transgender. The Court reasoned that the act prohibited discrimination because of an individual’s “race, color, religion, sex, or national origin.” Critics of the decision argued that when the law was written in 1964, the definition of “sex” would not have applied to gay or transgender people, but the majority held that discrimination on the basis of their sexual identity requires an employer to intentionally treat employees differently because of their sex, which is the very practice Title VII prohibits.

CHURCH AND STATE

Establishment Clause and Free Exercise Clause

Engel v. Vitale, 370 U.S. 421 (1962). A local school district under order of state law violated the First Amendment prohibiting the establishment of religion when they required a daily recitation of a nondenominational prayer in the presence of their teacher at the beginning of each school day.

Abington v. Schempp, 374 U.S. 203 (1963). The Court struck down a law that promoted the reading of Bible verses and the recitation of prayer on school grounds under the supervision of school employees during school hours, even if such practice was voluntary.

Epperson v. Arkansas, 393 U.S. 97 (1968). A state law prohibiting the teaching of the theory of evolution was found unconstitutional because the purpose of the law was not to prevent the teaching of evolution in the curriculum but instead to proscribe a discussion of a subject that was found objectionable by a religious group.

Lemon v. Kurtzman, 403 U.S. 602 (1971). Laws providing public funding for salaries of teachers in nonpublic schools even when the teachers only taught secular subjects violate the Establishment Clause. Additionally, a law providing reimbursement to nonpublic schools for expenses incurred when teaching secular subjects was also in violation. The Court created what became known as the *Lemon test*, which was a three-part test. A statute or policy (1) must have a secular purpose; (2) must have a principal effect that neither advances nor inhibits religion; and (3) must not foster an “excessive government entanglement with religion.”

Wisconsin v. Yoder, 406 U.S. 205 (1972). A law requiring compulsory attendance infringed on the free exercise of religion for an Amish community who refused to send their children to any school past the eighth grade because they believed such schooling impeded preparation for adult life and for the religious practice within their community. The basis of the ruling was that the law violated the Free Exercise Clause.

Widmar v. Vincent, 454 U.S. 263 (1981). Colleges that maintain “limited open forums” for student groups cannot violate the speech rights of a religious club by

refusing to allow them to meet. An equal access policy would not have a “primary effect” that violates the Establishment Clause.

Sch. Dist. of the City of Grand Rapids et al. v. Ball, 473 U.S. 373 (1985). Programs for students enrolled in primarily parochial private schools funded by public finances in classes taught by public school teachers were ruled as unconstitutional.

Wallace v. Jaffree, 472 U.S. 38 (1985). A statute allowing a moment of meditation or voluntary prayer that does not have a clearly secular purpose violates the Establishment Clause.

Board of Education of Westside Community Schools v. Mergens, 496 U.S. 226 (1990). The Court held that the Equal Access Act does not violate the Free Speech Clause of the First Amendment’s proscription against the establishment of religion. A “non-curriculum related student group” means one that is not directly related to the curriculum. Several student clubs and groups met after hours and the school denied the request of a Christian club solely on the basis of religion.

Lee v. Wiseman, 505 U.S. 577 (1992). Invocations and benedictions led by clergy at public graduation ceremonies violate the Establishment Clause of the First Amendment. Prayer exercise in public school carry the risk of coercion, and graduation ceremonies can be coercive even though attendance is technically voluntary.

Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000). The Court held that a policy permitting student-led and student-initiated prayer before football games was a violation of the Establishment Clause. The decision was made against the district even though they had not yet implemented the policy.

Elk Grove Unified School District v. Newdow, 542 U.S. 1 (2004). A case that centered on parental rights and standing to challenge in federal court involved a noncustodial parent who objected to his child having to recite the Pledge of Allegiance and including the words “under God.” The Court ruled that the parent had no standing to make a federal claim because the state law did not give him the right to sue on the child’s behalf.

Trinity Lutheran Church v. Comer, 137 S. Ct. 2012 (2017). The Court held that a state policy denying religious organizations from using a playground scrap tire material violated the Free Exercise Clause because the decision was based solely on religious character. The law did not need to impede the practice of religion but it was sufficient that the law denied the religious organization from the same benefit otherwise available to all secular organizations. It was also noted that other government benefits such as fire and police services are not prohibited, and a safety benefit of children should be similarly treated.

Espinoza v. Montana, 591 U.S. ____ (2020). In a 5–4 decision that included several written opinions (concurring and dissenting), the Court held that a state cannot exclude religious schools from receiving tax credit-funded scholarships. The state discriminated against parents who wished to send their children to religious schools and did not meet the narrowly tailored standard that the policy achieved a government interest “of the highest order.” The decision has been

interpreted to set a precedent that state voucher and other school choice programs cannot exclude religious schools and institutions.

School Program

Board of Education, Island Trees Union School District No. 26 v. Pico, 457 U.S. 853 (1982). Local school boards may not remove books and materials from libraries merely because they do not like the ideas presented. The board objected to materials and ignored their own review board recommendation and removed the books.

Owasso Independent School District No. 1-011 v. Falvo, 534 U.S. 426 (2002). FERPA does not cover grades on students' papers before the teacher records the grades as an education record. The case centered around students grading the work of other students. The Court held that FERPA requirements relate to "maintained" records, and students do not maintain records when they score papers of other students.

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