

# Contents

Disclaimer.....	2
About the Author .....	3
Dedication.....	4
Using this Book and CD.....	5
Table of Cases.....	9
<b>Basic Legal Principles .....</b>	<b>15</b>
Sources of Law .....	15
The Courts .....	16
State Courts .....	16
Federal Courts .....	17
Resources.....	17
Internet Resources .....	17
Textbooks .....	18
Other References .....	19
<b>The Governance of Education.....</b>	<b>19</b>
Education.....	19
Public Schools .....	20
Private Schools .....	20
Homeschooling.....	21
Charter Schools .....	22
<b>Religion .....</b>	<b>22</b>
Prayer/Religious Activities in Schools .....	23
Facilities Use .....	24
Services to Students.....	27
<b>Students .....</b>	<b>28</b>
First Amendment .....	28
Speech .....	28
Dress.....	30
Confederate Flag .....	31
Expression .....	32
Internet.....	32
Press.....	33
Association .....	34

Fourth Amendment (Search and Seizure).....	34
Eighth Amendment (Corporal Punishment) .....	36
Fourteenth Amendment .....	36
Due Process .....	36
Equal Protection .....	37
Curriculum Issues .....	38
High Stakes Testing.....	38
Evolution/Creationism.....	38
Textbooks/Library “Books” .....	39
Objections to Particular Curriculum Content.....	40
Miscellaneous .....	41
Immunization.....	41

## Teachers..... 41

First Amendment .....	42
Speech .....	42
Expression .....	43
Association .....	43
Fourteenth Amendment .....	43
Equal Protection, Due Process, and Tenure.....	44
Denial of Employment and Promotion.....	46
Demotion.....	46

## Desegregation ..... 48

Fourteenth Amendment .....	48
Federal Statutes .....	48

## IDEA ..... 50

IDEA Regulations.....	50
Significant Changes .....	51
Case Law .....	52

## School Finance ..... 53

Funding Public Education .....	53
Alternative Educational Funding Schemes.....	54

## Educator Liability ..... 55

Torts .....	55
-------------	----

Negligence.....	57
Defamation.....	57
School Records and Privacy.....	58
<b>Conclusion .....</b>	<b>59</b>
<b>Case Briefs .....</b>	<b>60</b>

## Table of Cases

### A

Abbott v. Burke / 60  
Adam J. v. Keller Indep. Sch. Dist. / 61  
Adler v. Duvall County / 62  
Agostini v. Felton / 64  
Aguilar v. Felton / 65  
Aliffi v. Liberty County Sch. Dist. / 65  
Allen v. Casper / 67

### B

Barcheski v. Bd. of Educ. of Grand Rapids Pub. Schs. / 68  
Barrow v. Greenville Indep. Sch. Dist. / 69  
Beischel v. Stone Bank Sch. Dist. / 70  
Bell v. Hood / 71  
Bernstein v. Lopez / 72  
Bethel Sch. Dist. No. 403 v. Fraser / 73  
Beussink v. Woodland R-IV Sch. Dist. / 74  
Blackmon v. Springfield R-XII Sch. Dist. / 76  
Board. of Educ. v. Allen / 78  
Board of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie  
County v. Earls / 78  
Board of Educ., Island Tree Sch. Dist. No. 26 v. Pico / 80  
Board of Regents of State Colls. v. Roth / 81  
Bolling v. Sharp / 82  
Boroff v. Van Wert City Bd. of Educ. / 83  
Boston's Children First v. City of Boston / 84  
Boucher v. Sch. Bd. of the Dist. of Greenfield / 86  
Bown v. Gwinnett County Sch. Dist. / 87  
Brown v. Bd. of Educ. of Topeka / 88  
Brown v. Hot, Sexy and Safer Prod., Inc. / 90  
Bush v. Holmes / 92

### C

Canady v. Bossier Parish Sch. Bd. / 93  
Cannon v. University of Chicago / 94  
Carey v. Piphus / 95  
Castorina v. Madison County Sch. Bd. / 96  
Cedar Rapids Cmty. Sch. Dist. v. Garret F. / 97  
Ceniceros v. Bd. of Trs. of San Diego Unified Sch. Dist. / 98  
Chandler v. McMinnville Sch. Dist. / 100  
Chandler v. Siegelman / 101

CJN v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1 / 103  
Cleveland Bd. of Educ. v. LaFleur / 104  
Cole v. Oroville Union High Sch. / 106  
Columbus Bd. of Educ. v. Penick / 107  
Connick v. Myers / 108  
Coolidge v. Riverdale Local Dist. / 109  
Coy v. Bd. of Educ. of N. Canton City Schls. / 110  
Cumming v. Bd. of Educ. of Richmond County / 112

## D

Davis v. DeKalb County Sch. Dist. / 112  
Davis v. Monroe County Bd. of Educ. / 113  
Debra P. v. Turlington / 115  
Denno v. Sch. Bd. of Volusia County / 117  
DeRolph v. State of Ohio / 118  
Deselle v. Guillory / 120  
D. F. v. Codell / 121  
Dilotoero v. Downey Unified Sch. Dist. / 122

## E

East Hartford Educ. Ass'n. v. Bd. of Educ. of Town of  
    E. Hartford / 123  
Eckmann v. Bd. of Educ. of Hawthorne Sch. Dist. No. 17 / 124  
Edwards v. Aguillard / 125  
Ellerbee v. Mills / 126  
Emmett v. Kent Sch. Dist. No. 415 / 127  
Engel v. Vitale / 128  
Epperson v. Ark. / 129  
Erb v. Iowa State Bd. of Pub. Instruction / 130  
Everson v. Bd. of Educ. of Ewing Township / 131

## F

Fabela v. Socorro Indep. Sch. Dist. / 132  
Falvo v. Owasso Indep. Sch. Dist. No. I-011 / 133  
Fay v. S. Colonie Cent. Sch. Dist. / 134  
Fleischfresser v. Dirs. of Sch. Dist. 200 / 135  
Flores v. Morgan Hill Unified Sch. Dist. / 136  
Floyd v. Waiters / 138  
Fowler v. Bd. of Educ. of Lincoln County, Ky. / 139  
Franklin v. Gwinnett County Pub. Schs. / 140  
Freeman v. Pitts / 142  
Friedman v. Clarkstown Cent. Sch. Dist. / 143

## G

Gaylord v. Tacoma Sch. Dist. No. 10 / 144  
Gebser v. Lago Vista Indep. Sch. Dist. / 145  
Geller v. Markham / 146  
Gernetzke v. Kenosha Unified Sch. Dist. No. 1 / 147  
GI Forum v. Tex. Educ. Agency / 149  
Gillett v. Unified Sch. Dist. No. 276 Jewell County / 151  
Givhan v. W. Line Consol. Sch. Dist. / 152  
Gong Lum v. Rice / 153  
Good News Club v. Milford Cent. Sch. / 153  
Goss v. Lopez / 155  
Grand Rapids School Dist. v. Ball / 157  
Gratz v. Bollinger / 157  
Green v. County Sch. Bd. of New Kent County / 159  
Griffin v. Wisconsin / 160  
Grube v. Bethlehem Area Sch. Dist. / 161  
Grutter v. Bollinger / 162

## H

Hartzell v. Connell / 163  
Hawkins v. Sarasota County / 164  
Hazelwood Sch. Dist. v. Kuhlmeier / 166  
Hearn v. Bd. of Pub. Instruction / 167  
Hendrick Hudson Dist. Bd. of Educ. v. Rowley / 169  
Hills v. Scottsdale Unified Sch. Dist. / 170  
Hines v. Caston Sch. Corp. / 171  
Hope v. Pelzer / 172

## I

Immediato v. Rye Neck Sch. Dist. / 173  
Ingraham v. Wright / 174  
*In re* Randy G. / 176  
Irving Indep. Sch. Dist. v. Tatro / 177

## J

Jackson v. Benson / 178  
Jacobson v. Commonwealth of Mass. / 179  
Jantz v. Muci / 180  
Joines v. State / 181  
J. S. v. Bethlehem Area Sch. Dist. / 182

## K

Kampmeier v. Nyquist / 184  
Kelly v. Indep. Sch. Dist. No. 12 of Okla. County / 184  
Kelley v. Johnson / 185  
Keyes v. Sch. Dist. No. 1, Denver, Colo. / 186  
Killion v. Franklin Reg'l Sch. Dist. / 187

## L

Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist. / 189  
Lassonde v. Pleasanton Unified Sch. Dist. / 190  
Leebaert v. Harrington / 191  
LaPage v. State Dep't of Health / 193  
Lee v. Weisman / 194  
Lemon v. Kurtzman / 196

## M

Marshall v. Kirkland / 197  
Marwood v. Elizabeth Forward Sch. Dist. / 199  
McDaniel v. Thomas / 199  
McLaurin v. Oklahoma State Regents / 201  
Meek v. Pittenger / 201  
Melton v. Young / 203  
Meyer v. Nebraska / 203  
Milliken v. Bradley / 204  
Mills v. Bd. of Educ. / 205  
Minersville School Dist. v. Gobitis / 206  
Missouri v. Jenkins / 207  
Mitchell v. Helms / 208  
Monell v. New York City Dep't of Social Servs. / 209  
Mount Healthy City Sch. Dist. v. Doyle / 210  
Mozert v. Hawkins County Bd. of Educ. / 211  
Mueller v. Allen / 213  
Muller v. Jefferson Lighthouse Sch. / 214  
Murray v. Curlett / 249

## N

Nabozny v. Podlesny / 216  
Neosho R-V Sch. Dist. v. Clark / 218  
New Jersey v. TLO / 220  
New York Times v. Sullivan / 221

## P

Palmer v. Merluzzi / 222  
Parents Involved in Cmty. Sch. v. Seattle Sch. Dist., No. 1 / 223  
Pennsylvania Assn. for retarded Children (PARC) v.  
Commonwealth of Pennsylvania / 225  
Perry Ed. Ass'n. v. Perry Local Educators' Ass'n. / 226  
Perry v. Sindermann / 227  
Peters v. Baldwin Union Free Sch. Dist. / 229  
Pickering v. Bd. of Educ. of Township High Sch. / 230  
Pierce v. Soc'y of Sisters / 231  
Plessy v. Ferguson / 232  
Plyler v. Doe / 234  
Poole v. S. Plainfield Bd. of Educ. / 235  
Prince v. Jacoby / 236

## R

Raad v. Fairbanks N. Star Borough Sch. Dist. / 238  
Roberts v. The City of Boston / 239  
Rose v. Council for Better Educ. / 240  
Rosenberger v. Univ. of Va. / 241

## S

Sain v. Cedar Rapids Cmty. Sch. Dist. / 242  
San Antonio Indep. Sch. Dist. v. Rodriguez / 244  
Santa Fe Indep. Sch. Dist. v. Doe / 245  
Saxe v. State Coll. Area Sch. Dist. / 246  
Serrano v. Priest / 249  
School Dist. of Abington Township v. Schempp / 249  
Scott v. Savers Property and Cas. Ins. Co. / 250  
Scott v. Sch. Bd. of Alachua County / 251  
Seal v. Morgan / 253  
S. G. v. Sayreville Bd. of Educ. / 254  
Shade v. City of Farmington / 256  
Shaul v. Cherry Valley-Springfield Cent. Sch. Dist. / 257  
Sherman v. Cmty. Consol. Sch. Dist. 21 of Wheeling  
Township / 259  
Sipuel v. Bd. of Regents of Univ. of Okla. / 260  
State of Missouri ex rel Gaines v. Canada / 260  
Strauder v. W. Va. / 261  
Strout v. Albanese / 262  
Swann v. Charlotte-Mecklenberg Bd. of Educ. / 263  
Swanson v. Guthrie Indep. Sch. Dist. No. I-L / 264

Sweatt v. Painter / 265  
Sypniewski v. Warren Hills Reg'l Bd. of Educ. / 266

## T

Tave v. Alanis / 268  
Thomas v. Atascadero Unified Sch. Dist. / 269  
Thomas v. Roberts / 270  
Tinker v. Des Moines Sch. Dist. / 271

## V

Vernonia Sch. Dist. 47J v. Acton / 273

## W

Wallace v. Jaffree / 274  
Walker-Serrano v. Leonard / 276  
Walz v. Egg Harbor Township Bd. of Educ. / 277  
Walz v. Tax Comm'r of City of New York / 279  
Washington v. Davis / 280  
West v. Derby Unified Sch. Dist. No. 260 / 281  
Westside Cmty. Bd. of Educ. v. Mergens / 282  
West Virginia Bd. of Educ. v. Barnette / 283  
Widmar v. Vincent / 285  
Wilson v. Chancellor / 286  
Wisconsin v. Yoder / 288  
Wise v. Bossier Parish Sch. Bd. / 289  
Witters v. Washington Dept. of Servs. for the Blind / 290  
Wolman v. Walter / 291  
Wood v. Strickland / 292

## Z

Zelman v. Simmons-Harris / 293  
Zorbrest v. Catalina Foothills Sch. Dist. / 294

# Basic Legal Principles

## Sources of Law

The Tenth Amendment grants to the states any rights not reserved to the federal government. Because education is not a federal function, therefore, it becomes a function of the states. While federal monies for education account for only about 7 percent of the total education budget in each state, educators must understand that the federal Constitution, federal court decisions, and federal statutes (along with administrative regulations) always supersede state laws, court decisions, and administrative regulations. States cannot enact laws that are contrary to federal law. In developing laws, statutes, and guidelines, a balance exists between federal and state mandates.

Both the federal government and individual states have constitutions. The U.S. Constitution, which includes the Bill of Rights, is the supreme law of the land. However, each state also has a constitution and a bill of rights which specifies, among other things, the provisions for education within that state.

Likewise, statutes are developed both nationally and on the state level. The U.S. Congress passes laws that federal agencies use to develop administrative regulations to implement the laws. We are all familiar with the Individuals with Disabilities Education Act (IDEA), which was reauthorized by Congress in 1997. The U.S. Department of Education then adopted administrative regulations to implement the act. State constitutions contain the provision for free and appropriate public education (FAPE). Educational provisions and rights may vary some from state to state.

Federal and state courts in the United States issue opinions based on real controversies. Our courts do not issue advisory opinions. Our American system of justice is based on actual events. A concrete dispute must exist before courts will adjudicate the issue. Some state attorney generals are authorized to issue advisory opinions, which have the effect of law in that particular state.

The U.S. Department of Education and state school boards are administrative agencies which propose and adopt administrative regulations to implement statutes. Local school boards are quasi-executive, quasi-legislative, and quasi-judicial bodies. The policies and regulations of local boards have the effect of law in local school systems.

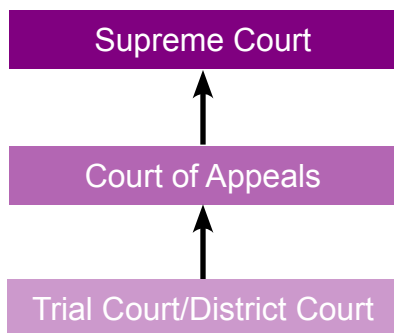
Boards and schools are subject to public record acts and open meeting (sunshine) laws in their respective states. State laws grant citizens

access to specified records, including records of school board meetings and other records in the system. Records exempted from disclosure by state law are not available under public record acts. It is important to remember that, in the electronic age, email constitutes a public record. In other words, be as cautious about email content as you are about more traditional documents. The laws specify what records are subject to inspection and the conditions under which the records may be obtained.

Like public records acts, open meeting laws dictate that boards of education and other public bodies must operate in the sunshine. Boards must notify the public of all meetings, regular and special. By law, penalties are imposed for any violations. Boards can go into executive session for certain matters like personnel and real estate; however, decisions from executive sessions must be announced in a public session.

## The Courts

### Court System



### State Courts

Although it may vary, in most states the highest court is called the supreme court. A higher court can always overrule a lower court. Instead of retrying a case or controversy, appellate courts put the matter on written record. Supreme courts can afford parties the opportunity to argue their case without going through a full retrial. The courts from lowest to highest are:

- Trial Court
- Appellate Court
- Supreme Court

The opinions from state courts are published in reporters for each state, as well as regional reporters that include cases from all the states within a certain region.

## Federal Courts

The federal court system is composed of district courts, appellate courts, and the United States Supreme Court. There is at least one district court in every state, but more populous states may have two or more districts. Decisions of the district courts, when reported, are contained in the Federal Supplement, and contain the following elements:

[volume number] *F. Supp.* [page number]

The next step up from district courts, appellate (circuit) courts serve a designated set of states. For example, the Eleventh Circuit Court of Appeals hears cases from district courts in Florida, Georgia, and Alabama. Cases from circuit courts are reported in the Federal Reporter, and look similar to the following:

[volume number] *F.2d* or *F.3d* [page number]

At the highest justice level, the United States Supreme Court has nine justices who are appointed by the president with the approval of the senate. This is true for all federal judges who, like the president, have tenure—impeachment is the only process that can remove them from office. The decisions of the Supreme Court are reported in the U.S. Reports, the Supreme Court Reporter, and the Supreme Court Reports, Lawyer’s Edition.

[volume number] *U.S.* [page number]

[volume number] *S. Ct.* [page number]

[volume number] *L. Ed.* [page number]

## Resources

### Internet Resources

<http://www.lexisone.com>

*the resource for small law firms*

<http://academic.udayton.edu/legaled/online>

*excellent information on how to brief cases*

<http://www.law.cornell.edu>

*excellent resource*

<http://www.edweek.org>

*archives allow you to search current legal issues in education*

- <http://www.oyez.org/oyez/frontpage>  
*case briefs and audio files on landmark cases*
- <http://www.supremecourtus.gov>  
*the official U.S. Supreme Court site; source for Supreme Court orders*
- <http://www.uscourts.gov>  
*federal judiciary homepage*
- <http://www.washingtonpost.com/wp-srv/national/longterm/supcourt/supcourt.htm>  
*good source for general legal information*
- <http://www.aclu.org>  
*promotes ACLU issues*
- <http://www.civilrightsproject.harvard.edu>  
*promotes civil rights issues*
- <http://gsulaw.gsu.edu/metaindex>  
*a gold mine of references and links*
- <http://www.law.emory.edu>  
*excellent information about federal courts (GCPS home page)*
- <http://www.lawnewsnetwork.com>  
*general legal information*
- <http://curry.edschool.virginia.edu/curry/class/edlf/875/cite.html>  
*University of Virginia site with good resources*
- <http://www.freedomforum.org>  
*good resource for First Amendment rights*
- <http://www.hslda.org/Default.asp?bhcp=1>  
*resource site for homeschooling*
- <http://www.nichcy.org>  
*National Dissemination Center for Children with Disabilities*
- <http://www.washingtonpost.com/wp-dyn/nation/courts>  
*The Washington Post provides excellent coverage of the Supreme Court and other courts*

### Textbooks

- K. ALEXANDER & M. ALEXANDER, *THE LAW OF SCHOOLS, STUDENTS AND TEACHERS; IN A NUTSHELL* (3d ed. 2003).
- K. ALEXANDER & M. ALEXANDER, *AMERICAN PUBLIC SCHOOL LAW* (6th ed. 2004).
- M. LAMORTE, *SCHOOL LAW: CASES AND CONCEPTS* (8th ed. 2004).

- M. McCARTHY, N. CAMBRON-McCABE, & S. THOMAS, PUBLIC SCHOOL LAW: TEACHERS' AND STUDENTS' RIGHTS (5th ed. 2003).

### Other References

- *The Schools and the Courts* (J. F. MEAD, ED.) COLLEGE ADMINISTRATION PUBLICATIONS, INC., at <http://www.collegepubs.com>.
- *School Law Reporter* EDUCATION LAW ASSOCIATION at <http://www.educationlaw.org>.

# The Governance of Education

Under the U.S. Constitution, education is a function reserved for the states. All states today provide for education in their state constitutions because, from the beginning of the republic, education has been regarded as essential. However, education has not always been as universal as it is today.

In the colonial era, education was mainly for those who could afford it, and a few worthy students who could not afford further education were granted scholarships. Gradually, states in the northeast began to pass laws providing education so that students could read the Bible (the Old, Deluder Satan Acts). In fact, Thomas Jefferson supported education for all through the early grades. But it was only in the late twentieth century that education became truly universal with the inclusion of all students in the process.

## Education

State constitutions have various provisions for schooling. States set the ages for compulsory education, usually from seven to sixteen. In *Wisconsin v. Yoder*, the State of Wisconsin had taken legal action against Amish parents for refusing to comply with the compulsory attendance law. The supreme court ruled that Amish children did not have to attend public school after the eighth grade. The Amish wanted to protect their

children from secular influences, and the court noted the solid Amish tradition. The parents provided education in farming and homemaking for their children. The Amish lifestyle was self-sufficient; therefore, the fact that the children did not get a high school education would not unduly burden society with unskilled workers later on.

Although education is compulsory, states must also recognize that parents have an interest in the education of their children. In the wake of World War I, Nebraska passed a law that prohibited the teaching of German to students who had not “graduated” from the eighth grade. The Supreme Court ruled in *Meyer v. Nebraska* that parents had a say in the “education and upbringing of their children.” The state could not make such a law.

### Public Schools

In one way or another, state constitutions provide that “free and appropriate education at public expense” should be available to all children. However, the question of both what constitutes free and what is included in education is open to debate. In the wake of Proposition 13 in California, which limited taxation, the Santa Barbara High School District decided to charge a fee for participation in extracurricular activities. In spite of the fact that the district provided for students who could not afford the fees, the court ruled in *Hartzell v. Connell* that the fees violated the free education guarantees of the California Constitution.

Other jurisdictions charge fees for certain extracurricular activities. Many schools charge fees, which some schools districts now refer to as voluntary contributions. If push comes to shove, it is likely that courts would rule that such fees violate the free public education provisions of state constitutions. As far as the courts are concerned, free means free.

Courts have also ruled that education must be provided to all children—including illegal immigrants. *Plyler v. Doe* established that states cannot deny educational benefits to children who are unlawful immigrants through no fault of their own. The Equal Protection Clause of the Fourteenth Amendment guarantees rights to “any person” residing in the state. Education is so important that denying it would have serious adverse consequences for these children.

### Private Schools

Parents may send their children to private or parochial schools. The states have the right to require these schools to meet standards such as the number of school days, the length of the school year, and other mat-