



School Law: An Essential Component in Your Toolbox

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Specialists in school law must help keep its focus on remaining a valuable tool for practitioners.

In the almost 60 years since the Supreme Court's ruling in *Brown v. Board of Education* (1954), the most important education-related case in the nation's history, the United States has undergone myriad educational, legal, and social changes. *Brown* not only ushered in an era of equal educational opportunities for all children but also signaled the birth of the field known today as school law or education law.

Before *Brown*, the Supreme Court resolved a handful of education-related cases. Now, hardly a year passes when the justices do not examine at least one school-related case. In fact, since the Court reviewed its first education case under the establishment clause in 1947, *Everson v. Board of Education*, upholding the constitutionality of a statute from New Jersey that allowed parents to be reimbursed for the cost of transporting their children to nonpublic schools, it has heard more than 30 cases in each of the two key areas of school desegregation and religion and more than 100 suits involving various aspects of K–12 education (Russo 2009a, 2009b).

School Law and Board Policy

The centrality of school law for school business officials and other education leaders is evidenced in a comprehensive study conducted on behalf of the University Council for Educational Administration, an organization of doctoral degree-granting institutions in educational leadership. The survey revealed that with 87.5% of UCEA's members offering courses in school law (Pohland and Carlson 1993), it was second only to classes introducing students to the study of the larger field of educational leadership. Since many institutions offer various graduate and undergraduate classes in school law, it will likely remain a part of curricula, demonstrating that as an applied rather than purely theoretical discipline, it is essential for all educators.

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tioners. Faculty members who teach school law must help prospective and practicing administrators focus on applying such basic concepts as due process and equal protection—essential elements in policy development.

School law presents a unique intellectual challenge to school business officials to be more proactive, especially in such a rapidly changing area as technology. Rendering the law proactive is complicated because most legal changes are reactive insofar as they typically occur after real cases or controversies are litigated or legislative bodies respond to unmet needs, such as through the enactment of the Individuals with Disabilities Education Act (2005). In fact, *Brown v. Board of Education* is a typical example of the reactive nature of case law since there would not have been a need for the Supreme Court's intervention had education leaders met the needs of the African American students and other children of color.

In balancing the tension between the proactive and reactive dimensions of school law, classes for educators should provide practitioners with a broad understanding of the law that allows them to accomplish two important goals:

1. Classes in school law must teach educators to rely on their substantive knowledge of the law and update their information through resources such as ASBO International and other professional associations. Professional development activities should help education leaders develop sound policies to enhance day-to-day school operations.
2. Classes in school law should provide educators with sufficient awareness of the legal dimensions of situations so they can better frame questions when they contact their attorneys, for example.

Educators must recognize the value in making their attorneys equal partners in problem solving after the fact and in developing policies before issues can arise. Such a proactive approach is consistent with the notion of preventative law

wherein educators can identify potential problems in advance and act with their attorneys to ensure that they do not develop into crises.

Further, when school business officials help their boards select attorneys, they should retain lawyers with specialized practices in school law, thereby avoiding potential lapses in critical knowledge and ensuring that their advice has the most up-to-date perspectives on legal matters.

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Many legal issues that arise in the United States are present throughout the world. Given the British common-law heritage that many nations share, education leaders can gain insights into how common-law legal systems have come to terms with thorny issues.

At the same time, in light of the extensive body of American school law, educators from other nations increasingly look to the United States for guidance on dealing with such difficult issues as school violence and drug testing to help formulate policies for addressing these concerns.

The Courts and School Law

School law is a dynamic discipline that is constantly evolving, largely via judicial interpretation, to meet the needs of today's schools. Over the past decade alone, the Supreme Court reviewed a range of difficult and far-reaching questions. Among the issues the Court reviewed included prayer (*Santa Fe Independent School District v. Doe* 2000); drug testing of student-athletes (Board of Education of Independent School District No. 92 of Pottawatomie v. Earls 2002a, 2002b); vouchers (*Zelman v. Simmons-Harris* 2002); the

Individuals with Disabilities Education Act (*Arlington Central School District v. Murphy* 2006; *Winkelman v. Parma City School District* 2007); student speech (*Morse v. Frederick* 2007); and student strip searches (*Safford Unified School District No. 1 v. Redding* 2009).

While the Supreme Court deals with larger issues of constitutional concern, lower courts serve as kinds of laboratories where disputes germinate as they potentially make their way through the judicial system.

For example, as technology assumes an increasingly larger role in schools, courts have begun to grapple with a variety of emerging topics. For instance, an appellate panel affirmed the denial of a challenge to a board policy from New York City banning cell phones in schools (*Price v. New York City Board of Education* 2008), while a federal trial court in Pennsylvania ruled that board officials could dismiss a student teacher for making inappropriate postings on her Facebook account (*Snyder*

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v. Millersville University 2008). Other courts have addressed sexting (*Miller v. Mitchell* 2010; *S.B. v. St. James School* 2006; *State v. Canal* 2009).

By relying on the judicial principles enunciated in these and myriad other cases, whether from the Supreme Court or lower courts, school business officials can better work with their boards to develop and implement policies to enhance the quality of schooling.

Conclusion

In sum, perhaps the only constant in school law is that as it evolves to meet the demands of constantly changing school environments, it will likely remain of the utmost importance to anyone who cares about students. If anything, the seemingly endless supply of new cases speaks to the need to be ever vigilant of how legal developments affect schools. The challenge for all educators is to harness their knowledge of school law so they can make schools better places for children.

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