Copies of Student Newspaper Seized


WOOSTER, OHIO—SCHOOL OFFICIALS IN A DISTRICT WHERE the policy is to allow students freedom of speech confiscated thousands of copies of the high school newspaper after learning it contained an article in which students talked about drinking alcohol at a party.

Student editors said the article quoted the daughter of a school board member saying she had consumed alcohol, and they believe that was the reason about 4,500 copies of the bi-weekly Wooster Blade were seized Thursday.

James Jackson, the principal at Wooster High School, confirmed Saturday that the papers were taken after a teacher told him about a possible confidentiality problem with the story.

Federal law forbids naming students who face disciplinary action without parents’ permission, and at least one student claimed to have been misquoted, Jackson said. Violating privacy rights could leave the school vulnerable to lawsuits, he said.

The student journalists disagreed and called the Student Press Law Center. Mike Hiestand, an attorney for the Arlington, VA-based center, said he reviewed the reporting at the student editors’ request and saw nothing in the Blade that violated libel laws.

“It’s very good reporting,” Heistand said. “It’s just another one of those cases of school officials wanting nothing but happy news in the newspaper and abusing their authority.”

According to a policy under “Student Publication Rights” on the Wooster City School District’s Web site, an “unfettered student press” is essential and “student journalists shall be afforded protection against prior review and/or censorship.”

It says that freedom does not extend to material that is obscene or defamatory, or would disrupt school activities. “I feel very privileged to have an open forum policy, but personally I am disappointed that it has been violated,” said Darcy Draudt, 17, a senior and editor of the Wooster Blade.

Whether school administrators can insist on prior review of a students’ publication has been a hot issue in high school journalism since 1988, when the U.S. Supreme Court ruled limits can be set on the free press rights of high school students.

INTASC Learning Outcomes

After reading and studying this chapter, you should be able to:

1. Explain the relationships between the U.S. Constitution and the role and responsibilities of the states in ensuring the availability of public schools for all children. (INTASC 7: Planning)

2. Describe critical issues about the role of public schools for which the courts are being used to resolve points of debate. (INTASC 9: Reflection)

3. Identify and describe court-established guidelines related to the use of public funds for private schools. (INTASC 9: Reflection)

4. Identify and describe court-established guidelines related to religious activities in public schools. (INTASC 7: Planning)

5. Outline the role of statutes and court decisions related to civil rights and affirmative action as they relate to schools. (INTASC 9: Reflection)

6. Summarize key components of the rights and responsibilities of teachers as determined by
Aspiring teachers typically do not consider the fact that there is a legal aspect to teaching. As citizens of the United States, teachers are, of course, subject to the laws of the land. However, in addition, teachers are employees and as such have specified protected rights and responsibilities. Also, teachers are responsible not only for children learning but also for their safety and protecting their rights. In each of these areas, elements of the legal system, its processes, and its rulings come into play. As illustrated in the Education in the News feature, schools and educators are frequently drawn into areas of debate that reflect society at large. All too frequently, it seems, the courts are turned to for resolution. Hot areas of debate include prayer in schools, racial equality, and teachers’ and children’s rights as citizens versus their rights in school.

The first big idea addressed in this chapter emphasizes that the legal foundations of education are the U.S. Constitution and the Bill of Rights. All else evolves from interpretations of the Constitution. Another big idea has to do with the rights and responsibilities of teachers as employees. For example, teachers are protected from termination without cause. A related important big idea is teacher responsibility, including providing safe and well-supervised educational activities for students. Teachers also need to understand that children retain their rights as citizens while having related rights and responsibilities as students. Another big idea is that policymakers such as Congress, state legislatures, and local school boards also establish laws in the forms of statutes, policies, rules, and procedures. Teachers must know about and understand how these affect classroom practice as well.

To illustrate each of these ideas, this chapter presents an important set of social, political, and educational issues that have been debated within and addressed by the legal system. It examines topics such as the appropriateness of using public funds to support private education, desegregation, teachers’ rights, and students’ rights. The chapter draws on excerpts from the Constitution, state statutes, and court decisions to point out some of the important issues that have been addressed through the legal system. Each of the topics presented in this chapter, as well as the legal processes behind it, applies directly to what you can do and should not do as a teacher and a school district employee. The
chapter is organized into three major sections: the legal basis and framing of the public education system, the legal rights and responsibilities of teachers, and the rights and responsibilities of students.

### LEGAL ASPECTS OF EDUCATION

The legal foundation of the United States is the U.S. Constitution, and a pivotal part of the Constitution is the Bill of Rights. Within the boundaries of U.S. law, each state is guided by its own constitution. Several additional sources of laws exist at the federal, state, and local levels, and there are a number of processes for addressing disputes. As illustrated in Figure 6.1, in many ways the teacher is the implementer at the intersection between those who enact laws and those who interpret them. Some, but not all, laws are developed out of the legislative process. These are referred to as **enabling laws**, or those that provide opportunity or make it possible for educators to do certain things. Also, laws can impose mandates or prohibitions. Once legislation is enacted into law, if a question of interpretation is raised, then the **judicial interpretive process** is engaged. If an administrative interpretation is not accepted, then the judicial process can come into play. The judicial process also is used when it appears that a law has been violated. The interpretations of the state and federal court systems form a body of case law. The sampling of legal topics presented in this chapter includes examples from constitutional law, state and federal statutes, and case law based on court interpretations. All apply directly to schools, teachers, and students.

### LEGAL PROVISIONS FOR EDUCATION: THE U.S. CONSTITUTION

The educational systems of the United States, both public and nonpublic, are governed by law. The U.S. Constitution is the fundamental law for the nation, and a state legislature has no right to change the Constitution. When a state legislature makes laws that apply to education, these laws must be in accordance with both the U.S. Constitution and that state’s constitution.

Three of the amendments to the U.S. Constitution are particularly significant to the governance of education, both public and private, in the United States. Interpretations of each of these amendments—the First, Tenth, and Fourteenth—by the courts have had profound impacts on the role and purpose of schools, the opportunities of all students to have access to an education, and the responsibilities and rights of teachers, students, and school administrators.

### TENTH AMENDMENT

The U.S. Constitution does not specifically provide for public education; however, the Tenth Amendment has been interpreted as granting this power to the states. The amendment specifies 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.” Therefore, education is legally the responsibility and the function of each of the fifty states. Education in the United States is not nationalized as it is in many other nations of the world.

#### Sources of Legal Control in U.S. Education as They Affect the Classroom Teacher

- People of the state and their rights under the U.S. Constitution
- Constitution of the state
- Statutes of the state legislature
- State school board policies
- Local school board policies

---

**enabling laws**

Laws that make it possible for educators to do certain things.

**judicial interpretive process**

The judicial process of drawing conclusions about the intent of the wording in the Constitution and statutes.
Each state, reflecting its responsibility for education in its state, has provided for education either in its constitution or in its basic statutory law. For example, Part 6, Section 2 of the Ohio Constitution reads:

The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.

The Utah Constitution, Section 1, Article X reads:

The Legislature shall provide for the establishment and maintenance of a uniform system of public schools, which shall be open to all children of the State, and be free from sectarian control.

Through such statements, the people of the various states commit themselves to a responsibility for education. The state legislatures are obliged to fulfill this commitment. While the interpretation of the Tenth Amendment places the responsibility for education on the states, the rights of citizens of the United States are protected by the Constitution and cannot be violated by any state.

**FIRST AMENDMENT**

The First Amendment ensures freedom of speech, of religion, and of the press, as well as the right to petition. It specifies:

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 redress of grievances.

As illustrated in the cases presented later in this chapter, two important clauses in the First Amendment have been applied repeatedly to issues confronting public education: (1) the establishment clause, “Congress shall make no law respecting an establishment of religion,” and (2) the free speech clause, which has direct implications for teacher and student rights.

**FOURTEENTH AMENDMENT**

The Fourteenth Amendment protects specified privileges of citizens. It reads in part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The application of the Fourteenth Amendment to public education as considered in this chapter deals primarily with the equal protection clause: “nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.” Equal educational opportunity is protected under the Fourteenth Amendment. In effect, the rights of citizens of the United States are ensured by the Constitution and cannot be violated by state laws or action.

**CHURCH AND STATE**

Our nation has a strong religious heritage. For example, in colonial times, education was primarily a religious matter; furthermore, much of this education was conducted in private religious schools. Many private schools...
today are under religious sponsorship. But debate about the rightful role of reli-
gion in public education continues. Should public funds be used to support stu-
dents in religious schools? Can there be prayer at high school commencement
services or in classrooms? Does the teaching of creationism amount to public
support for religion, or is it merely the presentation of an alternative scientific
view? Agreements have not been reached through the debate process, so propo-
nents of differing viewpoints have turned to the courts.

Court cases concerned with separation of church and state most frequently
involve both the First and Fourteenth Amendments of the U.S. Constitution.
The First Amendment is interpreted as being applicable to the states by the
Fourteenth Amendment. For example, a state law requiring a daily prayer to be
read in classrooms throughout the state could be interpreted as “depriving per-
sons of liberty” (see the Fourteenth Amendment due process clause) and as the
state establishing a religion, or at least “prohibiting the free exercise thereof”
(see the First Amendment establishment clause). States are not permitted to
make laws that abridge the privileges of citizens, and the right to the free prac-
tice of religion must be ensured.

Court cases related to the separation of church and state can be classified in
three categories: (1) those dealing with the use of public funds to support reli-
gious education, (2) those dealing with the practice of religion in public schools,
and (3) those dealing with the rights of parents to provide private education for
their children. Key cases related to each of these categories are presented next.

PUBLIC FUNDS AND RELIGIOUS EDUCATION

The use of public funds to support religious schools has been questioned on
many occasions. Typically, state constitutions deny public funds to sectarian in-
sstitutions or schools. However, public funds have been used to provide trans-
portation for students to church schools and to provide textbooks for students
in parochial schools.

Approximately 85 percent of the students who attend nonpublic schools are
attending church-related schools. Of this number, some 70 percent are enrolled
in parochial (Catholic) schools. In states with relatively large enrollments in
parochial schools, there have been continuing efforts to obtain public financial
assistance of one form or another for nonpublic school students. These attempts
have often been challenged in the courts. We will present a sampling of these
cases and issues here to illustrate the reasoning and to assess trends in this dif-
ficult area. A summary of cases related to the use of public funds for private ed-
ucation is presented in Table 6.1.

TRANSPORTATION FOR STUDENTS OF CHURCH SCHOOLS

The landmark case on the use of public funds to provide transportation for stu-
dents to church schools was Everson v. Board of Education, ruled on by the U.S.
Supreme Court in 1947. The Court held that in using tax-raised funds to reim-
burse parents for bus fares expended to transport their children to church
schools, a New Jersey school district did not violate the establishment clause of
the First Amendment. The majority of the members of the Court viewed the
New Jersey statute permitting free bus transportation to parochial school chil-
dren as “public welfare legislation” to help get the children to and from school
safely and expeditiously. Since the Everson decision, the highest courts in sev-
eral states, under provisions in their own constitutions, have struck down en-
actments authorizing expenditures of public funds to bus children attending
denominational schools; others have upheld such enactments.

THE LEMON TEST: EXCESSIVE ENTANGLEMENT

A useful rubric emerged from the U.S. Supreme Court decision in Lemon v.
Kurtzman (1971). This case dealt with an attempt by the Rhode Island legislature
to provide a 15 percent salary supplement to teachers who taught secular

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Religion, morality, and
time being necessary
to good government and
happiness of mankind,
schools and the means of
education shall forever be
encouraged.

Northwest Ordinance,
1787
### TABLE 6.1 Selected U.S. Supreme Court Cases Related to the Use of Public Funds for Private Education

<table>
<thead>
<tr>
<th>Case</th>
<th>Issue</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Everson v. Board of Education (1947)</td>
<td>Use of tax-raised funds to reimburse parents for transportation of students to church schools</td>
<td>Court ruled that reimbursement did not violate the First Amendment.</td>
</tr>
<tr>
<td>Lemon v. Kurtzman (1971)</td>
<td>Legislation to provide direct aid for secular services to nonpublic schools, including teacher salaries, textbooks, and instructional materials</td>
<td>Court ruled the legislation unconstitutional because of the excessive entanglement between government and religion.</td>
</tr>
<tr>
<td>Wolman v. Walter (1977)</td>
<td>Provision of books, standardized testing and scoring, diagnostic services, and therapeutic and remedial services to nonpublic school pupils</td>
<td>Court ruled that providing such materials and services to nonpublic school pupils was constitutional.</td>
</tr>
<tr>
<td>Wolman v. Walter (1977)</td>
<td>Provision of instructional materials and field trips to nonpublic school pupils</td>
<td>Court ruled that providing such materials and services to nonpublic school pupils was unconstitutional.</td>
</tr>
<tr>
<td>Grand Rapids School District v. Ball (1985), and Aguilar v. Felton (1985)</td>
<td>Instruction of nonpublic school students in supplementary education by public school teachers</td>
<td>Court ruled that the action violated the establishment clause in that it promoted religion.</td>
</tr>
<tr>
<td>Zobrest v. Catalina Foothills School District (1993)</td>
<td>Provision of a school district interpreter for a deaf student attending a Catholic high school</td>
<td>Court ruled that government programs that neutrally provide benefits to a broad class of citizens without reference to religion are not readily subject to an establishment clause challenge.</td>
</tr>
<tr>
<td>Board of Education of Kiryas Joel Village School District v. Grumet (1994)</td>
<td>Creation and support of a public school district for Hasidic Jews by New York State</td>
<td>Court ruled that the district violated the establishment clause in that it was a form of “religious favoritism.”</td>
</tr>
<tr>
<td>Agostini v. Felton (1997)</td>
<td>School districts’ provision of Title I teachers to serve disadvantaged students in religious schools</td>
<td>Court overturned ban provided the district assigns teachers without regard to religious affiliation, all religious symbols are removed from classrooms, teachers have limited contact with religious personnel, and public school supervisors make monthly unannounced inspections.</td>
</tr>
</tbody>
</table>

subjects in nonpublic schools and a statute in Pennsylvania that provided reimbursement for the cost of teachers’ salaries and instructional materials in relation to specified secular subjects in nonpublic schools. The Court concluded that the “cumulative impact of the entire relationship arising under the statutes in each state involves excessive entanglement between government and religion.” The Court pointed out another defect of the Pennsylvania statute: It provided for the aid to be given directly to the school. In the Everson case, the aid was provided to the students’ parents, not to the church-related school. The Court posed three questions that have since become known as the Lemon test: (1) Does the act have a secular purpose? (2) Does the primary effect of the act either advance or inhibit religion? (3) Does the act excessively entangle government and religion? Most subsequent cases dealing with the use of public funds in nonpublic school settings have referred to this test.

**SPECIAL SITUATIONS** The U.S. Supreme Court seems to have wavered from a strict application of the Lemon test in two more recent cases: Zobrest v. Catalina and Kiryas Joel v. Grumet.
In a 1994 case, Board of Education of Kiryas Joel Village School District v. Grumet, the U.S. Supreme Court ruled that a New York State law that created a public school to serve children with disabilities in a village of Hasidic Jews was a form of “religious favoritism” that violated the First Amendment. Interestingly, in this case, as in some others recently, the justices ignored the Lemon test in making the decision. Instead, the focus was on the legislature’s creation of a special school district; the justices noted the risk that “the next similarly situated group seeking a school district of its own will receive one.” Another implication of this decision was the indication that the court would be willing to revisit Aguilar v. Felton (1985) and Grand Rapids v. Ball (1985), which invalidated sending public school teachers to private religious schools to provide supplemental instruction.

Whether a public school district could provide an interpreter for a student who was deaf attending a Catholic high school was the central question in Zobrest v. Catalina Foothills School District (1993). Under a federal statute, the Individuals with Disabilities Education Act (IDEA), students who are deaf are entitled to have a sign language interpreter in all regular classes. In Zobrest v. Catalina, the Court concluded that no establishment clause violation occurred because the provision of the interpreter was a “private decision of individual parents.” In terms of the federal statute, the Court determined that this was a situation in which “government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an establishment clause challenge just because sectarian institutions may also receive an attenuated benefit.”

**CHILD BENEFIT THEORY**  The use of public funds to provide secular services has led to a concept referred to as child benefit theory. Child benefit theory supports the provision of benefits to children in nonpublic schools with no benefits to the schools or to a religion. More recent decisions supporting the use of public funds for transportation and textbooks for students in private schools have generally been based on the child benefit theory; this theory emerged out of commentary about the Everson v. Board of Education case. The reasoning was that transportation and books provide benefits to the children and not to the school or to a religion. Those opposed to the child benefit theory argue that aid to children receiving sectarian education instruction is effectively aiding the institution providing instruction.

The child benefit theory, as supported by the U.S. Supreme Court, has penetrated federal legislation. For example, the Elementary and Secondary Education Act of 1965 (ESEA) and its subsequent amendments, including No Child Left Behind, provide assistance to both public and nonpublic school children. Title I of ESEA, which deals with assistance for the education of children from low-income families, states that children from families attending private schools must be provided services in proportion to their numbers. When a school is demonstrated to be failing, the school district is required to provide transportation and access to other schools.

**TITLE I TEACHERS IN RELIGIOUS SCHOOLS**  In one recent decision, Agostini v. Felton (1997), the U.S. Supreme Court seemed to be providing increased flexibility and easing the tensions created by Aguilar v. Felton (1985). In Aguilar, the court struck down the use of Title I funds to pay public school teachers who taught in programs to help low-income students in parochial schools. But in Agostini, the court decided that under specific safeguards Title I teachers can be sent to serve disadvantaged students in religious schools; refer to Table 6.1.
The issue of public aid to church-related schools is still in the process of being settled. Although it is clear that aid for certain secular services (such as transportation, textbooks, and—under prescribed circumstances—testing, diagnostic, therapeutic, and remedial services) can be provided, it is not yet absolutely clear what further aid will be approved. In fact, the whole body of law in this area continues to be somewhat confused and contradictory. Some state legislatures are continuing to try to find new ways to provide aid to religious schools without violating the First Amendment. See Table 6.2 for a summary of statements related to public funds and religious education.

**RELIGIOUS ACTIVITIES IN PUBLIC SCHOOLS**

The limits and boundaries of the First Amendment in relation to public schools have been and will continue to be tested in the courts, especially in relation to religion. Several cases have dealt with the teaching of creationism and evolution, the practice of religion, and the religious use of public facilities. Each case has contributed to a gradual process of clarification of what can and what should not be done to ensure the separation of church and state. Table 6.3 is a summary of U.S. Supreme Court judgments in some of these cases.

**PRAYER IN SCHOOL**

A number of attempts have been and continue to be initiated by school districts to incorporate some form of prayer into public school classrooms and activities. One such case began when the school district for Santa Fe High School, in Texas, adopted a series of policies that permitted prayer initiated and led by a student at all home athletic games. In June 2000, the U.S. Supreme Court ruled in *Santa Fe*...
dependent School District, Petitioner v. Jane Doe that the clear intent of the district policies was in violation of the establishment clause. The six-to-three majority observed, “the District, nevertheless, asks us to pretend that we do not recognize what every Santa Fe High School student understands clearly—that this policy is about prayer.” Later in the decision, the Court noted, “This policy likewise does not survive a facial challenge because it impermissibly imposes upon the student body a majoritarian election on the issue of prayer.” In other words, the district would be imposing a particular religious activity of the majority on all, a clear violation of the establishment clause. “It further empowers the student body majority with the authority to subject students of minority views to constitutionally improper messages. The award of that power alone, regardless of the students’ ultimate use of it, is not acceptable.” In concluding, the Court stated, “the policy is invalid on its face because it establishes an improper...
majoritarian election on religion, and unquestionably has the purpose and creates the perception of encouraging the delivery of prayer at a series of important school events.”

In an attempt to clarify what is and is not permissible in relation to prayer and other religious activities in public schools, the U.S. Department of Education has published a set of guidelines for religious expression. Points from these guidelines are summarized in Table 6.4.

**CREATIONISM VERSUS EVOLUTION** One of the most famous trials involving religion and a teacher occurred in Tennessee in 1925, when a science teacher, John Scopes, was found guilty of teaching evolution. Although the decision was later reversed on a technicality, the Scopes “monkey trial” has been kept alive in the theater and through the more recent efforts of certain religious groups advocating that creation be taught in place of, or along with, the scientific construct of evolution. Creationists advance an interpretation of the origin of human life that is based on the Bible. In 1968 the Court ruled against states that had attempted to ban the teaching of evolution and then in 1987 ruled in *Edwards v. Aguillard* that the Arkansas legislature violated the Establishment Clause of the First Amendment when it required equal time for the teaching of creationism and evolution. Still, creationists have continued to push their agenda. For example, in 1999 the Kansas state board of education removed evolution from the science standards. This action then became a major election is-

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**TABLE 6.4 Guiding Principles for the Association of Prayer and Religion in Public Schools**

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<td>Students may organize prayer groups, religious clubs, and “see you at the pole” gatherings before school to the same extent that students are permitted to organize other noncurricular student activities groups.</td>
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<td>Such groups must be given the same access to school facilities for assembling as is given to other noncurricular groups, without discrimination because of the religious content of their expression.</td>
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<td>When acting in their official capacities as representatives of the state, teachers, school administrators, and other school employees are prohibited by the establishment clause from encouraging or discouraging prayer and from actively participating in such activity with students.</td>
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<td>If a school has a “minute of silence” or other quiet periods during the school day, students are free to pray silently, or not to pray, during these periods. Teachers and other school employees may neither encourage nor discourage students from praying during such times.</td>
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<td>Schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation in such instruction or penalize students for attending or not attending.</td>
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**CROSS-REFERENCE**
The philosophical and legal arguments about the place of religion in public schools are addressed in Chapter 11.

The *Louisiana Creationism Act* advances a religious doctrine by requiring either the banishment of the theory of evolution from public school classrooms or the presentation of a religious viewpoint that rejects evolution in its entirety. The Act violates the Establishment Clause of the First Amendment because it seeks to employ the symbolic and financial support of government to achieve a religious purpose.

*Edwards v. Aguillard*

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*Guiding Principles for the Association of Prayer and Religion in Public Schools*

- Students may pray when not engaged in school activities or instruction, subject to the same rules designed to prevent material disruption of the educational program that are applied to other privately initiated expressive activities.
- Students may organize prayer groups, religious clubs, and “see you at the pole” gatherings before school to the same extent that students are permitted to organize other noncurricular student activities groups.
- Such groups must be given the same access to school facilities for assembling as is given to other noncurricular groups, without discrimination because of the religious content of their expression.
- When acting in their official capacities as representatives of the state, teachers, school administrators, and other school employees are prohibited by the establishment clause from encouraging or discouraging prayer and from actively participating in such activity with students.
- If a school has a “minute of silence” or other quiet periods during the school day, students are free to pray silently, or not to pray, during these periods. Teachers and other school employees may neither encourage nor discourage students from praying during such times.
- Schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation in such instruction or penalize students for attending or not attending.
- Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school.
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- When acting in their official capacities as representatives of the state, teachers, school administrators, and other school employees are prohibited by the establishment clause from encouraging or discouraging prayer and from actively participating in such activity with students.
- If a school has a “minute of silence” or other quiet periods during the school day, students are free to pray silently, or not to pray, during these periods. Teachers and other school employees may neither encourage nor discourage students from praying during such times.
- Schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation in such instruction or penalize students for attending or not attending.
- Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school.
sue because in Kansas state board members are elected, and several conservative board members lost. As can readily be seen in Figure 6.2, a clear majority of the public supports the teaching of evolution. In fact, 83 percent of those surveyed believed that evolution should be taught in school, whereas fewer than 30 percent wanted creationism taught as science in public schools.

Regardless of past Supreme Court decisions, some topics, such as the posting of the Ten Commandments in classrooms and Bible reading in public schools, continue to be challenged by legislatures, individuals, and various groups. One of the outcomes of these ongoing challenges is an accumulating series of judicial interpretations that can serve as guidelines about what can and cannot be done. The summary statements presented in Table 6.5 outline the overall pattern of the many judicial decisions related to religion and the public schools.

### SEGREGATION AND DESEGREGATION

A troublesome problem for U.S. society has been the history of legal and social separation of people based on their race; in other words, *segregation*. Up until the middle of the twentieth century, the public school systems in many states contributed to this problem through the operation of two separate sets of schools, one for whites and one for African Americans (“Negroes”). Segregated schools were supported by state laws and by the official actions of state and local government administrators. This kind of segregation, based in legal and official actions, is called *de jure segregation*.

Since 1954 the courts and communities have made intensive efforts to abolish the racial segregation of school students, a process that has been called *desegregation*. A major instrument the courts have used to accomplish this end has been *integration*, the busing of students to achieve a balanced number of students, in terms of race, in each school within a school district. A second instrument has been the use of magnet schools, which are schools that emphasize particular curriculum areas, disciplines, or themes. The hope is that these schools will attract a diverse set of students. These efforts to integrate the schools have had mixed success, and now there is increasing concern over the *resegregation* of schools based on where people live. Segregation—or resegregation—caused by housing patterns and other nonlegal factors is called *de facto segregation*.

### TABLE 6.5 Summary Statements on Church and State and the Practice of Religion in Public Schools

- To teach the Bible as a religion course in the public schools is illegal, but to teach about the Bible as part of the history of literature is legal.
- To dismiss children from public schools for one hour once a week for religious instruction at religious centers is legal.
- Reading of scripture and reciting prayers as religious exercises are in violation of the Establishment Clause.
- Public schools can teach the scientific theory of evolution as a theory; a state cannot require that the biblical version of evolution be taught.
- If school facilities are made available to one group, then they must be made available to all other groups of the same general type.

### FIGURE 6.2 Public Support for the Teaching of Evolution

**QUESTION:** “The Kansas state board of education has recently voted to delete evolution from their new state science standards. Do you support or oppose the decision?”

![Image of chart showing public support for teaching evolution](chart-image-url)

**Source:** People for the American Way Foundation.
“SEPARATE BUT EQUAL”: NO LONGER EQUAL

Before 1954 many states had laws either requiring or permitting racial segregation in public schools (de jure segregation). Until 1954 lower courts adhered to the doctrine of “separate but equal” as announced by the Supreme Court in Plessy v. Ferguson (1896). In Plessy v. Ferguson, the Court upheld a Louisiana law that required railway companies to provide separate but equal accommodations for the black and the white races. The Court’s reasoning at that time was that the Fourteenth Amendment implied political, not social, equality.

THE FAILURE OF THE SEPARATE-BUT-EQUAL DOCTRINE

This separate-but-equal doctrine appeared to be the rule until May 17, 1954, when the Supreme Court repudiated it in Brown v. Board of Education of Topeka. The Court said that in education the separate-but-equal doctrine has no place and that separate facilities are inherently unequal. In 1955 the Court rendered the second Brown v. Board of Education of Topeka decision, requiring that the principles of the first decision be carried out with all deliberate speed.

From 1954, the time of the Brown decision, to 1964, little progress was made in eliminating segregated schools. On May 25, 1964, referring to a situation in Prince Edward County, Virginia, the Supreme Court said, “There has been entirely too much deliberation and not enough speed in enforcing the constitutional rights which we held in Brown v. Board of Education.” The Civil Rights Act of 1964 added legislative power to the 1954 judicial pronouncement. The act not only authorized the federal government to initiate court suits against school districts that were laggard in desegregating schools but also denied federal funds for programs that discriminated by race, color, or national origin.

Subsequently, many efforts have been made to meet the expectations of the Court decisions and legislation. The objective of these initiatives has been to promote integration, that is, to achieve a representative mix of students of different races in schools. In the fifty years since Brown, there have been many efforts by school districts and communities, and many additional lawsuits. Table 6.6 summarizes some key Supreme Court decisions on school desegregation and integration.

One of the positive long-term effects of desegregation can be seen in today’s highly diverse schools and classrooms.
RELEASE FROM COURT ORDERS

After fifty-plus years of court actions related to desegregation and school district responses, questions were raised about the conditions that must be in place for a school district to be released from federal court supervision. Three cases in the 1990s offered instances of conditions under which the courts would back away. Board of Education of Oklahoma City Public Schools v. Dowell (1991) is important for at least three reasons: First, the U.S. Supreme Court made it clear that “federal supervision of local school systems was intended as a temporary measure to remedy past discrimination.” Second, the Court stated that in relation to desegregation, “the District Court should look not only at student assignments, but to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities.” And third, for the first time the Court defined what full compliance with a desegregation order would mean:

In the present case, a finding by the District Court that the Oklahoma City School District was being operated in compliance with the commands of the equal protection clause of the Fourteenth Amendment, and that it was unlikely that the school board would return to its former ways, would be finding that the purposes of the desegregation litigation had been fully achieved.

Two other cases added additional clarity to what the Court expects in order to release a school district from supervision. In Freeman v. Pitts (1992), the U.S. Supreme Court ruled that districts do not have to remedy racial imbalances caused by demographic changes, but the districts still have the burden of proving that their actions do not contribute to the imbalances. The third case was a return to Brown. The Court had ordered the Court of Appeals for the Tenth Circuit to reexamine its 1989 finding that the Topeka district remained segregated. In 1992 the appellate court refused to declare Topeka successful. The court concluded that the district had done little to fulfill the duty to desegregate that was required of the total school.

**Multiethnic education requires reform of the total school.**

James A. Banks

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**TABLE 6.6 Selected U.S. Supreme Court Cases Related to School Desegregation and Integration**

<table>
<thead>
<tr>
<th>Case</th>
<th>Issue</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plessy v. Ferguson (1896)</td>
<td>Whether a railway company should be required to provide equal accommodations for African American and white races</td>
<td>The Court indicated in its decision that the Fourteenth Amendment implied political, not social, equality. Thus the doctrine of “separate but equal” was established.</td>
</tr>
<tr>
<td>Brown v. Board of Education of Topeka (1954)</td>
<td>Legality of separate school facilities</td>
<td>The separate-but-equal doctrine has no place in education, and dual school systems (de jure segregation) are inherently unequal.</td>
</tr>
<tr>
<td>Griffin v. County School Board of Prince Edward County (1964)</td>
<td>Whether a county may close its schools and provide assistance to private schools for whites only</td>
<td>The Court instructed the local district court to require the authorities to levy taxes to reopen and operate a nondiscriminatory public school system.</td>
</tr>
<tr>
<td>Board of Education of Oklahoma City Public Schools v. Dowell (1991)</td>
<td>The conditions under which a school district may be relieved of court supervision</td>
<td>Court supervision was to continue until segregation was removed from every facet of school operations.</td>
</tr>
<tr>
<td>Freeman v. Pitts (1992)</td>
<td>Whether court supervision may be withdrawn incrementally, and whether a school district is responsible for segregation based on demographic changes (de facto segregation)</td>
<td>A district court is permitted to withdraw supervision in discrete categories in which the district has achieved compliance; also “the school district is under no duty to remedy imbalance that is caused by demographic factors.”</td>
</tr>
</tbody>
</table>
first imposed on it in 1954. The judges wrote that to expect the vestiges of segregation to “magically dissolve” with so little effort “is to expect too much.”

These three cases in combination made it clear that it is possible for school districts to be released from court order. The decisions also made it clear that school districts have to make concerted efforts across time to address any and all remnants of de jure segregation. Further, it now appears that school districts are not expected to resolve those aspects of de facto segregation that are clearly beyond their control.

INTEGRATION FIFTY-FIVE YEARS LATER

At present there are more than 500 formerly segregated school districts under some federal court jurisdiction. Table 6.7 presents a summary of the legal reasoning behind several key cases. Unfortunately, while de jure segregation has been removed, it has been replaced in many situations with a more virulent form of segregation. The demographics and economic conditions of the country have changed in ways that have not facilitated integration in local schools. Many strategies have been tested, and there are some indicators of success, but the goal is still a dream in many ways.

THE RISK OF RESEGREGATION

Currently, there is concern in several regions of the country about apparent trends toward resegregation, which occurs when a recently integrated school population returns to being almost totally a minority school population. The historic progress that has been made toward integration of African Americans appears to be slowly eroding because of a combination of demographic, economic, and social factors. In addition, more Hispanic students are attending schools with decreasing proportions of white students. Interpreting these trends is difficult. Still, there is reason to be concerned if this trend toward resegregation continues.

THE SUCCESSES OF THE DESEGREGATION AGENDA

Desegregation has had some measurable benefits. For example, African Americans who graduated from integrated schools have higher incomes than those who graduated from segregated schools. They are more likely to graduate from college and to hold good jobs. In addition, the number of middle-class black families is growing. Still,

TABLE 6.7  Summary Statements on Segregation and Desegregation

- The assignment of a child to a school on the basis of race is in violation of the equal protection clause of the Fourteenth Amendment.
- Where school boards have indirectly contributed to segregated communities, the school district can be required to desegregate.
- Desegregation plans that have the effect of delaying integration of the school have not been upheld by the courts.
- Busing may be required for the operation of a desegregated school system.
- Once a school district has been fully desegregated, the school board does not need to draw up a new plan if resegregation occurs because of demographic shifts.
- The merger of school districts may be required where the involved districts helped create the segregated school systems.
- The neighborhood school concept is not in conflict with the Equal Protection Clause.
- Once the district has achieved desegregation in all facets of school operations, it can be released from court supervision.
there is a long way to go before the dream of full socioeconomic equality is achieved. It seems certain that schools will continue to be a primary vehicle for advancing this dream from the points of view of the courts.

## EQUAL OPPORTUNITY

The Equal Protection Clause of the Fourteenth Amendment has been instrumental in shaping many court cases and federal statutes that are directed toward preventing discrimination in schools. Table 6.8 is a summary of key events in the nation’s efforts to eradicate discrimination. A judgment of **discrimination** can be defined as a determination that an individual or a group of individuals—for example, African Americans, women, or people with disabilities—has been denied constitutional rights. In common usage, the term applies to various minorities or to individual members of a minority who lack rights typically accorded the majority. The principle that discrimination violates the Equal Protection Clause was reinforced in Titles VI and VII of the Civil Rights Act of 1964 and in Title IX of the Education Amendments Act of 1972. Title VI of the Civil Rights Act states:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Title VII states:

It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.

### Table 6.8  Events in the History of Affirmative Action

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1941</td>
<td>President Roosevelt issues an executive order prohibiting discrimination by government contractors.</td>
</tr>
<tr>
<td>1961</td>
<td>President Kennedy makes the first reference to affirmative action in an order mandating that federal contractors make employment practices free of racial bias.</td>
</tr>
<tr>
<td>1964</td>
<td>Congress passes the Civil Rights Act.</td>
</tr>
<tr>
<td>1965</td>
<td>President Johnson outlines specific steps federal contractors must take to ensure hiring equality.</td>
</tr>
<tr>
<td>1970</td>
<td>The Nixon administration orders federal contractors to set “goals and timetables” for hiring minorities.</td>
</tr>
<tr>
<td>1972</td>
<td>Congress passes Title IX of the Education Amendments Act that states that no person can be excluded from participation based on their sex.</td>
</tr>
<tr>
<td>1978</td>
<td>In <em>University of California v. Bakke</em>, the Supreme Court rules that colleges can consider race as one factor in admissions.</td>
</tr>
<tr>
<td>1995</td>
<td>The Supreme Court limits racial preferences in federal highway contracts.</td>
</tr>
<tr>
<td>2003</td>
<td>The Supreme Court rules that race can be considered by colleges in their efforts to have a diverse student body, but it cannot be done through a set formula or quota.</td>
</tr>
</tbody>
</table>

**discrimination**

Denial of constitutional rights to an individual or group.

All provisions of federal, state or local law requiring or permitting discrimination in public education must yield.

**Earl Warren, Chief Justice, U.S. Supreme Court (1955)**

**CROSS-REFERENCE**

Chapters 2, 3, and 4 describe the many ways in which our society is becoming diverse and the need for equal educational opportunity for all.
Title IX of the Education Amendments Act of 1972 states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

AFFIRMATIVE ACTION

In the years since the 1964 Civil Rights Act, numerous statutes and court cases have encouraged steps designed to ensure that underrepresented populations have equal opportunity. These affirmative action initiatives have included such actions as formalizing and publicizing nondiscriminatory hiring procedures and setting aside a certain number of slots in hiring or college admissions programs. Over time, concern has increased about the possibility of reverse discrimination—situations in which a majority or an individual member of a majority is not accorded equal rights because of different or preferential treatment provided to a minority or an individual member of a minority. This concern has resulted in a new set of court cases, such as University of California v. Bakke (1978), each of which is attempting to redress what is perceived as a new imbalance.

The legal basis for affirmative action is found in Titles VI and VII of the Civil Rights Act of 1964 and in Title IX of the Education Amendments Act of 1972. However, affirmative action procedures and methods continue to be clarified and, in some instances, questioned. For example, in 1996 the citizens of California passed Proposition 209, which bans the state and its local governments from using racial and gender preferences in hiring, contracting, and college admissions. Proposition 209 and other legal initiatives will be examined in the courts.

In 2003 the U.S. Supreme Court clarified further the extent to which race can be considered when it ruled that the University of Michigan could consider race in its admissions programs (Grutter v. Bollinger; Gratz v. Bollinger). However, this consideration must be done within the context of striving to achieve a racial mixture on campus and cannot be applied to all applications through a fixed point system or quota. Instead, each application must be considered individually and race must be just one of the factors considered.

OPPORTUNITIES FOR STUDENTS WITH DISABILITIES

The judicial basis for current approaches to the education of students with disabilities also is closely linked to the civil rights and equal opportunity initiatives. In addition, several specifically targeted statutes address the education of people with disabilities. Three particularly important statutes are Section 504 of the Rehabilitation Act; Public Law 94-142, the Education for All Handicapped Children Act (EAHCA); and the Individuals with Disabilities Education Act (IDEA).

SECTION 504 OF THE REHABILITATION ACT

Under this civil rights act established in 1973, recipients of federal funds are prohibited from discriminating against “otherwise qualified individuals.” Note that Section 504 is a federal statute and regulations, not a court decision. Three important themes addressed in Section 504 are equal treatment, appropriate education, and handicapped persons. Equal treatment, as in other civil rights contexts, must be addressed. However, this does not necessarily mean the same treatment. For example, giving the same assessment procedure to students with disabilities and other students may not be equal treatment. Educational judgments in relation to students with disabilities require a “heightened standard.” The measures must fit the students’ circumstances, and procedural safeguards must be employed. Appropriate education means that the school system and related parties must address

affirmative action
Policies and procedures designed to compensate for past discrimination against women and members of minority groups; for example, assertive recruiting and admissions practices.

reverse discrimination
A situation in which a majority or an individual of a majority is denied certain rights because of preferential treatment provided to a minority or an individual of a minority.
individual needs of students with disabilities as adequately as do the education
approaches for other students. In Section 504, a “handicapped person” is

Any person who (i) has a physical or mental impairment which substantially limits
one or more major life activities, (ii) has a record of such an impairment, or (iii) is
regarded as having such an impairment. (34 CFR 104.3)

PUBLIC LAW 94-142 (EAHCA) Passed by Congress in 1975, Public Law 94-142
has been amended several times since. This law assures “a free appropriate
public education” to all children with disabilities between the ages of three and
twenty-one. Children with exceptional needs cannot be excluded from educa-
tion because of their needs. The law is very specific in describing the kind and
quality of education and in stating that each child with a disability is to have an
individually planned education. Details of this plan must be spelled out in a
written Individualized Education Plan (IEP), formulated by general and special
education teachers, and subject to the parents’ approval. Originally, the law pro-
vided for substantial increases in funding; in subsequent years, however, the
funding authorizations have been lower than the original commitment. Two pri-
orities for funding were identified: (1) the child who currently receives no ed-
ucation and (2) the child who is not receiving all the services he or she needs to
succeed. These priorities place the emphasis on need rather than on the specific
disability.

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) This act (1992)
developed tighter specifications for the delivery of educational services to chil-

The 1990 Americans with Disabilities Act expanded the definition of disability
in such a way as to include people with AIDS. Also, under IDEA the courts have
found that AIDS is a disabling condition. But AIDS is an issue charged with
emotion, as was desegregation. People do not always approach these difficult
situations with calmness or equanimity. The courts, as well as school adminis-
trators and teachers, are constantly struggling to determine what is appropriate
education for students with AIDS and what are suitable educational environ-
ments for children with AIDS-related disabilities. Some exceptional and spiri-
tually strong children, such as Ryan White, have challenged the educational
system’s capabilities. Ryan White was an Indiana adolescent with AIDS who,
because of attitudes within his school, was forced to leave town to get an edu-
cation. Because of Ryan’s example, others with disabilities will have the
courage to challenge the limits of school systems. In these situations, educators,
the courts, and policymakers will be further tested—but at the same time will
have the opportunity to move the educational system ahead by developing cre-
ative approaches and innovative practices. Calm heads will be needed, as will
wisdom, from all the players for the education system to succeed for all its stu-
dents. The Centers for Disease Control is a useful resource for information about
**DEBATE**

**Should Teachers Have the Authority to Remove Disruptive Students from Their Classes Permanently?**

From a legal perspective, all students have a right to an education. But what can a teacher do when a student is very disruptive? When should teachers be able to expel a student from class?

**YES**

Tracey Jones Saxon is in her fourth year teaching sixth grade at Walker Upper Elementary School in Charlottesville, Virginia. She is vice president of the Charlottesville Education Association.

I have always been amazed at how people—teachers, parents, and administrators alike—sometimes get tunnel vision when it comes to disruptive students. In our constant efforts to make sure that every child has the “right to learn,” the rights of some children get trampled by disruptive children. Disruptive students steal time. They steal patience. They steal the fun a lot of the time.

I had a parent say to me, “Why did you send my child out of your class? Sitting in the hall won’t teach him anything! He has the right to learn, and if you don’t let him stay in your class, I’ll go to Central Office.”

What about the other 20 kids in the room who were interrupted as I gave him three warnings and moved his seat? They have rights, too.

That parent never asked what the student was doing that made him give him a new seat and three warnings. The child’s disruption was not the issue to the parent, but it was the major issue to me and my other students. Every time I stopped to deal with this one student, 20 kids lost their train of thought. Some children in that class had to really struggle to focus on their work. They were trying to stay with me, trying to participate, but they lost time and focus.

As teachers, our job is to help prepare our students for the real world—you have to follow rules. If you disrupt

**NO**

Noel Richardson is the student services coordinator at Ilima Intermediate School in Ewa Beach, Hawaii, and a member of the NEA’s IDEA cadre, which helps state and local associations. He has worked in special education for six years.

Our monumental task as educators goes beyond teaching reading, writing, and arithmetic. We need to instill in children the social skills that will enable them to be productive in society. This can be the most frustrating task for new and seasoned teachers alike. We have many disruptive students. But much as we may want to send them on their merry way to the office, that will not teach them the essential social skills.

Sometimes the consequences we impose only make things worse. If the child’s goal is to get out of class, sending him or her to the office only reinforces the behaviors you don’t want. The child has associated acting out with getting out.

You may feel you have tried everything, but have you really? Are you doing this by yourself or are you receiving help from other teachers? Disruptive behavior is the result of a need. Find out what it is and try to meet that need. Ask other teachers whether the student acts the same way in their classrooms. If not, find out what is different.

In one case, we found by observing the classroom that the teacher was yelling at the disruptive student. He did not realize this, and after some simple suggestions, the classroom was fine.

(continued)
evolve from either liberty or property interests. Liberty interests are created by
the Constitution itself; property interests are found in forms of legal entitlement
such as tenure or certification.

Teachers also have the same responsibilities as other citizens. They must
abide by federal, state, and local laws and by the provisions of contracts. As pro-
fessionals they must also assume the heavy responsibility for educating young
people. We will discuss specific court cases briefly here to illustrate some of the
issues and decisions related to aspects of teacher rights and responsibilities.
Note that the cases selected do not necessarily constitute the last word regarding

\textbf{YES}

a movie in a theater, they don’t give you three warnings
and ask you to move your seat—they throw you out! If
you do it enough times, you can be banned from
returning. Kids need to know that. We need to help them,
but we must also let the other members of our class “en-
joy the movie,” so to speak. Classroom environments
should have clear rules and expectations for everyone.

The decision to remove a child permanently should
not rest on any one person. But the teacher should
have the final say because he or she knows firsthand
what the “disruptive child” can do to the learning of
the other children.

Some disruptive students may have special prob-
lems, and they should receive special education ser-
dices for those problems. But special education should
not be a dumping ground for disruptive students!

I am talking about the child who refuses to stop
talking, who bothers other kids, picks at things that
don’t belong to him or her, shows a general indiffer-
ence to the educational process, and—this is the key—
makes the choice not to follow classroom rules.

My father, a former teacher and administrator,
gave me the best teaching advice: “Do what is best for
your class. Always put the kids first.”

I believe I am doing just that every time I make the
decision to remove a disruptive child from my class.

A disruptive student’s right to learn ends when it
interferes with his classmates’ right to learn.

Source: “Should Teachers Have the Authority to Remove Disruptive
Students from their Classes Permanently?” \textit{NEA Today} (January
2002), p. 11.

\textbf{NO}

It is not always so easy. By no means should you
tackle the problem on your own.

Yes, if the behavior is totally out of control and the
team has exhausted all possible interventions, then
perhaps it’s time to look at another less restrictive envi-
ronment. But that should be a team decision. Usually,
removing the child is not necessary.

In our school, three years ago, we started to use “stu-
dent support teams” for all students with special needs,
even those who have not been formally referred under
IDEA. In the team, we talk about the reasons for the dis-
ruptive behavior. We bring in whatever help is needed.

Teachers come out of these sessions saying, “I
learned an intervention that makes sense.” They come
back after trying the new approach saying, “This part is
okay but I need more help in that area.” And we work
on it more.

We have cut the number of students referred under
IDEA by three-quarters.

There was once a handsome little kindergarten stu-
dent who gave his teacher a hard time. He would
pester other students, disrupt the class, and basically
frazzle the teacher to her wit’s end. Then she found out
the boy’s mother had taught him all the skills he would
need up to first grade. He was bored. So the teacher
gave the student harder work. This simple modific-
aton kept him focused. He went on to fly helicopters in
the U.S. Marines. Later, he became a teacher of special
needs students. How do I know? The little boy was me!

Don’t give up on disruptive kids. You never know
which of them will go on to become teachers!

\textbf{WHAT DO YOU THINK?}

\textbf{Should teachers have the authority to remove disruptive
students from their classes permanently?}

To give your opinion, go to Chapter 6 of the companion website
(www.ablongman.com/johnson13e) and click on Debate.
teacher certification and licensure
The process whereby each state determines the requirements for certification and for obtaining a license to teach.

teacher rights but rather provide an overview of some of the issues that have been decided in the courts. Table 6.9 summarizes the issues and decisions in selected cases involving teacher rights and responsibilities. This summary table is not intended to provide a complete understanding of the court decisions cited; please read the text for better comprehension. Note also that most of the court cases were decided in the 1970s and 1980s; more recently, new federal statutes have been the defining force.

## CONDITIONS OF EMPLOYMENT

Many conditions must be met for you to be hired as a teacher. These include your successful completion of a professional preparation program, being credentialed or licensed by the state, and receiving a contract from the hiring school district. In each of these instances, you have rights established in law and statute, as well as responsibilities.

### TEACHER CERTIFICATION AND LICENSURE

The primary purpose of teacher certification and licensure is to make sure there are qualified and competent teachers in the public schools. Certification laws usually require, in addition, that the candidate show evidence of citizenship,
good moral character, and good physical health. A minimum age is frequently specified. All states have established requirements for teacher certification and licensure. Carrying out the policies of certification is usually a function of a state professional standards board. The board first has to make certain that applicants meet legal requirements; it then issues the appropriate license/certificates. Certifying agencies may not arbitrarily refuse to issue a certificate to a qualified candidate. The courts have ruled that local boards of education may prescribe additional or higher qualifications beyond the state requirements, provided that such requirements are not irrelevant, unreasonable, or arbitrary. A teaching certificate or license is a privilege that enables a person to practice a profession—it is not a right. But teacher certification is a property interest that cannot be revoked without constitutional due process.

TEACHER EMPLOYMENT CONTRACTS

Usually, boards of education have the statutory authority to employ teachers. This authority includes the power to enter into contracts and to fix terms of employment and compensation. In some states, only specific members of the school board can sign teacher contracts. When statutes confer the employing authority to boards of education, the authority cannot be delegated. It is usually the responsibility of the superintendent to screen and nominate candidates to the board. The board, meeting in official session, then acts officially as a group to enter into contractual agreement. Employment procedures vary from state to state, but the process is fundamentally prescribed by the legislature and must be strictly followed by local boards. A contract usually contains the following elements: the identification of the teacher and the board of education, a statement of the legal capacity of each party to enter into the contract, a definition of the assignment specified, a statement of the salary and how it is to be paid, and a provision for signature by the teacher and by the legally authorized agents of the board. In some states, contract forms are provided by state departments of education, and these forms must be used; in others, each district establishes its own.

Teachers are responsible for making certain that they are legally qualified to enter into contractual agreements. For example, a teacher may not enter into a legal contract without having a valid teaching certificate issued by the state. Furthermore, teachers are responsible for carrying out the terms of the contract and abiding by them. In turn, under the contract they can legally expect proper treatment from an employer.

TEACHER TENURE

Teacher tenure legislation exists in most states. In many states, tenure or fair dismissal laws are mandatory and apply to all school districts without exception. In other states, they do not. The various laws differ not only in extent of coverage but also in provision for coverage.

Tenure laws are intended to provide security for teachers in their positions and to prevent removal of capable teachers by capricious action or political motive. Tenure statutes generally include detailed specifications necessary for granting tenure and for dismissing teachers who have tenure. These statutes have been upheld when attacked on constitutional grounds. The courts reason that because state legislatures create school districts, they have the right to limit their power.

BECOMING TENURED AND TENURE RIGHTS

A teacher becomes tenured by serving satisfactorily for a stated time. This period is referred to as the probationary period and typically is three years. The actual process of acquiring tenure after

CROSS-REFERENCE

See Chapter 1 for additional information about becoming a licensed teacher.
serving the probationary period depends on the applicable statute. In some states, the process is automatic at the satisfactory completion of the probationary period; in other states, official action by the school board is necessary. Teachers may be dismissed for any one of numerous reasons, including “nonperformance of duty, incompetency, insubordination, conviction of crimes involving moral turpitude, failure to comply with reasonable orders, violation of contract provisions or local rules or regulations, persistent failure or refusal to maintain orderly discipline of students, and revocation of the teaching certificate.”

A school board in Tennessee dismissed Jane Turk from her tenured teaching position after she was arrested for driving under the influence of alcohol (DUI). Turk’s appeal was upheld by the lower-court judge because there was no evidence of an adverse effect on her capacity and fitness as a teacher. The school board appealed to the Tennessee Supreme Court, which rejected the board’s appeal, finding that the school board “acted in flagrant disregard of the statutory requirement and fundamental fairness in considering matters that should have been specifically charged in writing.” Tennessee law requires that before a tenured teacher can be dismissed, “the charges shall be made in writing specifically stating the offenses which are charged.” Nevertheless, teacher tenure may be affected by teacher conduct outside school as well as inside. This issue, in a sense, deals with the personal freedom of teachers: freedom to behave as other citizens do, freedom to engage in political activities, and academic freedom in the classroom.

Tenure laws are frequently attacked by those who claim that the laws protect incompetent teachers. There is undoubtedly some truth in the assertion, but it must be stated clearly and unequivocally that these laws also protect the competent and most able teachers. Teachers who accept the challenge of their profession and dare to use new methods, who inspire curiosity in their students, and who discuss controversial issues in their classrooms need protection from politically motivated or capricious dismissal. Incompetent teachers, whether tenured or not, can be dismissed under the law by capable administrators and careful school boards that allow due process while evaluating teacher performance.

**RIGHTS OF NONTENURED TEACHERS** Although due process has been applicable for years to tenured teachers, nontenured teachers do not, for the most part, enjoy the same rights. As you can see in Table 6.10, there are significant differences from state to state. In general, tenured teachers enjoy two key rights: protection from dismissal except for cause as provided in state statutes, and the right to prescribed procedures. Nontenured teachers may also have due process rights if these are spelled out in state statutes; however, in states that do not provide for due process, nontenured teachers may be nonrenewed without any reasons being given. If a nontenured teacher is dismissed (as distinguished from nonrenewed) before the expiration of the contract, the teacher is entitled to due process. Twenty-two states afford nontenured teachers the right both to know the reasons for their nonrenewal and to meet with the school board or superintendent to argue to keep their jobs. Cases in Massachusetts and Wisconsin point to the necessity of following due process in dismissing nontenured teachers. In the Massachusetts case, the court said: “the particular circumstances of a dismissal of a public school teacher provide compelling reasons for application of a doctrine of procedural due process.” In the Wisconsin case, the court said:

A teacher in a public elementary or secondary school is protected by the due process clause of the Fourteenth Amendment against a nonrenewal decision which is wholly without basis in fact and also against a decision which is wholly unreasoned, as well as a decision which is impermissibly based.

In 1972 the Supreme Court helped to clarify the difference between the rights of tenured and nontenured teachers. In one case (*Board of Regents v. Roth*, 1972), it held that nontenured teachers were assured of no rights that were
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<tr>
<th>State</th>
<th>Right to Know Reasons for Nonrenewal</th>
<th>Right to Meet with Administration</th>
<th>Mandatory Evaluation of Job Performance</th>
<th>Mandatory Plan of Improvement</th>
<th>Violation of Evaluation Procedure</th>
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(continued)
not specified in state statutes. In this instance, the only right that probationary teachers had was the one to be notified of nonrenewal by a specified date. In a second case (Perry v. Sindermann, 1972), the Court ruled that a nontenured teacher in the Texas system of community colleges was entitled to due process because the language of the institution’s policy manual was such that an unofficial tenure system was in effect. Guidelines in the policy manual provided that a faculty member with seven years of employment in the system acquired tenure and could be dismissed only for cause.

Whether or not a teacher is tenured, that person cannot be dismissed for exercise of a right guaranteed by the U.S. Constitution. A school board cannot dismiss a teacher, for example, for engaging in civil rights activities outside school, speaking on matters of public concern, belonging to a given church, or running for public office. These rights are guaranteed to all citizens, including teachers. However, if a teacher’s behavior is disruptive or dishonest, a school board can dismiss the person without violating the right to freedom of speech.

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<td>Right to Know Reasons for Nonrenewal</td>
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<td>Y Wyoming ✔</td>
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Note:  
X = States with substantial job protections for beginning teachers.  
Y = States with few or no rights in connection with nonrenewal decisions.  
Z = Three states have no state tenure laws, even for veteran teachers.

DISCRIMINATION

School districts are prohibited from using discriminatory practices in the hiring, dismissal, promotion, or demotion of school personnel. In addition to court decisions, federal statutes, such as the Civil Rights Acts of 1964 and 1991, have had a defining influence on the legal basis for judgments of discrimination. For example, the 1991 law expanded protection beyond race to include discrimination based on sex, disability, medical conditions, religion, and national origin. Further, employment decisions must be “job-related for the position in question.” The 1991 law also places the burden on the defendant (schools) to show that a legitimate nondiscriminatory reason exists for any personnel decision that may be challenged.

RIGHT TO BARGAIN COLLECTIVELY

The right of teachers to bargain collectively has been an active issue since the 1960s. In the past, teacher groups met informally with boards of education to discuss salaries and other teacher welfare provisions. Sometimes the superintendent was even the spokesperson for such teacher groups. In more recent years, however, formal collective procedures have evolved. These procedures have been labeled collective bargaining, professional negotiation, cooperative determination, and collective negotiation. Teachers’ groups have defined collective bargaining as a way of winning improved goals and not the goal itself. The right of employees to bargain collectively and the obligation of the district to bargain are not constitutionally granted but are typically guaranteed by statute.

A contract arrived at by a teachers’ union means that salaries, working conditions, and other matters within the scope of the collective bargaining agreement can no longer be decided unilaterally by the school administration and board of education. Instead, the contract outlines how the teachers’ union and its members will participate in formulating the school policies and programs under which they work.

The first teachers’ group to bargain collectively with its local board of education was the Maywood, Illinois, Proviso Council of West Suburban Teachers, Union Local 571, in 1938. In 1957 a second local, the East St. Louis, Illinois, Federation of Teachers was successful in negotiating a written contract. The breakthrough, however, came in December 1961, when the United Federation of Teachers, Local 2 of the American Federation of Teachers (AFT), won the right to bargain for New York City’s teachers. Since then, collective bargaining agreements between boards of education and teacher groups have grown phenomenally. Both the AFT and the National Education Association (NEA) have been active in promoting collective bargaining. Today, approximately 75 percent of the nation’s teachers are covered by collective bargaining agreements.

RIGHT TO STRIKE

Judges have generally held that public employees do not have the right to strike. For example, the Supreme Court of Connecticut and the Supreme Court of New Hampshire ruled that teachers may not strike. The court opinion in Connecticut stated:

Under our system, the government is established by and run for all of the people, not for the benefit of any person or group. The profit motive, inherent in the principle of free

Although the number of collective bargaining agreements between boards of education and teacher groups has grown phenomenally, many states have statutes that prohibit teachers from striking.
enterprise, is absent. It should be the aim of every employee of the government to do his or her part to make it function as efficiently and economically as possible. The drastic remedy or the organized strike to enforce the demands of unions of government employees is in direct contravention of this principle.

A few states permit strikes in their collective bargaining statutes. At least twenty states have statutes that prohibit strikes, however. Whether or not there are specific statutes prohibiting strikes, boards of education threatened by strikes can usually get a court injunction forestalling them. Both the NEA and the AFT view the strike as a last-resort technique, although justifiable in some circumstances.

In 1976, by a six-to-three vote, the U.S. Supreme Court ruled that boards of education can discharge teachers who are striking illegally. Ramifications of this decision, which involved a Wisconsin public school, are potentially far-reaching. The Court viewed discharge as a policy question rather than an issue for adjudication: "What choice among the alternative responses to the teachers’ strike will best serve the interests of the school system, the interests of the parents and children who depend on the system, and the interests of the citizens whose taxes support it?" The Court said that the state law in question gave the board the power to employ and dismiss teachers as a part of the balance it had struck in municipal labor relations (Hortonville Joint School District No. 1 v. Hortonville Education Association, 1976).

One can argue that strikes are unlawful when a statute is violated, that the courts in their decisions have questioned the right of public employees to strike, and that some teachers and teacher organizations consider strikes unprofessional. In any given case, the question before teachers seems to be whether the strike is a justifiable and responsible means—after all other ways have been exhausted—of declaring abominable educational and working conditions and trying to remedy them.

![CROSS-REFERENCE](See Chapter 13 for information about how curriculum and instruction can be offered in ways that include teacher creativity.)

**ACADEMIC FREEDOM**

A sensitive and vital concern to the educator is academic freedom—freedom to control what one will teach and to teach the truth as one discovers it without fear of penalty. Academic freedom is thus essentially a principle of pedagogical philosophy that has been applied to a variety of professional activities. A philosophical position, however, is *not necessarily* a legal right. Federal judges have generally recognized certain academic protections in the college classroom while exhibiting reluctance to recognize such rights for elementary and secondary school teachers. For example, the contract of a history teacher at the University of Arkansas—Little Rock was not renewed after he announced that he taught his classes from a Marxist point of view. The court ordered that the teacher be reinstated in light of the university’s failure to advance convincing reasons related to the academic freedom issue to warrant his nonrenewal. In another case, a university instructor claimed that he was denied tenure because he refused to change a student’s grade. He argued that awarding a course grade was the instructor’s right of academic freedom. Because the university had given several valid reasons for the nonrenewal of the instructor’s contract, however, the court did not order a reinstatement.

**ACADEMIC FREEDOM FOR ELEMENTARY AND SECONDARY TEACHERS**

Although federal courts generally have not recognized academic freedom for elementary and secondary school teachers, the most supportive ruling was made in 1980 in a case that involved a high school history teacher whose contract was not renewed after she used a simulation game to introduce her students to the characteristics of rural life during the post—Civil War Reconstruction era. Although the role playing evoked controversy in the school and the community,
there was no evidence that the teacher's usefulness had been impaired. Therefore, the school erred in not renewing the teacher's contract, and she was ordered reinstated.

In *Pickering v. Board of Education* (1968), the U.S. Supreme Court dealt with academic freedom at the public school level. Marvin L. Pickering was a teacher in Illinois who, in a letter published by a local newspaper, criticized the school board and the superintendent for the way they had handled past proposals to raise and use new revenues for the schools. After a full hearing, the board of education terminated Pickering’s employment, whereupon he brought suit under the First and Fourteenth Amendments. The Illinois courts rejected his claim. The U.S. Supreme Court, however, upheld Pickering’s claim and, in its opinion, stated:

To the extent that the Illinois Supreme Court’s opinion may be read to suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work, it proceeds on a premise that has been unequivocally rejected in numerous prior decisions of this Court.

It is difficult to define precisely the limits of academic freedom. In general, the courts strongly support it yet recognize that teachers must be professionally responsible when interacting with pupils. In most instances, teachers are not free to disregard a school board’s decision about which textbook to use, but they are able to participate more when it comes to their choice of supplementary methods. Teachers have usually been supported in their rights to criticize the policies of their local school boards, wear symbols representing stated causes, participate in unpopular movements, and live unconventional lifestyles. But where the exercise of these rights can be shown to have a direct bearing on a teacher’s effectiveness, respect, or discipline, these rights may have to be curtailed. For example, a teacher may have the right to wear a gothic costume to class, but if the wearing of the outfit leads to disruption and an inability to manage students, the teacher can be ordered to wear more conventional clothes.

In summary, academic freedom for teachers is more limited than it is for higher education faculty. First Amendment protection of free speech is increasingly limited to a teacher’s actions outside of the classroom and school. Before arguing for academic freedom and free speech in the classroom, a teacher must show that she or he did not defy legitimate state and local curriculum directives, followed accepted professional norms, and acted in good faith when there was no precedent or policy.

**BOOK BANNING AND CENSORSHIP**

Ever since the United States has had public schools, some people have taken issue with what has been taught, how it has been taught, and the materials used. The number of people challenging these issues and the intensity of their feeling have escalated since the mid-1970s. Well-organized and well-financed pressure groups have opposed the teaching of numerous topics, including political, economic, scientific, and religious theories; the teaching of values grounded in religion, morality, or ethnicity; and the portrayal of stereotypes based on gender, race, or ethnicity. Some complaints have involved differences of opinion over the central role of the school—whether the school’s job is to transmit traditional values, indoctrinate students, or teach students to do their own thinking.

Several court cases since the 1970s have involved the legality of removing books from the school curriculum and school libraries. The courts have given some guidance but have not fully resolved the issue. In 1972 a court of appeals held that a book does not acquire tenure, so a school board was upheld in its removal of Down These Mean Streets. The Court of Appeals for the Seventh Circuit in 1980 upheld the removal of the book *Values Clarification*, ruling that local
boards have considerable authority in selecting materials for schools. Removal of books on the basis of the vulgar language they contain has also been upheld.

The U.S. Supreme Court treated this issue in 1982.\(^{11}\) The decision disappointed people who had hoped that the justices would issue a definitive ruling on the banning of books. Instead, Justice William Brennan ruled that students may sue school boards on the grounds of denial of their rights, including the right to receive information. The Court also indicated that removal of a book because one disagrees with its content cannot be upheld. The net effect of this decision was that the school board decided to return the questionable books to the library.

The latest censorship battleground has to do with limiting access to the World Wide Web. Many school districts and schools are applying filters that restrict access to particular types of websites. New questions related to defining what is meant by “responsible use” and who decides—teachers, principals, or school districts—are now occupying school boards, legislative bodies, and the courts.

**FAMILY RIGHTS AND PRIVACY ACT**

In 1974, Congress passed the Family Educational Rights and Privacy Act (FERPA), which also is called the **Buckley Amendment**. This statute addresses the maintenance of confidentiality of student records. The statute makes it clear that schools and teachers may not release any information or records of students without written permission of the parents. The statute also mandates that parents have the right to inspect the official records, files, and data related directly to their children, including academic and psychological test scores, attendance records, and health data. Parents must be able to challenge the content of their child’s school records to ensure that they are accurate and that they are not misleading or in violation of the privacy or other rights of students. This statute does not prohibit teachers, principals, and other education professionals from making student information available for educational purposes as long as they take steps to maintain privacy of the information.

**SCHOOL RECORDS**

Before November 19, 1974, the effective date of the Buckley Amendment, the law regarding the privacy of student records was extremely unclear. Even today many school administrators—and most parents—do not realize that parents now have the right to view their children’s educational records. Many teachers, too, are not yet aware that their written comments, which they submit as part of a student’s record, must be shown at a parent’s request, or at a student’s request if the student is eighteen or older.

The law (P.L. 93-380 as amended by P.L. 93-568) requires that schools receiving federal funds must comply with the privacy requirements or face loss of those funds. What must a school district do to comply? According to a 1976 clarification by HEW, the Buckley Amendment requires that the school district

- Allow all parents, even those not having custody of their children, access to each educational record that a school district keeps on their child.
- Establish a district policy on how parents can go about seeing specific records.
- Inform all parents of what rights they have under the amendment, how they can act on these rights according to school policy, and where they can see a copy of the policy.
- Seek parental permission in writing before disclosing any personally identifiable record on a child to individuals other than professional personnel employed in the district (and others who meet certain specific requirements).\(^{12}\)

**STUDENTS GRADING ONE ANOTHER’S PAPERS**

A common instructional practice for teachers is to have students grade one another’s work. As common as the
practice is, it resulted in a suit that went all the way to the U.S. Supreme Court. In *Owasso Independent School District v. Falvo*, the plaintiff alleged violations of FERPA in regard to “peer review.” The suit was funded by the Rutherford Institute, a national conservative organization. The Court of Appeals for the Tenth Circuit agreed with an Oklahoma parent that students should not grade other students’ work. In 2002 the Supreme Court was unanimous in overturning the circuit court and said that the privacy law was directed at records “kept in a filing cabinet in a records room or on a permanent secure database,” not the grades on a classroom paper. The Court observed:

> Correcting a classmate’s work can be as much a part of the assignment as taking the test itself. It is a way to teach material again in a new context, and it helps show students how to assist and respect fellow pupils. By explaining the answers to the class as the students correct the papers, the teacher not only reinforces the lesson but also discovers whether the students have understood the material and are ready to move on. We do not think FERPA prohibits these educational techniques.

### TEACHER RESPONSIBILITIES AND LIABILITIES

With about 47 million students enrolled in elementary and secondary schools, it is almost inevitable that some will be injured in educational activities. Each year, some injuries will occasion lawsuits in which plaintiffs seek damages. Such suits are often brought against both the school districts and their employees. Legal actions seeking monetary damages for injuries are referred to as *actions in tort*. Technically, a *tort* is a legal wrong—an act (or the omission of an act) that violates the private rights of an individual. Actions in tort are generally based on alleged negligence; the basis of tort liability or legal responsibility is negligence. Understanding the concept of negligence is essential to understanding liability.

Legally, *negligence* is a failure to exercise or practice due care. It includes a factor of foreseeability of harm. Court cases on record involving negligence are numerous and varied. The negligence of teacher supervision of pupils is an important topic that includes supervision of the regular classroom, departure of the teacher from the classroom, supervision of the playground, and supervision of extracurricular activities. *Liability* is the responsibility for negligence—responsibility for the failure to use reasonable care when such failure results in injury to another.

### EDUCATIONAL MALPRACTICE

Culpable neglect by a teacher in the performance of his or her duties is called *educational malpractice*. The courts of California and New York dismissed suits by former students alleging injury caused by educational malpractice. The plaintiffs claimed that they did not achieve an adequate education and that this was the fault of the school district. In the California case, the student, after graduating from high school, could barely read or write. The judge in his opinion stated:

> The science of pedagogy itself is fraught with different and conflicting theories . . . and any layman might—and commonly does—have his own emphatic viewpoints on the subject. . . . The achievement of literacy in the schools, or its failure, is influenced by a host of factors from outside the formal teaching process, and beyond the course of its ministries.

In essence, the judge stated that there was no way to assess the school’s negligence. In the New York case, the judge said, “The failure to learn does not bespeak a failure to teach.” In the twenty-first century, with the continuing push for accountability, there are likely to be more tests of the educational malpractice question.
NEGLIGENT CHEMISTRY TEACHER

In a California high school chemistry class, pupils were injured while experimenting with the manufacture of gunpowder. The teacher was in the room and had supplemented the laboratory manual instructions with his own directions. Nevertheless, an explosion occurred, allegedly caused by the failure of pupils to follow directions. A court held the teacher and the board of education liable. Negligence in this case meant the lack of supervision of laboratory work, a potentially dangerous activity requiring a high level of “due care.”

FIELD TRIP NEGLIGENCE

In Oregon a child was injured while on a field trip. Children were playing on a large log in a relatively dry area on a beach. A large wave surged up onto the beach, dislodging the log, which began to roll. One of the children fell seaward off the log, and the receding wave pulled the log over the child, injuring him. In the subsequent court action, the teacher was declared negligent for not having foreseen the possibility of such an occurrence. The court said:

The first proposition asks this court to hold, as a matter of fact, that unusual wave action on the shore of the Pacific Ocean is a hazard so unforeseeable that there is no duty to guard against it. On the contrary, we agree with the trial judge, who observed that it is common knowledge that accidents substantially like the one that occurred in this case have occurred at beaches along the Oregon coast. Foreseeability of such harm is not so remote as to be ruled out as a matter of law.

Although liability for negligence is a vague concept involving due care and foreseeability, it is defined more specifically each time a court decides such a case.

GOVERNMENTAL IMMUNITY FROM LIABILITY

Historically, school districts have not been held liable for torts resulting from the negligence of their officers, agents, or employees while the school districts are acting in their governmental capacity. That immunity was based on the doctrine that the state is sovereign and cannot be sued without its consent. A school district, as an arm of state government, would therefore be immune from tort liability. Unlike school districts, however, employees of school districts have not been protected by immunity; teachers can be held liable for their actions. Teachers must act as reasonable and prudent people, foreseeing dangerous situations. The degree of care required increases with the immaturity of the pupil. Lack of supervision and foresight forms the basis of negligence charges.

Recent decades have seen a trend away from governmental immunity. As of 1986, more than half of the states had abrogated governmental immunity either judicially, statutorily, or through some form of legal modification. There has also been an increase in the number of lawsuits.

LIABILITY INSURANCE

Many states authorize school districts to purchase insurance to protect teachers, school districts, administrators, and school board members against suits. It is important that school districts and their employees and board members be thus protected, either through school district insurance or through their own per-
The costs of school district liability insurance have increased so dramatically in recent years that many school districts are contemplating the elimination of extracurricular activities. Consequently, state legislatures are being pressured to fix liability insurance rates for school districts; they are also being asked to pass laws to limit maximum liability amounts for school-related cases. For teachers, membership in the state affiliates of the NEA and membership in the AFT include the option of liability insurance programs sponsored by those organizations.

In summary of the discussion of this section, Table 6.11 lists brief statements related to the rights and responsibilities of teachers.

**STUDENTS’ RIGHTS AND RESPONSIBILITIES**

The Professional Dilemma feature dealing with testing student athletes for drugs reflects how the rights of students have changed since the late 1960s. Before 1969, school authorities clearly had the final say as long as what they decided was seen as reasonable. A key U.S. Supreme Court decision in 1969 changed the balance by concluding that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” Going further on behalf of student rights, in 1975 the Court decided that the principle of due process applied to students. These decisions led to several successful student challenges of school policies and procedures. In the late 1980s, Court decisions moved back toward increasing the authority of public school officials. Along the way, student life has become more complex, not only because of such threats as the increased use of drugs and the presence of weapons and gangs, but also because a diverse multicultural and shifting political context has...
PROFESSIONAL DILEMMA

Drug Testing of Student Athletes: Prevention or Problem?

States, school districts, and schools have clear policies and rules that address the problem of student uses of drugs. Even with strong laws and policies, many students use alcohol, so-called recreational drugs, and other illicit substances. Student athletes represent a special case in that they are more apt to use anabolic steroids and other substances that are perceived to enhance performance. One response by both policymakers and educators has been to advocate for drug testing programs.

Over the last twenty-five years, testing for drugs has become common in sports. For example, most professional sports test athletes for drugs, as does the U.S. Olympic Committee. But what about having required drug testing of student athletes? Is it legal? Is it an invasion of privacy? Should there be advance notice? Should the testing be random or applied to all students equally? And, most important, are such policies effective?

The answer to the legality of drug testing is “yes.” The U.S. Supreme Court in Vernonia School District 47 v. Acton (1995) upheld drug testing of adolescents engaged in sports. As a result, schools and school districts are implementing a variety of approaches, especially random testing.

What do you think?

- As a teacher, do you think your students should be subject to random drug testing?
- Should the testing be done across all students?
- Researchers who study policy talk about two kinds of consequences: intended and unintended. For any policy such as random drug testing there will be both kinds of consequences. What would you predict to be some of the intended and unintended consequences of random drug testing?

Read the next paragraph after you have developed your thoughts about this professional dilemma.

Researchers have compared drug use and attitudes of athletes in schools with and without random drug testing. The findings are that illicit drug use for athletes in the testing school decreased across the school year (the intended consequence). At the same time, the tested athletes had a larger reduction in positive attitudes toward school and more preference for risky drug use behavior, and they saw authority figures as more tolerant of drug and alcohol use (unintended consequences). Also, the researchers found no differences in the uses of alcohol and tobacco.


To answer these questions on-line and e-mail your answers to your professor, go to Chapter 6 of the companion website (www.ablongman.com/johnson13e) and click on Professional Dilemma.

made it more difficult to determine what is and what is not appropriate to be able to do and say within a school environment.

To illustrate some of the issues and decisions related to student rights and responsibilities, we present specific court cases here. Note that the cases do not necessarily constitute the last word regarding student rights, but rather provide an overview of some of the issues that have been decided by the courts. Table 6.12 is a summary of key cases; however, it is not intended to provide a complete understanding of the court decisions. You should read the following subsections and pursue references provided in the notes and bibliography to learn more about these and other student rights issues.

STUDENTS’ RIGHTS AS CITIZENS

Through a series of court decisions, all children in the United States have been granted the opportunity for a public school education. Further, although school officials have a great deal of authority, children as students maintain many of the constitutional rights that adult citizens enjoy all the time. As obvious as each of these points might seem, each has been the subject of debate and court decision.
STUDENTS’ RIGHT TO AN EDUCATION

American children have a right to an education; this right is ensured in many state constitutions. It has been further defined by court decisions and is now interpreted to mean that each child has an equal opportunity to pursue education.

The right to an education, however, is not without certain prerequisites. Citizenship alone does not guarantee a free education. Statutes that establish public school systems also generally establish how operating costs will be met. Real estate taxes are the usual source of funds, so proof of residence is necessary for school attendance without tuition. Residence does not mean that the student, parent, or guardian must pay real estate taxes; it means that the student must live in the school district in which he or she wants to attend school. Residence, then, is a prerequisite to the right of a free public education within a specific school district.

HOMELESS CHILDREN HAVE THE RIGHT TO GO TO SCHOOL

There are more than 500,000 homeless children in the United States. Because access to public school usually requires a residence address and a parent or guardian, as well as transportation, in the past homeless children were squeezed out of the system. Congress addressed this growing problem in 1987 with passage of the Stewart B.

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TABLE 6.12 Selected U.S. Supreme Court Decisions Related to Students’ Rights and Responsibilities

<table>
<thead>
<tr>
<th>Case</th>
<th>Issue</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plyler v. Doe (1982)</td>
<td>Rights to education of illegal aliens</td>
<td>Court struck down Texas law that denied a free public education to children of illegal aliens.</td>
</tr>
<tr>
<td>Goss v. Lopez (1975)</td>
<td>Suspension of high school students without a hearing</td>
<td>Court ruled that only in an emergency can a student be suspended without a hearing.</td>
</tr>
<tr>
<td>Wood v. Strickland (1975)</td>
<td>Question of whether school board members can be sued for depriving students of their constitutional rights (through suspension)</td>
<td>Students can seek damages from individual school board members but not from the school district.</td>
</tr>
<tr>
<td>Board of Education, Island Trees Union Free District No. 26 v. Pico (1982)</td>
<td>School board’s decision to remove books from the school library</td>
<td>Court issued decision that under certain circumstances, children may challenge board’s decision to remove books.</td>
</tr>
<tr>
<td>Ingraham v. Wright (1977)</td>
<td>Power of states to authorize corporal punishment without consent of the student’s parent</td>
<td>Court ruled that states may constitutionally authorize corporal punishment.</td>
</tr>
<tr>
<td>Bethel School District No. 403 v. Fraser (1986)</td>
<td>Power of school officials to restrain student speech</td>
<td>School officials may discipline a student for making lewd and indecent speech in a school assembly attended by other students.</td>
</tr>
<tr>
<td>Hazelwood School District v. Kuhlmeier (1988)</td>
<td>School district control of student expression in school newspapers, theatrical productions, and other forums</td>
<td>School administrators have broad authority to control student expression in the official student newspaper, which is not a public forum but is seen as part of the curriculum.</td>
</tr>
<tr>
<td>Honig v. Doe (1988)</td>
<td>Violation of the Education for All Handicapped Children Act (P.L. 94-142); school indefinitely suspended and attempted to expel two emotionally disturbed students</td>
<td>P.L. 94-142 authorizes officials to suspend dangerous children for a maximum of ten days. Justice Brennan said, “Congress very much meant to strip schools of unilateral authority to exclude disturbed students.”</td>
</tr>
<tr>
<td>New Jersey v. T.L.O. (1985)</td>
<td>Search and seizure</td>
<td>School officials must have a reasonable cause when engaged in searches.</td>
</tr>
</tbody>
</table>
**in loco parentis**

Meaning “in the place of a parent,” this term describes the implied power and responsibilities of schools.

McKinney Homeless Assistance Act, which requires that “each State educational agency shall assure that each child of a homeless individual and each homeless youth have access to a free, appropriate public education.” The law was amended in 1990 to require each school district to provide services to the homeless that are comparable to the services offered other students in the schools. These services include allowing homeless children to finish the school year in the school they were in before they lost their housing, providing transportation to school, tutoring to help catch students up, and giving homeless children the opportunity to take part in school programs offered to other children.

**STUDENTS’ RIGHT TO SUE**

The U.S. Supreme Court has affirmed that students may sue school board members who are guilty of intentionally depriving students of their constitutional rights. In *Wood v. Strickland* (1975), the Supreme Court held that school officials who discipline students unfairly cannot defend themselves against civil rights suits by claiming ignorance of pupils’ basic constitutional rights. As a result of this decision, Judge Paul Williams, a federal judge in Arkansas, ordered that certain students who had been suspended could seek damages from individual school board members—though not from the school district as a corporate body. The judge also ruled that the school records of these pupils must be cleared of the suspension incident. From these decisions, it is apparent that the U.S. Supreme Court is taking into account the rights of students.

**STUDENTS’ RIGHT TO DUE PROCESS**

Much of the recent involvement of the courts with student rights has concerned due process of law for pupils. Due process is guaranteed by the Fourteenth Amendment. The protection clause states, “nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws.” Due process of law means following those rules and principles that have been established for enforcing and protecting the rights of the accused. As explained earlier, due process falls under two headings—procedural and substantive. *Procedural* due process has to do with whether the procedures used in disciplinary cases are fair; *substantive* due process is concerned with whether the school authorities have deprived a student of basic substantive constitutional rights such as personal liberty, property, or privacy.17

The application of due process to issues in schools is a recent phenomenon. Historically, schools functioned under the doctrine of *in loco parentis* (“in the place of a parent”). This doctrine meant that schools could exercise almost complete control over students because they were acting as parent substitutes. Under the doctrine of in loco parentis, the courts have usually upheld the rules and regulations of local boards of education, particularly about pupil conduct. However, the courts have not supported rules that are unconstitutionally “vague” and/or “overboard.” The following cases illustrate the difficult balance between protecting students’ right to due process and giving schools sufficient authority to pursue their mission.

**PROCEDURAL DUE PROCESS IN CASES OF SUSPENSION AND EXPULSION**

Zero tolerance policies, such as those described in the Relevant Research feature, have complicated the local schools’ ability to balance students’ right to due process and serving students’ ed-
Educational needs. Procedural due process is scrutinized especially in cases of suspension and expulsion. These cases most often result from disciplinary action taken by the school, which may or may not have violated a pupil’s substantive constitutional rights. For example, in Goss v. Lopez (1975) the U.S. Supreme Court dealt with the suspension of high school students in Columbus, Ohio. In that case, the named plaintiffs claimed that they had been suspended from public high school for up to ten days without a hearing. The action alleged deprivation of constitutional rights. Two students who were suspended for a semester brought suit charging that their due process rights were denied—because they were not present at the board meeting when the suspensions were handed out.

In ruling that students cannot be suspended without some kind of hearing, the Court said:

The prospect of imposing elaborate hearing requirements in every suspension case is viewed with great concern, and many school authorities may well prefer the untrammelled power to act unilaterally, unhampered by rules about notice and hearing. But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his defalcation and to let him tell his side of the story in order to make sure that an injustice is not done. Fairness can rarely be obtained by secret.

STUDY PURPOSE/QUESTIONS: Legal research begins with the analysis of incidents and cases related to a particular statute or interpretation of the U.S. Constitution, in this case zero tolerance. In response to the tragedy at Columbine High School, many state legislatures and school districts have mandated that there be no flexibility when it comes to students making threats or bringing weapons to schools, that is, zero tolerance. Most of the established policies mandate that the student be expelled.

STUDY DESIGN: Stories from many individual situations were summarized. For example, one six-year-old made national news when he was expelled for bringing a weapon to kindergarten. The “weapon” was a plastic knife in his lunch sack, which his grandmother had put there so that he could spread peanut butter. Then there was the high school potential valedictorian who was expelled for making a “terrorist threat” on a student government election campaign poster. In this study, state statutes and district policies were examined as well.

STUDY FINDINGS: “Kids whose misbehaviors in the past would have occasioned oral reprimands from a teacher or perhaps a trip to the principal’s office are now being labeled a threat to school safety. And, those very same kids-will-be-kids incidents are now prompting punishments ranging from suspension to expulsion to referral to the juvenile court system for behaviors that even the schools agree do not actually compromise safety.” Another finding is that parents think of zero tolerance as keeping guns and drugs out of schools. However, zero tolerance, in many settings, has become a catch phrase for schools that are unable or unwilling to prevent school violence. This approach is also making students less inclined to confide in teachers and administrators.

IMPLICATIONS: As with many policies, there needs to be a commonsense approach to zero tolerance. Teachers and administrators, those closest to the action, need to have flexibility in judging the seriousness of perceived threats and in dispensing consequences. Texas has been innovative in its approach by identifying three levels of severity and three levels of response. At the most serious level, bringing a gun, knife, or drugs to school and aggravated assault result in expulsion. At the middle level, simple assault, use of alcohol, and a few other violations result in temporary removal from school. For the lowest-level offenses, school officials have discretion to determine the severity of the offense and the punishment. Zero tolerance has become a widespread policy approach. To what extent should school officials have flexibility in determining the severity of a threat? Or should there be a universal mandated response? Where should the line be drawn, if there is to be one?
one-sided determination of the facts decisive of rights. . . . Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.

Procedural due process cases usually involve alleged violations of the Fourteenth Amendment, which provides for the protection of specified privileges of citizens, including notice to the student, impartiality of the hearing process, and the right of representation. These cases might also involve alleged violations of state constitutions or statutory law that call for specific procedures. For example, many states have procedures for expulsion or suspension. Expulsion usually involves notifying parents or guardians in a specific way, perhaps by registered mail, and giving students the opportunity for a hearing before the board of education or a designated hearing officer. Suspension procedures are usually detailed as well, designating who has the authority to suspend and the length of time for suspension. Teachers and administrators should know due process regulations, including the specific regulations of the state where they are employed.

**SUBSTANTIVE DUE PROCESS AND STUDENTS’ RIGHTS TO FREE SPEECH** Substantive due process frequently addresses questions of students’ constitutional rights to free speech versus the schools’ authority to maintain order in support of education. The *Tinker* case (*Tinker v. Des Moines Independent Community School District*, 1969) was significant. It involved a school board’s attempt to keep students from wearing black armbands in a protest against U.S. military activities in Vietnam. In 1969 the U.S. Supreme Court ruled against the Des Moines school board. The majority opinion of the Court was that

the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to “pure speech” which, we have repeatedly held, is entitled to comprehensive protection, under the First Amendment. . . . First Amendment rights, applied in the light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

In the *Tinker* opinion, the Court clearly designated that the decision “does not concern aggressive, disruptive action or even group demonstrations.” The decision did make it clear that whatever their age, students have constitutional rights; and the decision has had a widespread effect on the operation of schools in the United States. Schools have had to pay attention to U.S. law. Educators as well as lawyers have been guided by the principles set forth in the decision regarding the constitutional relationship between public school students and school officials.

A more recent U.S. Supreme Court decision appears to have at least narrowed the breadth of application of the *Tinker* ruling. The case involved Matthew Fraser, a high school senior in a school outside Tacoma, Washington. In the spring of 1983, Fraser was suspended from school for two days after he gave a short speech at a school assembly nominating a friend for a position in student government. School officials argued that Fraser’s speech contained sexual innuendos that provoked other students to engage in disruptive behaviors unfavorable to the school setting. The U.S. District Court for the Western District of Washington held that Fraser’s punishment violated his rights to free speech under the First Amendment and awarded him damages. The U.S. Court of Appeals for the Ninth Circuit affirmed the decision, holding that Fraser’s speech was not disruptive under the standards of *Tinker*. However, the Supreme Court reversed the decision. In the majority opinion in *Bethel School District No. 403 v. Fraser* (1986), Chief Justice Warren Burger wrote, “The de-
termination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board."

## STUDENTS’ RIGHTS AND RESPONSIBILITIES IN SCHOOL

The right, or privilege, of children to attend school also depends on their compliance with the rules and regulations of the school. To ensure the day-to-day orderly operation of schools, boards of education have the right to establish reasonable rules and regulations controlling pupils and their conduct. Boards’ actions have been challenged in numerous instances, however. Challenges have concerned questions such as corporal punishment, the rights of married students, dress codes, student publications’ freedom of expression, and involvement with drugs.

### DRESS CODES AND GROOMING

Lower-court cases dealing with grooming have been decided in some instances in favor of the board of education—in support of their rules and regulations—and in other instances in favor of the student. A general principle seems to be that if the dress and grooming do not incite or cause disruptive behavior or pose a health or safety problem, the court ruling is likely to support the student. Dress codes, once very much in vogue, are less evident today. Although the U.S. Supreme Court has yet to consider a so-called long-hair case, federal courts in every circuit have issued rulings in such cases; half of them found regulations on hair length unconstitutional, and half upheld them. In all, over a two-decade period, federal and state courts decided more than 300 cases on this subject. If there is a trend, it is that students have won most of the cases that dealt with hairstyle. The courts have usually refused to uphold dress and hair length regulations for athletic teams or extracurricular groups unless the school proves that the hair or dress interfered with a student’s ability to play the sport or perform the extracurricular activity.

In the late 1970s and continuing through the 1980s, courts entertained fewer challenges to grooming regulations. The later decisions, however, continued to be consistent with earlier court rulings. Courts have supported school officials who attempted to regulate student appearance if the regulation could be based on concerns about disruption, health, or safety. Presumably, controversy over the length of students’ hair or grooming in general is no longer critical because officials and students have a more common ground of agreement about what is acceptable. However, as the new century begins, new questions could be raised in relation to school efforts to control the clothing and other grooming symbols of gangs.

### CORPORAL PUNISHMENT

In 1977 the U.S. Supreme Court ruled on and finally resolved many of the issues related to corporal punishment (*Ingraham v. Wright*, 1977). The opinion established that states may constitutionally authorize corporal punishment without prior hearing or notice and without consent by the student’s parents, and may as a matter of policy elect to prohibit or limit the use of corporal punishment. It also held that corporal punishment is not in violation of the Eighth Amendment (which prohibits “cruel and unusual punishments”).

In response to the greater sensitivity to student rights, many school districts have
adopted administrative rules and regulations to restrict the occasions, nature, and manner of administering corporal punishment. Some school districts specify that corporal punishment can be administered only under the direction of the principal and in the presence of another adult.

**SEX DISCRIMINATION**

Until relatively recently, educational institutions could discriminate against females—whether they were students, staff, or faculty. In 1972 the Ninety-Second Congress enacted Title IX of the Education Amendments Act to remove sex discrimination against students and employees in federally assisted programs. The key provision in Title IX states, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” Title IX is enforced by the Department of Education’s Office of Civil Rights. An individual or organization can allege that any policy or practice is discriminatory by writing a letter of complaint to the secretary of education. An administrative hearing is the next step in the process. Further steps include suing for monetary damages under Title IX, which the U.S. Supreme Court affirmed in *Franklin v. Guinneth County Schools* (1992).

**MARRIAGE AND PREGNANCY**

In the past, it was not unusual for school officials to expel students who married. Some educators reasoned that marriage brought on additional responsibilities, such as the establishment of a household, and therefore that married students could not perform well in school. They also believed that exclusion would help deter other teenagers from marrying. Courts tended to uphold school officials in these positions. Both courts and school officials acted consistently in not rigidly enforcing compulsory attendance statutes for underage students who married.

School officials today cannot prohibit a student from attending school merely because he or she is married. This position is based on the above-mentioned Title IX and on the notion that every child has a right to attend school. Public policy today encourages students to acquire as much education as they can. Not only are married students encouraged to remain in school, but they are also entitled to the same rights and privileges as unmarried students. Thus, they have the right to take any course the school offers and to participate in extracurricular activities open to other students. That is, participation in extracurricular activities cannot be denied a student solely on the basis of married status. However, a student’s attendance and participation rights can be removed if his or her behavior is deleterious to other students.

Today’s schools also enroll more pregnant students than ever before. Title IX prohibits their exclusion from school or from participation in extracurricular activities. Many school systems have reorganized their school programs so that courses can be offered during after-school hours or in the evenings to accommodate married and pregnant students. This arrangement makes it easier for students to work during the day and complete their education at a time that is convenient for them. Such programs often include courses and topics aimed at the specific audience, as well as counseling programs to assist students with their adjustment to marriage and family life.

**CHILD ABUSE AND NEGLECT**

Government bodies in the United States have the right to exercise police power, which means that government is entrusted with the responsibility of looking after the health, safety, and welfare of all its citizens. In effect, each state acts as a guardian over all its people, exercising that role specifically over individuals not able to look after themselves. This guardianship extends to care for children...
who have been either abused or neglected by their parents. All fifty states have statutes dealing with this issue. These statutes generally protect children under the age of eighteen, but the scope of protection and definitions of abuse and neglect vary considerably among the states. In 1974, Congress passed the Child Abuse Prevention and Treatment Act, which provides financial assistance to states that have developed and implemented programs for identifying, preventing, and treating instances of child abuse and neglect.

The severity of this problem has been highlighted by the requirement of mandatory reporting of suspected abuse and neglect. Formerly, this reporting was limited mainly to physicians, but today educators are also required to report instances of suspected abuse and neglect. Some teachers are reluctant to do so because they fear a breakdown in student–teacher–parent relationships and the possibility of lawsuits alleging invasion of privacy, assault, or slander. Their fear should be diminished, however, by statutes that grant them immunity for acting in good faith.

STUDENT PUBLICATIONS

A significant decision relative to “underground” student newspapers was made in Illinois in 1970. Students were expelled for distributing a newspaper named Grass High, which the students produced at home and which criticized school officials and used vulgar language. The students were expelled under an Illinois statute that empowered boards of education to expel pupils guilty of gross disobedience or misconduct. A federal court in Illinois supported the board of education, but on appeal the Court of Appeals for the Seventh Circuit reversed the decision. The school board was not able to validate student disruption and interference as required by Tinker. The expelled students were entitled to collect damages. An implication is that the rights of students regarding newspapers they print at home are stronger than their rights of free expression in official school publications.

Early in 1988, in a landmark decision (Hazelwood School District v. Kuhlmeier), the U.S. Supreme Court ruled that administrators have broad authority to control student expression in official school newspapers, theatrical productions, and other forums that are part of the curriculum. In reaching that decision, the Court determined that the Spectrum, the school newspaper of the Hazelwood District, was not a public forum. A school policy of the Hazelwood District required that the principal review each proposed issue of the Spectrum. The principal objected to two articles scheduled to appear in one issue. One of the articles was about girls at the school who had become pregnant; the other discussed the effects of divorce on students. Neither article used real names. The principal deleted two pages of the Spectrum rather than delete only the offending articles or require that they be modified. He stated that there was no time to make any changes in the articles and that the newspaper had to be printed immediately or not at all.

Three student journalists sued, contending that their freedom of speech had been violated. The Supreme Court upheld the principal’s action. Justice Byron White decided that the Spectrum was not a public forum, but rather a supervised learning experience for journalism students. In effect, the censorship of a student press was upheld by the Supreme Court. In Justice White’s words, schools must be able to set high standards for the student speech that is disseminated under [their] auspices—standards that may be higher than those demanded by some newspaper publishers and theatrical producers in the “real” world—and may refuse to disseminate student speech that does not meet those standards.

Accordingly, we hold that the standard articulated in Tinker for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression.
The issue of institutional control over publications has not yet been fully resolved. In response to questions about student publications and their distribution, school boards have endeavored to write rules and regulations that will withstand judicial scrutiny. A prompt review and reasonably fast appeal procedures are vital. Students should also be advised of distribution rules and abide by them.

**RIGHTS OF STUDENTS WITH DISABILITIES**

Before the early 1970s, the access to education of students with disabilities was left to the discretion of different levels of government. In the early 1970s, court decisions established the position that students with disabilities were entitled to an “appropriate” education and to procedural protections against arbitrary treatment. Congress subsequently specified a broad set of substantive and procedural rights via Section 504 of the Rehabilitation Act and Public Law 94-142, the Education for All Handicapped Children Act (EAHCA). Since that time there has been a continuing series of legislative and legal refinements and extensions of the intents to see that students with special needs have appropriate educational opportunities. The problem has been to define what is meant by “appropriate.” This examination and clarification process continues to unfold.

One recent case regarding student rights dealt with a violation of P.L. 94-142. That law requires public school officials to keep disruptive or violent students with disabilities in their current classrooms pending hearings on their behavior. In the decision made in *Honig v. Doe* (1988), the U.S. Supreme Court upheld lower-court rulings that San Francisco school district officials violated the act in 1980 when they indefinitely suspended and then attempted to expel two students who were emotionally disturbed and who the officials claimed were dangerous.

The act authorizes officials to suspend dangerous children with disabilities for a maximum of ten days. Longer suspensions or expulsions are permissible only if the child’s parents consent to the action taken or if the officials can convince a federal district judge that the child poses a danger to himself or herself or to others. The rules under which school officials must operate also are more limiting if the misbehavior is a manifestation of the student’s disability.

It is clear that Congress meant to restrain the authority that schools had traditionally used to exclude students with disabilities, particularly students who are emotionally disturbed, from school. But P.L. 94-142 did not leave school administrators powerless to deal with dangerous students.

**STUDENT AND LOCKER SEARCHES**

Most courts have refused to subject public school searches to strict Fourth Amendment standards. In general, the Fourth Amendment protects individuals from search without a warrant (court order). Many lower courts, however, have decided in favor of a more lenient interpretation of the Fourth Amendment in school searches. The rationale is that school authorities are obligated to maintain discipline and a sound educational environment and that that responsibility, along with their in loco parentis powers, gives them the right to conduct searches and seize contraband on reasonable suspicion without a warrant. First, however, school officials may only search for evidence that a student has violated a school rule or a law. Also, there must be a valid rule or law in place.

School authorities do not need a warrant to search a student’s locker or a student vehicle on campus. For searches of a student’s person, however, courts apply a higher standard. Where reasonable suspicion exists, a school official will likely be upheld. Reasonable suspicion exists when one has information that a student is in possession of something harmful or dangerous, or when there

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*Where reasonable suspicion exists, school authorities do not need a warrant to search a student’s locker or a student’s vehicle on campus.*
is evidence of illegal activities such as drug dealing (money, a list of customers, or selling papers). The second consideration is the way in which the search of a student’s person is conducted. School officials are advised to have students remove contents from their clothing rather than having a teacher or administrator do it. A further caution is not to force students to remove all their clothing or undress to their underwear. To date, courts have not upheld school officials in strip searches; these cases evoke the greatest judicial sympathy toward student claims for damages on grounds of illegal searches.21

PEER SEXUAL HARASSMENT

Title IX prohibits sex discrimination, and this includes students’ harassing other students. Teasing, snapping bra straps, requesting sexual favors, making lewd comments about one’s appearance or body parts, telling sexual jokes, engaging in physical abuse, and touching inappropriately are examples of peer sexual harassment. It is important for teachers to make it clear that sexual harassment will not be tolerated. School districts are supposed to have in place a grievance procedure for sex discrimination complaints. Students and/or their parents can file a complaint with the Office of Civil Rights also. All allegations must be investigated promptly, and schools must take immediate action in cases in which harassment behaviors have been confirmed. Keep in mind that sexual harassment is not limited to high school students; middle school and in some cases elementary school children are also sexually harassed. In summary of the topics covered in this section, Table 6.13 lists brief statements related to the rights and responsibilities of students.

<table>
<thead>
<tr>
<th>TABLE 6.13 Summary Statements on Students’ Rights and Responsibilities</th>
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<tr>
<td>■ State constitutions provide that a child has the right to an education; to date, students have been unsuccessful in suing school board members on the ground that they have not learned anything.</td>
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<td>■ The due process clause provides that a child is entitled to notice of charges and the opportunity for a hearing prior to being suspended from school for misbehavior.</td>
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<td>■ Students enjoy freedom of speech at school unless that speech is indecent or leads to disruption; courts are in agreement that school officials can regulate the content of student newspapers. Underground newspapers are not subject to this oversight.</td>
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<td>■ Students may be awarded damages from school board members for a violation of their constitutional rights if they can establish that they were injured by the deprivation and that the school official deliberately violated those rights.</td>
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<td>■ The use of corporal punishment is not prohibited by the U.S. Constitution, but excessive punishment may be barred by the Fourteenth Amendment.</td>
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<td>■ Students may be restricted in their dress when there are problems of disruption, health, or safety.</td>
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<td>■ Assignments of students to activities or classes in general on the basis of sex is not consistent with Title IX. These assignments may be made in such areas as sex education classes or when sports are available for both sexes.</td>
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<td>■ Restricting a student’s activities on the basis of marriage or pregnancy is inconsistent with the equal protection clause and Title IX.</td>
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<td>■ Teachers are required to report to proper authorities suspected instances of child abuse and neglect.</td>
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<td>■ Parents have the right to examine their children’s educational records. Students age eighteen or older have the right to examine their records.</td>
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<tr>
<td>■ School officials may search students, lockers, and student property without a search warrant, but they must have reasonable grounds for believing that a student is in possession of evidence of a violation of a law or school rule.</td>
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</table>
The legal aspects of school systems in other countries offer some interesting differences in comparison to the U.S. system. For example, other democratic countries do not have the apparently never-ending debates about the separation of church and state. As nearby as provinces of Canada and as far away as Belgium and the Netherlands, public dollars fund nondenominational and church-based schools. In the Dutch system, there are three separate school systems: public, Catholic, and Protestant. Each is supported with public funds, yet each is governed independently.

Germany incorporates instruction in religion in all schools. In fact, often one teacher is hired specifically to teach religion in regularly scheduled classes. Students have to take instruction on religion and are given a choice of Protestant or Catholic classes. In the higher grades, this instruction shifts toward more emphasis on human values.

Also, in Germany there are no school boards, and there are no publicly elected state boards of education. The school system is run by government bureaucracies. The curriculum and exams are set by the state. However, parents are actively involved in the education of their children at the school site. For example, when there is a parent evening, both parents will attend. At these evenings, much of the talk between parents will be about the homework assignments their children have been doing. This level of involvement is possible because parents are expected to help their children with homework. In Germany children have three to four hours of homework assignments every day. The school day ends at 1:00 P.M. Children return home and work on their homework during the afternoon.

Germany takes a different approach to consideration of special-needs children. These children either have tutors or are assigned to different schools. If a child cannot keep up with the others at a school, he or she is told, “You do not belong here.” The parents and the child will then either have to work harder at keeping up or move to a different school.

Another legal aspect of the education system in Germany is that teachers, as government employees, cannot be sued. One consequence is that teachers do not supervise children during nonteaching times. Also, as government employees, teachers are not evaluated after their first year of teaching. As this description of schooling in Germany illustrates, the legal aspects of education and schools can be very different from country to country. Be careful not to assume that schools are the same everywhere.
in ways that ensure an orderly and safe school environment. Students have the right to see their school records, to sue, and to receive procedural and substantive due process. Students must not dress in ways that are disruptive or present a risk to health or safety, harass other students, or violate school standards in school publications.

In summary, the legal lens offers an important view of education, schools, teaching, and learning. From the U.S. Constitution through state statues to school board policies, school administrators and teachers are surrounded with protected rights and identified responsibilities. Most of these rights and responsibilities apply to nontenured teachers and to teacher education students. However, it is of the utmost importance that you learn about and keep in mind the legal specifics of the school districts and school where you will be teaching. As in other parts of life, ignorance of the law is not an acceptable defense for teachers.

**Discussion Questions**

1. Each year state legislators offer up many bills related to the operation of public schools. What are some current or recent examples in your state or another of proposed bills that the courts would probably find unconstitutional?

2. The appropriate place for prayer in public schools continues to be a source of contention. What will you say and do if a parent wants you to have a moment of prayer in your classroom?

3. How should you as a teacher accommodate the religious interest of children in your class who are of a religion other than Christianity, such as Judaism, Muslim, or Buddhism?

4. In *Ingraham v. Wright* (1977), the U.S. Supreme Court ruled that states may authorize the use of corporal punishment as school policy. The U.S. military has not allowed corporal punishment for 100 years; why should it be disallowed in the military but be permissible in schools? Is it ever appropriate in schools?

5. Each fall, teacher strikes somewhere in the country delay the opening of school. Have you ever been involved in a strike of any kind? What do you think are the most critical consequences of teacher strikes? If your association/union leaders called for a strike, would you join the picket line or teach your classes?

6. What are your thoughts about the balancing of student rights against school officials’ need to maintain an environment conducive to learning? Should school officials have more authority? Should students have greater freedom?

7. AIDS is a legally recognized disability. If, as a teacher, you are to have an HIV-positive student in your classroom, what are that student’s rights under the law? What are your responsibilities as a teacher?

**Journal Entries**

1. Prayer in public schools is the subject of seemingly endless debates. As a teacher, you will probably be asked to offer an opinion or be asked to include a moment of silence in your classroom. Now is the time for you to prepare your position. Certainly, you have a personal position as to whether prayer should be permitted/encouraged/required in public schools. On one page, list the key points in your personal position. Then review the position of the courts as outlined in this chapter. Is your personal position consistent with legal precedent? Annotate your list to indicate which points are supported or refuted by law.

2. Academic freedom is a complex idea with uncertain legal foundation, especially for schoolteachers; most court cases involving academic freedom have dealt only with college faculty. Issues related to academic freedom are more uncertain still for beginning teachers. For the first several years, you will be a probationary teacher—in other words, untenured. What are your thoughts about the amount of academic freedom you will have during those first years? Do you plan to select the topics you will teach? What about the lesson designs and specific activities you will use? What are the chances of your slipping into some area of controversy? How will you guard against this happening? Take fifteen minutes or so to prepare a journal entry on this topic.

**Portfolio Development**

1. Pick a school district where you think you would like to be employed as a teacher. Obtain a copy of the teacher employment contract from the district human resources/personnel office and study it. What does the contract say about your rights as a district employee and as a teacher? What does it say about your responsibilities? There may be references to other legal documents such as an employee handbook and board
policies; if so, become familiar with those documents too. Together, these documents set the parameters for what you can, should, and should not do as a teacher. Place these documents and your notes in a folio file folder and save them for later uses.

2. From time to time, newspapers and weekly news-
magazines carry reports about disagreements between students and school officials. Collect these reports,

PREPARING FOR CERTIFICATION

TEACHERS’ AND STUDENTS’ RIGHTS

1. The Praxis II Principles of Teaching and Learning (PLT) test includes cases and items that address “teachers’ and students’ legal rights inside and outside the classroom.” Review the tables in this chapter that present key legal decisions affecting teachers’ and students’ rights, then list the five law-related parameters that you think will influence you the most in the subject area or geographical location in which you plan to teach.

2. Answer the following multiple-choice question, which is similar to items in Praxis and other state certification tests. If you are unsure of the answer, reread the Teachers’ Rights and Responsibilities section of this chapter.

   The Buckley Amendment

   (A) permits corporal punishment as long as district policies and procedures are in place.

   (B) allows all parents access to their children’s academic records.

   (C) establishes that married or pregnant students have the same rights and privileges as other students.

   (D) states that all students with disabilities are entitled to an “appropriate” education.

3. Answer the following short-answer question, which is similar to items in Praxis and other state certification tests. After you’ve completed your written response, use the scoring guide in the ETS Test at a Glance materials to assess your response. Can you revise your response to improve your score?

   What are the arguments for and against tenure for teachers? What is your position, and why?

WEBSITES

- catalog.loc.gov The Library of Congress Catalog provides a quick way to access the text of government bills, including those related to education.
- janweb.icdl.wvu.edu and www.schoolnet.ca/sne There are many websites with information on special education topics. The ADA (Americans with Disabilities Act) Document Center and the Special Needs Education Network are two useful sites to check first.
- www.abanet.org The American Bar Association’s website provides access to its journal, analyses of court decisions, and a large database of court decisions.
- www.lawschool.cornell.edu The Cornell Law School website is easy to use and provides access to court decisions, news related to court cases, directories, and current awareness items.
- www.cnn.com/LAW CNN operates a number of useful websites including Law Center, which reports on state, national, and international court proceedings.
- www.nea.org The National Education Association website offers legal information and a number of teaching supports for beginning teachers.

FURTHER READING


Zirkel, Perry A. “Courtside.” *Phi Delta Kappan.* A regular column in the *Phi Delta Kappan* providing timely and pertinent information about legal issues.

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**THEMES OF THE TIMES!**

Expand your knowledge of the concepts discussed in this chapter by reading current and historical articles from the *New York Times* by visiting the Themes of the Times! section of the companion website (www.ablongman.com/johnson13e).

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**NOTES**