

4-2017

# The Supreme Court and Education Law

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## eCommons Citation

Russo, Charles J., "The Supreme Court and Education Law" (2017). *Educational Leadership Faculty Publications*. 199.  
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# The Supreme Court and Education Law: The Most Significant Cases

By Charles J. Russo, J.D., Ed.D.

A rundown of some of the most significant education-related Supreme Court cases.

Compiling a “top 10” list of anything—including Supreme Court cases and justices’ quotes—can be fraught with differences of opinion. Yet discussions about those differences can be useful learning activities, because they can lead to conversations about the underlying legal issues in schools.

With that caveat in mind, this column offers key quotes from major Supreme Court cases that played major, even transformational, roles in shaping the landscape of U.S. K–12 education. The quotes are accompanied by brief summaries of why the cases are significant.

With the exception of *Brown v. Board of Education, Topeka, Kansas* (1954), the most important education law case of all time, cases are listed chronologically rather than in order of significance.

## Desegregation

In the immortal words of the ruling in *Brown v. Board of Education* (1954), “[I]n the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal” (p. 495). *Brown*, of course, opened the door for equal educational opportunities for African American children by ordering an end to racial segregation in public schools. The Court later addressed the rights of children of Mexican descent in *Keyes v. School District No. 1, Denver, Colorado* (1973).

*Brown* was a catalyst that set in motion a wide array of societal changes, ultimately affecting the rights of women with the enactment of Title IX in 1972 and of children with disabilities in the Individuals with Disabilities Education Act (IDEA), adopted in 1975.

## Nonpublic Schools

*Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary* (1925) stands out

as the Magna Carta for nonpublic schools. At issue in *Pierce* was a state law from Oregon that essentially obligated parents to send their children, ages 8–16, to public school in order to satisfy the state’s compulsory attendance law, thus possibly putting nonpublic schools out of business.

*Pierce* is noteworthy because in its ruling, the Court reasoned that although state officials have the authority to supervise nonpublic schools, whether secular or religiously affiliated, they cannot subject them to greater regulations than those applicable to public schools.

In often-cited language, the *Pierce* Court acknowledged the role of parents in directing the education of their children: “The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations” (p. 535). Advocates of school choice often rely on *Pierce* in trying to make their cases for greater public funding.

## First Amendment Rights

*Tinker v. Des Moines Independent Community School District* (1969)—a watershed case about the First Amendment free speech rights of students—involved a dispute from Iowa over whether high school students could wear black armbands protesting American involvement in Vietnam.

The Court recognized the legitimate authority of school officials, specifying that “[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate” (p. 506). Yet finding in favor of the students, the Court added that “where there is no finding and no showing that engaging in the forbidden conduct would ‘materially and substantially

interfere with the requirements of appropriate discipline in the operation of the school,' the prohibition cannot be sustained" (p. 509).

In other words, absent reasonable forecasts of material and substantial disruptions, school officials cannot limit student speech and expression unless constitutionally permissible rules are in place before their acting. *Tinker* has spawned litigation over dress codes, including tattoos and piercings, and, more recently, student use and misuse of the Internet and social media.

### Religion in Schools

*Lemon v. Kurtzman* (1971) is the most important of the more than 30 cases the Supreme Court has reviewed on religion in K–12 schools. In the widely quoted tripartite test it created in striking down programs in Pennsylvania and Rhode Island because they provided too much aid to faith-based schools, the Court decreed, "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive government entanglement with religion'" (pp. 612–13).

As important as *Lemon* is, it is not without its difficulties. The first two prongs of *Lemon* come from cases dealing with prayer and Bible reading in public schools; the third originated in a dispute over tax exemptions for churches. The Court's failure to explain how or why *Lemon's* "one size fits all" approach in cases on aid to faith-based schools and their students as well as prayer and religious activities in public schools continues to lead to confusion for judges, lawyers, and educators.

### School Finance

*San Antonio Independent School District v. Rodriguez* (1973) is the Supreme Court's only case on school finance. Refusing to intervene on

behalf of plaintiffs who challenged Texas's system of school finance, the justices held that "[e]ducation, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected" (p. 35). Despite this clear language identifying education as a state concern, federal mandates continue to abound in public education.

### Student Rights

*Goss v. Lopez* (1975) is the high-water mark for student rights. Ruling in favor of students in Ohio who challenged their short-term (less than 10-day) disciplinary suspensions from school, the justices interpreted due process as requiring officials to provide "oral or written notice of the charges against [them] and, if [they] deny them, an explanation of the evidence the authorities have and an opportunity to present [their] side of the story" (p. 581). The Court maintained that there is no reason for a delay between when officials give students notice and when they conduct hearings, conceding that in most instances, disciplinarians typically informally discuss alleged acts of misconduct with pupils shortly after they occur.

The justices further observed in *Goss* that "[l]onger suspensions [of 10 days or more] or expulsions for the remainder of the school term, or permanently, may require more formal procedures . . . [and that] in unusual situations, although involving only a short suspension, something more than the rudimentary procedures will be required" (p. 584).

### Individuals with Disabilities

*Board of Education of Hendrick Hudson Central School District v. Rowley* (1982) was the first case under the present-day IDEA. Deciding that a child from New York who was deaf was entitled only to a program providing her with "some

educational benefit" (p. 200), a standard currently facing a judicial challenge, the Court addressed the role of judges. Attempting to curtail the power of the judiciary, the justices wrote: "We previously have cautioned that courts lack the 'specialized knowledge and experience' necessary to resolve 'persistent and difficult questions of educational policy. . . .' Therefore, once a court determines that the requirements of the Act have been met, questions of methodology are for resolution by the States [through school officials]" (p. 208). Put another way, the Court preferred that educators, rather than judges, devise solutions for education disputes.

### Student Searches

In *New Jersey v. T.L.O.* (1985), the Supreme Court created a two-part test under which education officials can search students and their property in order to keep schools safe. This test has been applied in more than 400 cases, with school boards winning about 80% of the time.

Upholding the search of a student who was smoking in a lavatory in violation of school rules and was discovered to have been carrying marijuana-related paraphernalia, the Court noted: "First, one must consider 'whether the . . . action was justified at its inception'; second, one must determine whether the search as actually conducted 'was reasonably related in scope to the circumstances which justified the interference in the first place.' . . . [A] search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction" (pp. 341–42).

### Student Speech

*Hazelwood School District v. Kuhlmeier* (1988) involved a challenge from high school students in

Missouri after educators removed two articles from a newspaper they prepared as part of a journalism class.

Upholding the authority of the school officials, the Court pointed out that “[e]ducators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns” (p. 273). Requiring educators to ensure that their policies and actions are reasonably related to legitimate school matters, the Court basically applied the “rational relations” test, the lowest level of constitutional scrutiny, thereby making it easier for officials to enforce rules designed to maintain order and discipline.

### Peer-to-Peer Sexual Harassment

*Davis v. Monroe County Board of Education* (1999, 2000) established the parameters for school board liability for peer-to-peer sexual harassment. The Court began by clarifying that damages are limited “to circumstances wherein the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs” (p. 646). The Court then found that as recipients of federal financial assistance, school boards “are properly held liable in damages

only when they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school” (p. 650).

Under the *Davis* standards, the results of litigation concerning peer-to-peer sexual harassment is about evenly split between students and the school board officials they sue. Lower courts now apply the *Davis* principles in disputes involving harassment due to disability, race, religion, being of the same sex, and sexual orientation or preference.

### Conclusion

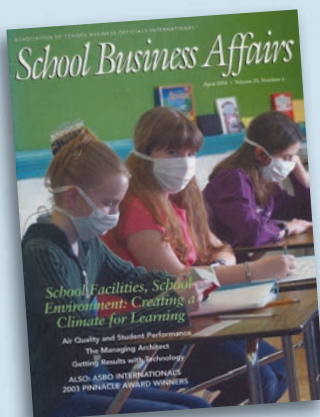
As noted, identifying key cases and quotes can be somewhat subjective. Even so, this column focused on cases from a wide array of areas that are often cited as precedent setting for the important principles they enunciated. The cases concerned desegregation, nonpublic schools, religion in schools, school finance and funding, student rights, and sexual harassment—all topics of ongoing concern in schools. Thus, the cases reviewed in this column can serve as a good refresher for school business officials, board members, and other education leaders who are familiar with education law or as a good starting point for professionals who are working to become more

knowledgeable about how this crucial topic affects their professional lives.

### References

- Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982).
- Brown v. Board of Education, Topeka, Kansas*, 347 U.S. 483 (1954).
- Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), *on remand*, 206 F.3d 1377 (11th Cir. 2000).
- Goss v. Lopez*, 419 U.S. 565 (1975).
- Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).
- Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* (2004).
- Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973).
- Lemon v. Kurtzman*, 403 U.S. 602 (1971).
- New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
- Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*,
- San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).
- Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).
- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (1972).

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### LOOKING BACK: APRIL 2004

In April 2004, *School Business Affairs* looked at school facilities and school climate. Topics included “The Managing Architect Approach: A New Paradigm in Construction Delivery,” by Richard Moretti; “The Perils and Promise of Design-Build Project Delivery,” by Patricia Myler and James Keaney; “Getting Serious About Power Failures,” by James McClure; and “Community Involvement: A Win-Win Approach to School Facility Planning,” by T.C. Chan. Richard Weeks outlined a strategy for planning a successful annual conference, Glenn Cook examined the “Unhealthy State of Health Insurance,” Steve Perus provided tips for “Getting Results with Technology,” Carlos Patino offered an international perspective on the role of school business managers, Edward Eiler wrote on how to win elections on school finance issues, and ASBO President William Fellmy dedicated this President’s Message to investing in student learning.