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The Importance of Understanding School Law

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

Education leaders must have at least a basic understanding of school law.

In an increasingly litigious society wherein parents and their children file a broad spectrum of claims against school systems, it is essential that education leaders have at a minimum a basic understanding of school law.

Before 1954, the Supreme Court addressed only a handful of cases involving K–12 schools and higher education. *Brown v. Board of Education of Topeka* (1954), perhaps the Supreme Court’s most important education-related decision, ushered in an era of equal educational opportunities and key legislations, such as the Elementary and Secondary Education Act of 1965, now the No Child Left Behind Act (2002); Title IX of the Education Amendments of 1972 (2015), which was originally intended to ensure gender equity in intercollegiate sports but has expanded to address sexual harassment and discrimination; and the 1975 Education for All Handicapped Children Act, now the Individuals with Disabilities Education Act (2005).

Over the past 15 years, the Supreme Court has reviewed a wide range of difficult and far-reaching disputes related to K–12 education.

Schools and Religion

The Court has ruled on several cases involving religion, including these five:

1. *Santa Fe Independent School District v. Doe* (2000). The Court invalidated a board policy from Texas designed to permit prayer before the start of high school football games and, by extension, other activities.

2. *Good News Club v. Milford Central School* (2001). The justices judged in favor of students who challenged school officials in New York who refused to allow a club that discussed character and moral development from a religious perspective to

use school facilities for its meetings, even though the space was available to similar organizations that discussed the same topics from secular points of view.

3. *Zelman v. Simmons-Harris* (2002). The Court allowed students to use vouchers to attend faith-based schools in Ohio. The implications of the case were probably limited to school systems that were taken over by the state and were operating under desegregation orders.

4. *Elk Grove Unified School District v. Newdow* (2004). This dispute from California saw the justices sidestep a challenge to the words “under God” in the Pledge of Allegiance. The Court held that insofar as the noncustodial father who filed suit lacked standing, or the legal ability to challenge the disputed words, his claim was without merit.

5. *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunities Commission* (2011). In a case from Missouri that is likely of greater interest to educators in faith-based schools, the justices unanimously agreed that religious officials—not the Equal Employment Opportunities Commission—had the right to decide who qualified as a minister.

First Amendment

As to First Amendment free speech, the Supreme Court has addressed the parameters of the rights of both students and employees.

1. *Morse v. Frederick* (2007). The justices upheld the authority of school officials to limit student expression deemed to support illegal drug.

2. *Garcetti v. Ceballos* (2006). Although it involved a district attorney in California rather than an educator, the case has an impact on teachers’ and administrators’ speech. The Court found that when public

employees are disciplined by their employers for speaking out pursuant to their official duties, they are not entitled to protection under the First Amendment.

3. *Davenport v. Washington Education Association* (2007). The justices limited the rights of teachers unions to collect dues. The Court unanimously agreed that “it does not violate the First Amendment for a State to require that its public-sector unions receive affirmative authorization from a nonmember before spending that nonmember’s agency fees for election-related purposes” (p. 191).

4. *Ysursa v. Pocatello Education Association* (2009). The justices reasoned that a ban on public-employee payroll deductions for local political activities in Idaho was constitutional because it furthered the state’s interest in separating government operations in the form of public schools from partisan politics.

Fourth Amendment

In a pair of cases involving the Fourth Amendment, the Supreme Court upheld the use of drug testing of student-athletes in *Board of Education of Independent School District No. 92 of Pottawatomie v. Earls* (2002a, 2002b) in Oklahoma. And the Court forbade strip searches of students for drugs in a case originating in Arizona in *Safford Unified School District No. 1 v. Redding* (2009).

Special Education

The Supreme Court addressed three major cases under the Individuals with Disabilities Education Act (IDEA) with potentially far-reaching financial implications for school boards.

1. *Schaffer ex rel. Schaffer v. Weast* (2005). In a dispute from Maryland, the justices determined that the parties challenging the appropriateness of student individualized education programs—usually parents—bear the burden of proving

their ineffectiveness unless state law places that duty on school boards.

2. *Arlington Central School District v. Murphy* (2006). In this case from New York, the Court interpreted the IDEA as not permitting parents to be reimbursed for the cost of expert witnesses or consultants even if they helped them prevail in disagreements with their school boards.

3. *Winkelman v. Parma City School District* (2007). The Court observed that insofar as nonattorney parents in Ohio had rights separate and apart from those of their son, they could act pro se (on their own without a lawyer) in judicial actions challenging his individualized education program.

Race

Turning to race, in *Parents Involved in Community Schools v. Seattle School District Number 1* (2007), the Supreme Court invalidated the use of race as a factor in K–12 school assignment plans in Seattle, Washington, and Louisville, Kentucky. According to the justices, education officials failed not only to demonstrate that the use of racial classifications in the student assignment plans was necessary to achieve their stated goal of racial diversity but also to consider alternative approaches adequately.

The Court added that the remedies in those cases were inappropriate insofar as Seattle had never been under a desegregation order and the board in Louisville had been released from judicial oversight for operating a segregated school system.

Lower Courts

Even as the Supreme Court deals typically with larger issues of constitutional concern, lower courts serve as laboratories where disputes germinate as they wend their way through the judicial system. For example, lower courts are grappling with a variety of issues involving technology, such as expression and

use, sometimes reaching different results within the same circuit or jurisdiction.

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Regarding Facebook, Myspace, and other forms of social media, courts have upheld sanctions on—

- Students who bullied or made threats to peers (*Kowalski v. Berkeley County Schools* 2011, 2012; *Wynar v. Douglas County School District* 2013),
- A teacher who used her blog to criticize students and parents (*Munroe v. Central Bucks School District* 2014), and
- A student teacher who posed for a picture of herself drinking beer and posted it online (*Snyder v. Millersville University* 2008).

Yet other courts refused to punish students for posts on social media, citing First Amendment rights to free expression or because supposed threats were not considered genuine (*A.B. v. State* 2008; *Layshock ex rel. Layshock v. Hermitage School District* 2011, 2012).

Although cell phones have become an accepted part of daily life in schools, most court cases have upheld the disciplining of students who violated board rules about restrictions on the use of cell phones in schools (*Koch v. Adams* 2010; *Laney v. Farley* 2007). Even so, the Sixth Circuit, in a case from Kentucky (*G.C. v. Owensboro Public Schools* 2013), and a federal trial court in Pennsylvania (*Klump v. Nazareth Area School District* 2006) invalidated searches of student phones where educators lacked the requisite level of suspicion to act.

School Law and Board Policy

Crafting district policies according to school law can prove challenging,

as policy development or policy changes are usually reactive—made after a case has been litigated or a law has been mandated. Guided by cases such as those described above, district leaders can work with their school boards to develop and implement policies to enhance the quality of schooling in their districts.

In addition, school leaders can work with their teachers to better understand school law. Professional development opportunities for educators should not become Law School 101, however. Rather than trying to turn educators into lawyers equipped to deal with such technical matters as jurisdiction and the service of process, schools should offer professional development that helps educators develop a broad understanding of the law that allows them to accomplish two important goals.

Education leaders must recognize the value of treating their attorneys as equal partners.

The first goal of professional development in school law is for educators to be up-to-date on current school law so they can develop sound policies to enhance day-to-day school operations. The second is to provide educators with enough knowledge of the legal dimensions of situations so that they know when to ask questions or raise concerns—and what questions to ask. Accordingly, education leaders must recognize the value of treating their attorneys as equal partners not only in problem solving after the fact but also in policy development before troubles can arise.

Conclusion

Perhaps the only certainty in school law is that it evolves to meet the needs of changing school environments. Moreover, the seemingly endless supply of new issues giving rise to litigation speaks to the need to remain vigilant on how legal

developments affect schools. The challenge for school business officials, their boards, and other education leaders, then, is to harness their knowledge of school law to help make schools better places for children to learn.

References

- A.B. v. State*, 885 N.E.2d 1223 (Ind. 2008).
- Arlington Central School District v. Murphy*, 548 U.S. 291 (2006).
- Board of Education of Independent School District No. 92 of Pottawatomie v. Earls*, 536 U.S. 822 (2002a), *on remand*, 300 F.3d 1222 (10th Cir. 2002b).
- Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).
- Davenport v. Washington Education Association*, 551 U.S. 177 (2007).
- Elk Grove Unified School District v. Newdow*, 542 U.S. 1 (2004).
- Garcetti v. Ceballos*, 547 U.S. 410 (2006).
- G.C. v. Owensboro Public Schools*, 711 F.3d 623 (6th Cir. 2013).
- Good News Club v. Milford Central School*, 533 U.S. 98 (2001).
- Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunities Commission*, 131 S. Ct. 1783 (2011).
- Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* (2005).
- Klump v. Nazareth Area School District*, 425 F. Supp. 2d 622 (E.D. Pa. 2006).
- Koch v. Adams*, 361 S.W.3d 817 (Ark. 2010).
- Kowalski v. Berkeley County Schools*, 652 F.3d 565 (4th Cir. 2011), *cert. denied*, 132 S. Ct. 1095 (2012).

Laney v. Farley, 501 F.3d 577 (6th Cir. 2007).

Layschock ex rel. Layschock v. Hermitage School District, 650 F.3d 205 (3d Cir. 2011), *cert. denied*, 132 S. Ct. 1097 (2012).

Morse v. Frederick, 551 U.S. 393 (2007).

Munroe v. Central Bucks School District, 34 F. Supp. 3d 532 (E.D. Pa. 2014).

No Child Left Behind Act, 20 U.S.C. §§ 6301 *et seq.* (2002).

Parents Involved in Community Schools v. Seattle School District Number 1, 551 U.S. 701 (2007).

Safford Unified School District No. 1 v. Redding, 557 U.S. 364 (2009).

Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000).

Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49 (2005).

Snyder v. Millersville University, 2008 WL 5093140 (E.D. Pa. 2008).

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (2015).

Winkelman v. Parma City School District, 550 U.S. 516 (2007).

Wynar v. Douglas County School District, 728 F.3d 1062 (9th Cir. 2013).

Ysursa v. Pocatello Education Association, 555 U.S. 353 (2009).

Zelman v. Simmons-Harris, 536 U.S. 639 (2002).

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