

Preface

WHY WE WROTE THIS BOOK

As we note in the introduction to the first chapter, well over 3 million teachers currently work in American public schools. Yet, teachers in most states are not required to take a course or courses in education law in order to obtain certification or licensure. As a result, the majority of teacher preparation programs in our colleges and schools of education do not require courses in education law, and many do not even offer it as an elective. Generally, teachers do not even take such a course in their graduate programs, unless they have enrolled in programs leading them to prepare for roles as school administrators.

Over the past six decades the role of teachers has become intimately intertwined with legal issues. Since the Supreme Court's landmark school desegregation decision in *Brown v. Board of Education (Brown)* in 1954, teachers in public schools have had to become more concerned with their legal rights as employees. In fact, *Brown* also stands out as the birth of the extensive field that is known today as education (or school) law. At the same time, just as educators, whether teachers, administrators, or other staff members, are aware of their rights, they are also cognizant of their professional duties in schools. Although the responsibility for implementing all of the myriad laws and regulations that affect education largely rests on administrators, insofar as teachers and other staff share in the duty of safeguarding the rights of the students in their care, they must have knowledge of how the law impacts their professional roles. In particular, teachers need to know their rights and responsibilities, both regarding their employment and as these rights and responsibilities apply to the instructional process.

In our experiences as former K–12 educators who now teach graduate courses and conduct professional development seminars on an array of topics in education law, we have found that there is a dearth of information about education law targeted specifically for teachers. We have thus written this book to help fill the knowledge gap in education law by providing a

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concise, practical guide specifically targeting the areas of the law that are of most concern to teachers. In addition to addressing the concerns expressed by teachers in our courses and professional development seminars, prior to undertaking this project we conducted an informal survey with a representative group of teachers to see which topics are foremost in their minds.

Turning to the employment context, the book presents information about teacher certification, employment, tenure, evaluation, and dismissal, along with issues related to collective bargaining. The book also reviews the constitutional rights of teachers, including freedom of speech and religion. In addition, the book provides information on how teachers can avoid liability when dealing with discrimination and harassment based on race, ethnic origin, gender, sexual orientation, age, religion, or disability, regardless of whether it is at the hands of supervisors, peers, or students.

In the instructional domain, the book explores the rights and responsibilities teachers have in the instructional process. This includes topics such as what may be taught, academic freedom, methodology, grading policies, student records, and copyright law. The book also provides information about tort liability and teachers' responsibilities regarding the safety and well-being of their students as well as their own protections from defamation.

Prior to writing this book we circulated a proposed table of contents to many teachers and colleagues in higher education who had taught in K–12 schools asking for their input. Many of the topics that we included directly respond to the concerns expressed by those teachers and colleagues. The book also provides useful, practical suggestions for dealing with specific situations, and there are answers to frequently asked questions at the end of each chapter. These are questions that our graduate students, who are practicing teachers, asked in our graduate school law courses, seminars, and professional development presentations. Moreover, the third through ninth chapters include summaries of leading judicial opinions to give readers a sense of how the law is applied to actual situations.

For ease of reading, we use endnotes to cite our sources and references throughout the book, as is common in legal writing, rather than in-text citations. However, we recognize that most readers are not familiar with standard legal citations. Thus, we have used a modified version of the law review style outlined in *The Bluebook: A Uniform System of Citation*. We deviate from this style in many instances by borrowing elements of American Psychological Association style to make our endnotes more reader friendly.

We would like to point out that this book is intended to be one of a two-book set. The second book will address student rights. Although each book will stand alone in its own right, the volumes could be used together to form a comprehensive treatment of education law.

WHO SHOULD READ THIS BOOK

As indicated above, this book is targeted specifically for teachers. Even so, it can be useful to administrators, particularly those at the building level, who need a refresher on school law as it applies to teachers' rights and responsibilities. Although the book is designed to be read by in-service teachers, particularly those just entering the field, it could be useful for students currently in programs leading to teacher licensure. The book could also be used as a text in an introductory course on school law or in professional development seminars.

As is the case with all of our books, this one is not intended to replace the advice and counsel of competent attorneys. Rather, the book is designed to make school personnel more aware of how various laws provide them with rights, protections, and responsibilities. We hope that educators who understand these laws will be in a better position to meet their myriad legal requirements and make legally correct decisions. Accordingly, we caution readers to consult competent legal counsel when difficult situations arise. In this respect, although the book presents information about teachers' rights and responsibilities, it does not provide information about legal procedures.

HOW THE BOOK IS ORGANIZED

The first chapter, which serves as an introduction, begins with a brief look at the history of public education in America. The bulk of the chapter deals with the legal foundations of education, including a review of relevant constitutional provisions and major laws. This introductory chapter is important insofar as it provides a brief synopsis of the constitutional provisions and the statutes that are discussed throughout the book.

Chapter 2 continues the discussion of the legal foundations of education by providing an overview of school governance. Specifically, this chapter provides additional information about the expanding role of the federal government along with laws regulating state and local educational agencies as well as a section on school finance and the use of school property. All of this is covered from the perspective of how school governance affects teachers.

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The third chapter provides a brief overview of the constitutional rights and freedoms of all citizens. In doing so it lays the foundation for many of the issues that are discussed in more detail in subsequent chapters. The chapter includes discussions of the basic freedoms: speech, association, religion, and privacy, in addition to due process. It places particular emphasis on how these rights and freedoms interact with teachers' responsibilities and the limitations placed on them as public employees. The purpose of the chapter is to provide an introduction to the constitutional principles underlying many of the issues presented throughout the book.

Chapter 4 outlines the legal issues involved in employment terms and conditions. The chapter begins with a discussion of the requirements for teacher certification and the reasons for which such certification can be revoked. It continues with information about the privacy rights of teachers and issues regarding employment terms such as salaries, leaves of absence, evaluations, and resignations.

Chapter 5 discusses collective bargaining. The chapter begins with an overview of the history of teacher associations, their role in the process, and how bargaining units are formed. It next outlines the topics of bargaining before reviewing dispute resolution processes that are used in teacher labor relations disagreements. The chapter concludes with practical suggestions for unions and school boards to use before, during, and after bargaining.

The sixth chapter focuses on discussions of discrimination. This chapter outlines federal statutes and constitutional provisions that provide teachers with protections against workplace discrimination. It begins with information on those areas specifically enumerated in Title VII of the Civil Rights Act of 1964, continuing with an overview on more recent statutes protecting teachers from other forms of discrimination.

Chapter 7 deals with the important issues of teacher discipline and dismissal, emphasizing the due process rights of teachers. Opening with information on tenure and the privileges it entails before continuing with topics related to progressive discipline and the steps school boards must follow to dismiss teachers for cause, the chapter concludes with a discussion on dismissals that occur due to reductions in force.

Chapter 8, which deals exclusively with curricular and instructional topics, starts by providing information on the authority of school boards to establish and control curricular topics, including those that must be taught, that may not be taught, and that are discretionary. The chapter also speaks to issues such as graduation requirements, testing, grading policies, and student records. It rounds out by reviewing other curriculum-related

topics such as special instructional programs, copyright law, and technology in classrooms.

The final chapter covers the different types of torts and the standard of care that teachers must exercise in order to avoid civil liability. Chapter 9 begins with the definition of a tort and descriptions of the various types of torts. Next, the chapter reviews the intentional torts of assault, battery, false imprisonment, and defamation. It continues with discussions of negligence, the standard of care expected of educators, the elements of negligence, how to avoid negligence, and defenses to negligence. The chapter also covers educational malpractice and civil rights torts.

Appendices to this book, which are designed to familiarize readers with the technical aspects of law, should be particularly beneficial for readers with little background in educational law. As a result, readers with little background in school law may wish to review the first two of these resources before reading the book itself. Other readers may find it helpful to consult these references when questions arise. Resource A provides a brief, but fairly comprehensive, overview of the court systems and how they operate. This resource affords readers a better understanding of the various levels of courts and the significance that should be placed on decisions from each court. Resource B explains where legal documents, such as copies of statutes and court opinions, can be found; it also provides an explanation of legal citations that should be helpful to readers unfamiliar with the structure and format of the legal citations contained in the endnotes of each of the book's chapters. Since the law is constantly evolving, it is difficult for practitioners to maintain their currency in the field. Resource C thus provides references and suggestions for readers who wish to keep up with new developments in education law via a list of websites providing further information.