Legal Foundations of Education

EDUC 2112

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Legal Provisions for Education: The U.S. Constitution

- All laws must be in accordance with both the U.S. Constitution and the State Constitution
- Three of the amendments to the U.S. Constitution are significant to education:
  - 10th
  - 1st
  - 14th

Legal Provisions for Education: The U.S. Constitution

- Tenth amendment—
  “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.”
- Each State has provided for education through its State Constitution

Legal Provisions for Education: The U.S. Constitution

- First Amendment—
  “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.”

Legal Provisions for Education: The U.S. Constitution

- Fourteenth amendment---
  “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.”

Church and State

- Court cases usually involve 1st and 14th amendments
- Classified in three categories
  - Use of public funds to support religious education
  - Practice of religion in public schools
  - Rights of parents to provide private religious education
Use of public funds to support religious education

- *Cochran v. Louisiana Board of Education (1930)*—loan of textbooks
  - U.S. Supreme Court ruled this served public purpose and did not violate 1st amendment. Also, *Allen (1968)*
  - *Everson v. Board of Education (1947)*—reimburse parents for transportation to church schools
  - SC ruled reimbursement did not violate 1st amendment

*Use of public funds to support religious education*

- *Lemon v. Kurtzman (1971)*
  - LANDMARK CASE
  - Rhode Island wanted to provide a 15% salary supplement to teachers who taught secular subjects in non public schools.
  - SC ruled unconstitutional because of “excessive entanglement”

*Lemon Test*

- Three Questions to determine use of public funds to support religious schools
  - One—Does the act have a secular purpose?
    - Secular—non religious
  - Two—Does the primary effect of the act advance or inhibit religion?
  - Three—Does the act excessively entangle government and religion?

*Child Benefit Theory*

- Supreme Court decisions have lead to this concept
- If the act benefits the *child* and not the *school*, it is usually OK

*Church and State Summary Statement*

- Laws and policies that have the effect of establishing religion in the schools will not be upheld by the courts.
- Public tax funds to pay for secular textbooks for loan to students, and transportation of religious school children have been upheld by the courts.
Church and State
Summary Statement

- Public tax funds to pay for salaries of teachers in religious schools have not been upheld by the courts,
- Special support (speech and hearing tests, etc.) may be provided to religious schools
- Testing, record keeping, etc. maybe reimbursed with state money.

Practice of Religion in Public Schools

- Epperson v. State of Arkansas (1968)—antievolution
  - SC said forbidding the teaching of evolution as a theory violates 1st amendment
- Edwards v. Aguillard (1987)—balanced treatment—evolution and creation
  - SC says state cannot require teaching of creation

Practice of Religion in Public Schools

- Wallace v. Jaffree (1985)—state legislation authorizing prayer in public school, led by teachers, and period of silence for meditation or voluntary prayer
  - SC said unconstitutional
- Lee v. Wiseman (1992)—religious exercise in graduation ceremony
  - SC—prayers as an official part of graduation exercises are unconstitutional

Guidelines for Religious Expression in Public Schools

- The right to voluntary prayer or religious discussion does not include the right to have a captive audience listen or to compel other students to participate.
- Students may engage in prayer and religious discussion during the school day as long as they are not disruptive.
Guidelines for Religious Expression in Public Schools

- Students may pray or discuss their religious views and attempt to persuade others in informal settings such as cafeterias and hallways, subject to the same rules of order as apply to other student activities and speech.

- School officials may not mandate or organize prayer at graduation or baccalaureate ceremonies.
- Schools may teach about religion as part of courses in history, the arts, culture, and society, but may not teach any one religion.

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

- To teach the Bible as a religion course is illegal, but to teach about the Bible as history or literature is OK.
- Dismissing students for period of instruction at religious centers is legal.

- To teach evolution as a theory, but a state may not require that creation be taught.

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

- If school facilities are made available to one group, then they must be available to all other groups of the same general type.
- OPEN DOOR

- Reading of scripture and reciting prayers as religious exercises violate the establishment clause of the 1st amendment.
- Public schools may teach evolution as a theory, but a state may not require that creation be taught.

SEGRATION AND DESEGREGATION

- de jure segregation—based on law, policy, or practice designed to accomplish separation
- de facto segregation—resulting from circumstances such as housing patterns rather than law or policy
- Plessey v. Ferguson (1896)—"separate but equal"—de jure law
**SEGRATION AND DESEGREGATION**

- Brown v. Board of Education (1954)—struck down Plessey
  - SC said separate-but-equal doctrine has no place in education.
- Civil Rights Act of 1964 added power to this by authorizing federal government to withhold federal funds from schools that discriminated by race, color, or national origin.

**SEGRATION AND DESEGREGATION**

- Board of Education of Oklahoma City Public Schools v. Dowell (1991)—Release from court order
  - SC made it clear that Federal supervision of public schools was intended as "temporary" measure to remedy past discrimination
  - Also, District Courts should be more involved in “total school operations”

**SEGRATION AND DESEGREGATION**

- Third—SC defined what full compliance with desegregation order means—
  - "...operating in compliance...unlikely that the school board would return to its former ways..."
- Freeman v. Pitts (1992)—school district is not responsible for demographic changes in living patterns—de facto segregation

**The Rights of Students and Teachers**

- Students’ Rights and Responsibilities
- Teachers’ Rights and Responsibilities

**Students’ Rights and Responsibilities**

- Rights as a Citizen
- All children born in US have been granted the opportunity for a public school education.

**Students’ Right to an Education**

- **Right** to an education does not mean **free** education
- Residence
- SC decision struck down Texas law denying education to undocumented illegal aliens.
**Plyler v. Doe (1982)**

- The Texas law "...imposes a lifetime of hardship on a discrete class of children not accountable for their disabling status and promotes the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime."

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**Homeless Children**

- McKinney Homeless Assistance Act (1990)
- Ensures a free, appropriate education for homeless children
- Allows them to finish school year in school before they lost their home
- Provides transportation
- Allows participation in school programs

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**Students’ Right to Sue**

- Student may sue school board members who are guilty of intentionally depriving students of their constitutional rights.

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**Students’ Right to Due Process**

- 14th Amendment
- Due Process--What does it mean?
- Procedural Due Process--Being Fair
- Substantive Due Process--deprived someone of personal liberty, property, privacy?
- In loco parentis
- In the place of a parent

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**Procedural Due Process**

- Suspension and expulsion
- Goss v. Lopez (1975)
- Students were suspended for 10 days without a hearing and were not present at the board meeting when suspensions were handed out.
- S.C. ruled cannot be suspended without some kind of hearing.

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**Substantive Due Process**

- 1st Amend. Freedoms (speech, religion, etc.)
- Tinker v. Des Moines (1969)
- Protest against Viet Nam War by wearing black arm bands.
- Told they could return when they removed the arm bands.
- Violation of 1st amendment Rights
**Tinker v. Des Moines**
- “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 at the schoolhouse gate.”
- Bethel v. Fraser (1986)—may restrain speech
- Hazelwood v. Kuhlmeier (1988)—may control newspaper articles

**Students’ Responsibilities**
- Dress Codes
- So far—No SC decision about “long hair”
- Corporal Punishment
- Ingraham v. Wright (1977)
- What about 8th Amendment?
- Key word -- “Reasonable”

**Students’ Responsibilities**
- Sex Discrimination
  - Title IX
- Marriage and Pregnancy
- Child Abuse and Neglect
- School Records
  - Buckley Amendment--1974

**Student and Locker Searches**
- Fourth Amendment--search warrant
- In loco parentis
  - “Reasonableness and method of search”
- Drug Dogs????
- Sexual Harassment

**Teachers’ Rights and Responsibilities**
- 14th Amendment
- Teacher Certification
- Primary purpose—make sure there are qualified and competent teachers in public schools
- Certificate is a privilege granted to practice—it is not a right

**Teachers’ Rights and Responsibilities**
- Employment Contracts
- No Certificate--No Contract
- No Contract--No Funds
- Discrimination?
- Sex, Pay, Race, Handicap, Pregnancy???
**Teachers’ Rights and Responsibilities**

- Right to Collective Bargaining
- Right to STRIKE!!
- Teacher Tenure
- Probationary (non tenured)
- Career (tenured)
- Academic Freedom
- Negligence

**Negligence**

- Failure to exercise or practice due care
- Liability occurs when a failure to use a reasonable amount of care results in an injury.
- Teachers are expected to exercise due care in foreseeing possible accidents and in working to prevent their occurrence.

**Lawsuits against School Districts Filed by Students**

- Total 1,647
- Negligence 621
- Equal Opportunity 56
- Sexual Harassment 33
- School Program 42
- Discipline 40
- Unknown 78

**Lawsuits against School Districts Filed by Employees**

- Total 694
- Discrimination 135
- Negligence 131
- Equal Opportunity 64
- Union Contracts 84
- Unknown 37

**Direct Aid to Nonpublic Schools: The Three-Pronged Lemon Test**

- Does the act have a secular purpose?
- Does the primary effect of the act either advance or inhibit religion?
- Does the act excessively entangle government and religion?

**Indicators of Child Abuse**

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<th>Types</th>
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| Physical | 1. Unexplained bruises and welts  
|         | 2. Unexplained fractures  
|         | 3. Unexplained lacerations                      |
| Sexual  | 1. Difficulty in walking or sitting     
|         | 2. Bleeding in vaginal or anal areas                   |
|         | 3. Bruises in reproductive areas                  |
|         | 4. Pregnancy                                     |
| Emotional | 1. Speech disorders     
|         | 2. Leg in physical development                   |
|         | 3. Suicide threats or attempts                    |
|         | 4. Substance abuse                                |
| Neglect | 1. Constant hunger                               |
|         | 2. Poor hygiene                                  |
|         | 3. Unattended physical / mental needs            |
|         | 4. Substance abuse                                |
The End!!!!