

# **The Legal Framework for Public Education**

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## **ABSTRACT**

Public schools in the United States are governed by a complex body of laws that are grounded in federal and state constitutions, federal and state statutes, federal and state administrative agencies, and case law. At the local level, local school board policies provide another source of law for school administrators, as well as their individual school's rules and regulations. Laws relating to public schools have increased significantly in volume and complexity since the mid-twentieth century.

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All three units of government—federal, state, and local—exercise some degree of authority and control over U.S. public education. Educational governance of public schools is the result of constitutional and statutory provisions of the federal government, the fifty-state governments, and case law. The degree of authority and control that local school boards have over school operations depends on the constitutional and statutory provisions of their state.

## **Federal Role in Education**

At the federal level, the United States Constitution, federal statutes, federal administrative agencies, and case law all constitute sources of law under which school administrators operate. Each one will be discussed in turn.

### **United States Constitution**

Although education is not specifically mentioned in the United States Constitution, the federal government has had a significant involvement in education. In fact, programs under various federal statutes regarding PK-12 education in recent years have constituted more than 7% of the total expenditures for public elementary and secondary education (National Center for Education Statistics, 2010a). Of greater significance has been the pervasive force of the federal government in influencing educational policy. Education issues such as racial segregation in schools, equitable state

financing of public schools, due process of students and teachers, church-state relations, search and seizure, and freedom of expression of students and teachers have all been addressed by the federal judiciary.

The federal Constitution is the supreme law of the land. All statutes passed by Congress, state constitutions and statutes, and policies of local school boards are subject to the provisions of the U.S. Constitution. The provisions of the Constitution that have had the greatest impact on the operation of public schools are the General Welfare Clause, Commerce Clause, Article I, Section 10, and the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.

**General welfare clause.** The *General Welfare Clause* of Article I, Section 8 of the U.S. Constitution provides, “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general welfare of the United States ....” (Article I, § 8, cl. 1). Federal involvement in education has emanated principally from the General Welfare Clause.

Some of the areas of legislation Congress has enacted over the years, emanating from the general welfare rationale, include defense (National Defense Education Act of 1958); vocational education (Vocational Education Act of 1963); civil rights (Title VII of the Civil Rights Act of 1964); elementary and secondary education (Elementary and Secondary Education Act of 1965); bilingual education (Bilingual Education Act of 1968); sex discrimination (Title IX of the Education Amendments of 1972); protecting information concerning students (Family Educational Rights and Privacy Act of 1974); pregnancy bias (Pregnancy Discrimination Act of 1978); children with disabilities (Section 504 of the Rehabilitation Act of 1973, the Education for All Handicapped Children Act of 1975, renamed the Individuals with Disabilities Act of 1990, the Individuals with Disabilities Education Act of 1997, and 2004); national health and safety concerns (Asbestos School Abatement Act of 1980) and (Indoor Radon Abatement Act of 1988); protecting the welfare of minors concerning the suitability of materials made available through the Internet (Children’s Internet Protection Act of 2000).

The No Child Left Behind Act (NCLB) of 2001 (Public Law 107-110) represents the latest major federal enactment. Federal expenditure of tax dollars for NCLB is justified under the General Welfare Clause. NCLB was signed into law by George W. Bush on January 8, 2002. The central thesis of NCLB is three-fold: increasing the performance of public schools, requiring accountability of states and local school districts, and promoting parental choice.

**Commerce clause.** Beyond the limitations governing general welfare, the Congress is empowered under the *Commerce Clause* to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes” (Article I, § 8, cl. 3). Safety, transportation, and labor regulations enacted pursuant to this clause have affected education.

One would naturally assume that the term “commerce” included commercial activity – buying, selling, and trading goods among the states. However, the Supreme Court has favored a broad interpretation of “commerce” and an expanded federal role in regulating commercial activity to ensure national prosperity. In *Gibbons v. Ogden* (1824),

Chief Justice Marshall maintained that commerce was defined not merely as an exchange of goods but also as a means for “advancement of society, labor, transportation, intelligence, care, and various mediums of exchange ....” The *Gibbons* case reinforced the importance of literacy as a necessity, and a right, of every human being. In this broad context, the constitutional assertion of education and knowledge as an aspect of commerce is vital to the growth and prosperity of the nation.

**Obligation of contracts.** Article I, Section 10, provides in part that “no state shall...pass any...law impairing the obligation of contracts.” This article guaranteeing the *obligation of contracts* has been litigated in numerous public school cases. Court decisions have verified that contracts entered into by school districts (including personnel contracts and other contracted services) are fully protected under Article I, Section 10 of the U.S. Constitution. The provision also applies when a state legislature seeks to alter a teacher tenure or retirement statute in which contractual status prevails under the law (*Ball v. Board of Trustees of Teachers Retirement Fund*, 1904).

**First Amendment.** The *First Amendment* provides that “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The first part of the amendment dealing with religious freedoms precipitated litigation challenging government aid to parochial schools and public school policies objected to on religious grounds. The *freedom of speech* portion has evoked numerous court cases involving students’ and teachers’ rights to freedom of expression

**Fourth Amendment.** The *Fourth Amendment* provides in part that “the right of the people to be secure... against unreasonable searches and seizures... and no Warrants shall issue, but upon probable cause...” This amendment has been the subject of litigation involving searches of students’ lockers and person and, in some cases, teachers’ rights to privacy.

**Fifth Amendment.** The *Fifth Amendment* reads in part that “no person... shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without compensation.” The first clause is relevant to cases where teachers have been questioned by superiors about their alleged activities with subversive organizations. The *due process clause* pertains specifically to acts of the federal government. The last clause is germane in instances where states or school boards acquire property for school building purposes.

**Ninth Amendment.** The *Ninth Amendment* stipulates, “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.” Essentially, the Ninth Amendment assures that rights not enumerated in the other clauses of the Bill of Rights are retained by the people. The Ninth Amendment was brought forth in educational litigation in which teachers have asserted that their right to personal privacy outside the classroom is protected as an unenumerated right.

Furthermore, teachers and students have challenged dress and grooming regulations as infringing on their individual liberties and freedoms under this amendment.

**Fourteenth amendment.** The *Fourteenth Amendment* is the most widely invoked constitutional provision in school litigation, since it specifically addresses state action. The United States Supreme Court has interpreted Fourteenth Amendment liberties as incorporating the personal freedoms contained in the Bill of Rights (*Cantwell v. Connecticut*, 1940; *Gutlow v. New York*, 1925). Consequently, the first 10 amendments, originally directed toward the federal government, have been applied to state action as well. In part, the Fourteenth Amendment stipulates, “No state shall... 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 Due Process Clause of the Fourteenth Amendment, which prohibits states from depriving citizens of life, liberty, or property without due process of law, has been significant in school cases. Compulsory school attendance laws confer on students a legitimate property right to attend school. The granting of tenure gives teachers a property right to continued employment. Liberty rights include interests in one’s reputation and fundamental rights related to marriage, family, and personal privacy. The Equal Protection Clause, which prohibits states from denying to any person within its jurisdiction, the equal protection of the laws, has played an important role in school litigation involving discrimination based on race, gender, ethnicity, and disabilities, as well as litigation calling for the equitable financing of schools.

### **Federal Administrative Agencies**

At the federal level, federal administrative agencies conduct the regulatory activities and structural details to implement broad legislative mandates. Originally established in 1867, the Office of Education became part of the Department of Health, Education, and Welfare in 1953. In 1980, the Department of Education was created. Its secretary is appointed by the president with the approval of the Senate and serves as a member of the president’s cabinet.

The primary function of the Department of Education is to coordinate federal involvement in education. Regulations created by the Department of Education to implement federal legislation have had a significant impact on public elementary and secondary schools. The Department of Education administers regulations for more than 100 different programs. Other federal administrative agencies, including the Department of Agriculture, the Department of Defense, the Department of Health and Human Services, the Department of Justice, and the Department of Labor, administer the remaining educational programs. The Office of Civil Rights and the Equal Employment Opportunity Commission, through their regulatory activities, review claims of discrimination in public schools and initiate suits against school districts for non-compliance with civil rights laws. The Environmental Protection Agency regulates compliance with national health and safety concerns designed to assure the safety of students and employees.

## Case Law

A third source of law is case law. Case law refers to principles of law established by the courts, as distinguished from the written law of constitutions, statutes, and administrative agencies. Case law frequently relies on earlier court decisions, which are called *precedents*. This practice is derived from the *doctrine of stare decisis*, meaning “let the decision stand.” Under the *doctrine of stare decisis*, a court may stand by precedent and thereby not disturb an already settled point of law. Although courts generally rely on precedent, they are not bound by it in reaching a decision. A court may decide that the factual circumstances in the case being decided are not sufficiently similar to the precedent-setting case. Furthermore, the legal rationale used in reaching the precedent-setting case may not be applicable to the particular case under review.

Federal courts have contributed a significant body of case law, which has impacted educational policies governing the operation of public schools. Federal courts have addressed issues such as racial segregation, equitable methods of financing schools, separation of church and state, due process and equal protection concerns of students and teachers, freedom of expression of students and teachers, and dress and grooming standards of students and teachers. Precedents established by the federal courts in the aforementioned areas provide school administrators with an important source of law.

Case law is not always well settled, because occasionally federal district courts and courts of appeals render conflicting rulings within their jurisdictions. Consequently, school administrators must follow case law rendered for their particular jurisdiction. The United States Supreme Court is the single court whose decisions affect the administration and operation of public schools across the nation. A decision of the United States Supreme Court may be modified only by another High Court decision or by an amendment to the constitution. Unfortunately, Supreme Court decisions have not always been followed by local school administrators. Desegregation decisions and those dealing with Bible reading and reciting prayers during school hours are examples. It is vital that school administrators have a thorough understanding of well-settled case law and enforce compliance with those decisions in operating their schools.

## State Role in Education

At no point does the federal Constitution refer to education. This, coupled with the language of the Tenth Amendment (...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), vested in state government the legal responsibility for the control and direction of public education. Thus, while federal authority is restrictive concerning education, the state has complete authority to provide a public education system. State-level sources of law include the state’s constitution, state statutes, state administrative agencies, and case law.

## **State Constitutions**

The Tenth Amendment to the United States Constitution stipulates 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.” Since education is not mentioned in the Tenth Amendment to the United States Constitution it is left to the states to control. Therefore, state constitutions represent the basic source of law for individual states and generally require legislative bodies to make provision for a system of free public schools. Such provisions range from very specific educational provisions to broad mandates that direct the legislature of the state to provide funds for the support of a public school system. State constitutions also restrict the powers legislative bodies may exercise.

State constitutions frequently address the same subject matter found in the federal Constitution, such as due process and/or equal protection of the law requirements, as well as separation of church and state. As a result, state courts are often asked to interpret these issues in an educational context. State constitutions may not contravene the federal Constitution.

## **State Statutes**

The public schools of the United States are governed by state statutes enacted by state legislatures. State statutes represent an important source of law for school administrators. The specificity of state statutes governing the operation of public schools varies from state to state and from subject to subject. Typically, however, state legislatures can raise revenue and distribute educational funds; prescribe curricular offerings; establish length of school day and year; mandate school attendance; establish pupil performance standards; set rules regarding suspension and expulsion of students; control teacher certification; establish procedures for tenure, retirement, collective bargaining, and fair dismissal procedures; create, alter, abolish school districts and school boards; remove incumbent school board members and abolish their offices; set admission policies for local schools; impose penalties for noncompliance with state regulations; and regulate other specific aspects of public school operations, including state-funded charter schools and home schooling.

## **State Administrative Agencies**

State-level agencies typically include a State Board of Education, a Chief State School Officer, and a State Department of Education. The specific functions of these state administrative agencies vary considerably among the states. Nevertheless, these agencies individually and collectively provide an important source of law for school administrators.

The primary function of state boards of education is to develop policies and regulations to implement legislation and constitutional requirements. One regulatory method used by state boards of education to compel local school districts to abide by their directives is accreditation. The most common accreditation models typically include

the establishment of minimum standards in areas such as curriculum, instructional materials, teacher qualifications, and facilities. State funds may be withheld from school districts for noncompliance with accreditation requirements. Other areas state boards of education deal with include school district organization, school closings, reductions in professional staff, and state level review of appeals from local school boards.

The Chief State School Officer (CSSO), variously designated as State Superintendent or Commissioner of Education, often acts as the executive head of the state's Department of Education. Typically, the duties of the CSSO have been regulatory in nature but often include other activities such as research, long-range planning, and adjudicating educational controversies.

Each state also has established a state Department of Education, which may contain divisions for specialized services such as administration, finance, instruction, and research. State department personnel often collect data from local school districts to ensure that legislative requirements and State Board of Education policies are implemented, as well as engage in activities to improve educational practices within the state.

### **Case Law**

State court decisions provide another source of law for school administrators, where there is no policy direction from the state constitution, state statutes, or state administrative agencies. A decision of one state's highest court is not binding in another state. However, such a decision does provide school administrators with the rationale of another state's highest court in an area of concern. And it should be noted that unless a federal issue is involved, there is no appeal of a decision of a state's highest court.

Courts have the final say on the meaning and effect of questioned laws. The power of individual courts to create law is illustrated, for example, to determine whether or not a school administrator lawfully exercised his or her authority or unlawfully abused administrative discretion.

### **Local Role in Education: School Boards**

There are approximately 15,000 local school districts nationwide, ranging from a few students to several hundred thousand (National Center for Education Statistics, 2010b). Some states, particularly those with large numbers of school districts, like Texas, have created intermediate or regional service centers that perform regulatory or service functions for several school districts within a designated geographic area. School districts, acting through their local school boards, administer the public schools.

Local school board policies provide another source of law for school administrators, as well as their individual school's rules or regulations. School board policies have the full force of the law as long as they do not contravene federal and state constitutions, federal and state statutes, or case law. Once these legal requirements are met, the school board as the delegated government at the local level may not violate its own policies. In many cases, school administrators rely on this authority in dealing with

such issues as administering corporal punishment, suspending or expelling a student, searching a student's locker or person, censorship of the school newspaper or yearbook, a student or teacher's refusal to participate in the pledge of allegiance or flag salute, use of the school building by the community, and dress and grooming standards of students and teachers.

State laws generally require that a school board can only make official decisions as a single corporate body, that is, as a whole at a duly convened official school board meeting (*Dugan v. Ballman*, 1976; *Konovalchik v. Sch. Comm. of Salem*, 1967; *State v. Consol. Sch. Dist.*, 1955; *Whalen v. Minn. Spec. Sch. Dist.*, 1976), pursuant to proper public notification, attended by a quorum of board members, and open to the public (*Rathman v. Brd. of Dir. of Davenport Comm. Sch. Dist.*, 1998). "Open meeting" or "sunshine" laws generally provide exceptions to open meeting requirements for school boards to meet in executive session to discuss matters that threaten public safety or pending or current litigation (*Davis v. Churchhill Cty. Sch. Brd.*, 1985; *Hanten v. Sch. Dist. of Riverview Gardens*, 1998; *Racine Union Sch. Dist. v. Thompson*, 1982); labor negotiations (*Bassett v. Braddock*, 1972); potential land purchase (*Collinsville Comm. Unit Sch. Dist. No. 10 v. White*, 1972); and personnel matters (*McCown v. Patagonia Union Sch. Dist.*, 1981; *Sch. Dist. for City of Royal Oak v. Schulman*, 1976). Although discussion of these matters may take place in closed meetings, state statutes usually require that formal action must take place in open meetings (*Connelly v. Sch. Comm.*, 1991).

### **Conclusion**

Public schools in the United States are governed by a complex body of laws that are grounded in federal and state constitutions, federal and state statutes, federal and state administrative agencies, and case law. At the local level, local school board policies provide another source of law for school administrators, as well as their individual school's rules and regulations. Laws relating to schools have increased significantly in volume and complexity since the mid-twentieth century.

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