

# Education Law

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## Introduction

Education law is now taught in over 60% of the law schools in the United States according to an article in 33 *Journal of Law & Education* 333 (2004). Education law in the United States is both state and federal constitutional provisions; local, state, and federal statutes; court opinions; and government regulations that provide the framework of educational institutions. Much of the litigation, legislation, and debate in education law has been concentrated in nine main issues: student speech and expression; searches of students; separation of church and state; racial segregation; the education of disabled children; employment law; employee sexual harassment and abuse of students; instructional programming; and the financing of public education. This bibliography will concentrate on these issues.

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## Books

Finding books: Books available on campus can be located through INFOHAWK, the integrated library catalog for the University of Iowa. You can expand your research to resources off campus use the Big Ten Plus Multiple Catalog or WorldCat. These items can be obtained through interlibrary loan.

Subject searches: The Library of Congress subject headings listed below are where most of the books on election law are located. A key word search can be used to find additional materials. All books listed below are located on campus. Unless otherwise indicated the books are in the Law Library.

- Charter Schools – United States
- Children with Disabilities –Education – Law and legislation
- Discrimination in education – Law and legislation – United States
- Educational equalization – United States
- Education – Standards – United States
- Educational accountability – Law and legislation – United States
- Educational change – United States
- Education – Law and legislation
- Educational vouchers – Law and legislation – United States
- Federal aid to education – United States
- Religion in the public Schools – Law and legislation
- Right to education
- School choice – Law and legislation – United States
- School improvement programs – United States
- Segregation in Education – Law and legislation
- Sex discrimination in education – Law and legislation
- Special Education – Law and legislation
- Students – Legal status, laws, etc.
- Teachers – Legal status, laws, etc.
- Universities and colleges – Law and legislation

**General** \*indicates an important resource

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## American Law Reports

Use the print version *West's ALR Digest* "Schools and Education" and *ALR Quick Index* "Schools and Education", or online Westlaw to find annotations.

## Statutes

Most education statutes can be found in Title 20, U.S. Code – (Education) or Title 42, U.S. Code (Public Health & Welfare). Below are listed selected federal statutes.

- Northwest Territory Ordinance of 1787 sets aside land for the support of schools and the establishment of a university in the Northwest Territory. July 13, 1787, 1 Stat. 51.
- The First Morrill Act is passed, providing for the endowment of the first land-grant colleges. July 2, 1862, Ch. 130, 12 Stat. 503, 7 U.S. Code §§ 301 – 305, 307 and 308.
- The Second Morrill Act is passed, extending land-grant colleges into the Southern states, leading to the creation of many public black colleges and universities. Aug. 30, 1890, Ch. 841, 26 Stat. 417, 7 U.S. Code §§ 321 – 326, 328.
- Vocational Education Act of 1917 (Smith-Hughes Act) provided federal support for vocation education at the secondary school level. Feb. 23, 1917, Ch. 114, 39 Stat. 929, 20 U.S. Code §§11 – 15, §§16 – 29.
- The Servicemen's Readjustment Act (G.I. Bill) is passed, providing for broad educational benefits to returning World War II veterans. June 22, 1944, P.L. 78-346, 58 Stat. 284, 38 U.S. Code §1801 et seq.
- National School Lunch Act is passed. June 4, 1946, P.L. 79-396, 60 Stat. 230, 42 U.S. Code §§ 1751 – 1760.
- Educational Agencies Financial Aid Act (Impact laws) is passed, providing permanent federal aid to schools impacted by federal employees and activities. Sept. 30, 1950, P.L. 81-815, 64 Stat. 1100, 20 U.S. Code §§236 – 244.
- National Defense Education Act is passed, providing federal aid to primary and secondary education, especially to promote math and science instruction. Sept. 2, 1958, P.L. 85-864, 72 Stat. 1580, 20 U.S. Code §§15aaa – 15ggg, 401-403, 421-429, 441-445, 461-465, 481-484, 491-, 511 – 513, 521; 42 U.S. Code §§ 1876 – 1879.
- Civil Rights Act is passed, with one provision calling for a withdrawal of federal financial support from any discriminatory school districts. July 2, 1964, P.L. 88-352, 78 Stat. 241, 42 U.S. § 1972, 1975a – 1975d, 2000 a – 2000 h-6.

- Economic Opportunity Act is passed, establishing a variety of programs, including the College Work-Study Program and Head Start. Aug. 20, 1964, P.L. 88-452, 78 Stat. 508, 42 U.S. Code §§ 2701, 2711-2720, 2731-2736, 2751-2756, 2761, 2781-2791, 2801-2807, 2821-2822.
- The Elementary and Secondary Education Act is passed, the first federal program of general financial aid to primary and secondary education. April 11, 1965, P.L. 89-10, 79 Stat. 27, 20 U.S. Code §§236-244, 331-332b, 821-827, 841-848, 861-870. 881-885.
- The Higher Education Act is passed, establishing a variety of programs, including guaranteed student loans and the Teacher Corps. Nov. 8, 1965, P.L. 89-329, 79 Stat. 1219, 20 U.S. Code §§403, 424-425, 441, 443, 591, 711, 713-717, 731, 743, 751, 1001-1011, 1021-1028, 1031-1034 et seq; 42 U.S. Code §§ 2751-2756.
- Bilingual Education Act is passed, establishing federal legislation dealing explicitly with language and culture. Jan. 2, 1968, P.L. 90-247, 81 Stat. 816, 20 U.S. Code §§880b to 880b-6.
- The Education of Handicapped Act is passed, providing federal aid to train teachers for handicapped children. Jan.2, 1968, P.L. 90-247, 81 Stat. 804, 20 U.S. Code §§ 871- 880a.
- Title IX of the Education Amendments is passed, making discrimination in education on the basis of gender illegal. Title IX of the 1972 Education Amendments, P.L. 92-318, 20 U.S.C. §1681 et seq.
- Education for All Handicapped Children Act is passed, mandating free appropriate public education designed to meet the individual needs of all handicapped children. Nov. 29, 1975, P.L. 94-142, 20 U.S. Code §1401 et seq.
- The Department of Education Organization Act is passed, establishing the modern Department of Education as a cabinet-level department. Oct. 17, 1979, P.L. 96-88, 3 U.S. Code §19, 5 U.S. Code §§101, 5312, 5314-5216, 5 U.S. Code Appx; 20 U.S. Code §§928, 929, 1102, 1102 nt., 2390, 2711, 3012, 3401, 3401nt. 3402 et seq.; 21 U.S. Code §1002; 29 U.S. Code §§761, 794c, 821, 829, 873, 879, 882, 914, 952.
- The Education Consolidation and Improvement Act is passed, consolidating 42 federal education programs into 7 programs. Aug 13, 1981, P.L. 97-35, 20 U.S. Code §3801 nt.
- The Equal Access Act is passed, requiring that religious-oriented extracurricular and student led activities be treated in the same manner as nonreligious activities. Aug. 11, 1984, P.L. 98-377, 20 U.S. Code §§4071 et seq., §4071 nt.
- The Drug Free Schools and Communities Act is passed, providing federal assistance for drug abuse education and prevention. Oct. 27, 1986, P.L. 99-570, 20 U.S. Code §4601 et seq.

- The Jacob K. Javits Gifted and Talented Student Education Act of 1988. April 28, 1988, P.L. 100-237, 20 U.S. Code §§3061 et seq.
- The Civil Rights Restoration Act is passed, largely reversing the 1984 *Grove City College* court decision regarding Title IX. March 22, 1988, P.L. 100-259, 102 Stat. 28, 20 U.S. Code §§1681 nt., 1687, 1687nt.; 29 U.S. Code §§705, 794; 42 U.S. Code §§2000d-4a, 6107.
- The Student Loan Reform Act is passed, reforming the federal student loan system by adding a direct federal lending program. Aug. 10, 1993, P.L. 103-66, 20 U.S. Code §1001nt.
- The Goals 2000: Educate American Act is passed, establishing institutions and funding to achieve national goals for education reform. March 1994, P.L. 103-227, 20 U.S. Code §5801 nt.
- The Safe Schools Act is passed, providing federal funding to help schools implement violence prevention measure. March 31, 1994, P.L. 103-227, 20 U.S. Code §§ 1221e-1, 5961 et seq.
- The Charter School Expansion Act is passed, providing federal funding to promote and expand charter schools (public schools offering parents choices in curriculum and teaching methods. Oct 22, 1998, P.L. 105-278, 112 Stat 2682, 20 U.S. Code §6301nt.
- No Child Left Behind Act of 2001 is passed, incorporating into the Elementary and Secondary Act specific proposals in such areas as testing, accountability, parental control, and early reading (P.L. 107-110), Title 20 U.S.C. §6301 et seq.

State Statutes can be found at <http://www.megalaw.com/top/education> or [http://www.ecs.org/ecsmain.asp?page=/html/statesTerritories/state\\_map.htm](http://www.ecs.org/ecsmain.asp?page=/html/statesTerritories/state_map.htm) This site is on the Education Commission of the States homepage. It includes links to state education statutes, state administrative codes, and state education agencies.

### **Proposed Federal Legislation**

Thomas – <http://thomas.loc.gov>. full-text and status of pending and recently enacted legislation. Many of the associations and advocacy groups track legislation and regulations.

### **Legislative Histories**

Materials on the legislative history of federal election laws can be found in two databases listed below. There are also several compiled legislative histories in the Law Library's collection which can be located searching under the name of the act.

**LexisNexis Congressional database.** This resource is based on print indexes created by the Congressional Information Service and is particularly useful for compiling legislative histories and tracking bills. It includes information on bills, laws, committee prints, House and Senate documents and reports, the Congressional Record, and more. Users can search by subject,

keyword, document number, and public law number. This resource also allows full text access to Congressional Research Service reports published since 1916.

**U.S. Congressional Serial Set, 1817-1980 database.** The goal of this database is to digitize the entire contents of the U.S. Serial Set, which contains House and Senate reports, documents, and journals, as well as a variety of other primary source materials. Materials are currently available for volumes 1-10968, covering the 15<sup>th</sup> – 77<sup>th</sup> Congresses. For earlier Congresses consult the American State Papers.

## **Federal Regulations**

Most of the federal regulations are found in Title 34, CFR – Education. GPO Access – <http://www.gpoaccess.gov/fr/index.html> tracks pending regulations. Many of the associations and advocacy groups track legislation and regulations.

## **Selected U.S. Supreme Court Cases**

Additional federal and state cases can be searched on Lexis and Westlaw.

- *Plessey v. Ferguson*, 163 U.S. 537 (1896), is decided upholding the constitutionality of the “separate-but-equal” doctrine.
- *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), is decided upholding parental rights to send their children to parochial schools.
- *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943), is decided striking down a compulsory flag salute.
- *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1 (1947), is decided upholding the use of public funds for bus transportation for parochial school students.
- *Brown v. Board of Education of Topeka*, 344 U.S. 1 (1954), is decided declaring racial discrimination in public schools unconstitutional.
- *Cooper v. Aaron*, 358 U.S. 1 (1958), is decided reaffirming support for the desegregation of education.
- *Engel v. Vitale*, 370 U.S. 421 (1962), is decided declaring state organized or sponsored prayer in schools unconstitutional.
- *Abington School District v. Schemp*, 374 U.S. 203 (1963), is decided extending *Engel* to include the Lord’s Prayer and Bible reading.

- *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969), is decided and upheld the right of students to wear black armbands in protest of the Vietnam war constitutional and part of the student's right to expression of speech.
- *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), is decided upholding the limited use of busing to achieve racial desegregation.
- *Lemon v. Kurtzman*, 403 U.S. 602 (1971), is decided establishing the three pronged *Lemon Test* criteria for determining whether a government program violates the constitutional prohibition against establishing a religion.
- *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), is decided refusing to mandate equal educational funding nationwide.
- *Lau v. Nichols*, 414 U.S. 563 (1974), is decided ruling that non-English speaking students are entitled to special assistance in school.
- *Regents of University of California v. Bakke*, 438 U.S. 265 (1978), is decided ruling that a special admissions program was illegal but race may be one of a number of factors considered by schools in passing on applications.
- *Grove City College v. Bell*, 465 U.S. 555 (1984), is decided ruling that the Title IX prohibition against gender discrimination applies only to educational programs that receives direct aid from the federal government.
- *Bethel School District 403 v. Fraser*, 478 U.S. 675 (1986), is decided ruling that constitutional rights of students in public schools are not automatically coextensive with the rights of adults in other settings.
- *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), is decided ruling that a high school paper published by students did not qualify as "public forum" so school official could impose reasonable restrictions on student speech in paper.
- *Vernonia School District 471 v. Acton*, 515 U.S. 646 (1995), is decided rejecting a constitutional challenge to public school district's random urinalysis testing program for students who participate in interscholastic athletics.
- *Gratz v. Bollinger*, 539 U.S. 244 (2003), is decided ruling that the University of Michigan's undergraduate admissions program was not narrowly tailored to achieve diversity in its class.
- *Grutter v. Bollinger*, 539 U.S. 306 (2003), is decided not prohibiting the law school's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the education benefits that flow from a diverse student body as long as quotas are not used.

- *Forest Grove School District v. T.A.*, \_\_\_ S.Ct. \_\_\_, 2009 WL 1738644, \_\_\_ U.S. \_\_\_, June 22, 2009 (NO. 08-305), is decided for reimbursement for a disabled child not found eligible for special education and received no special education services from the public school district.
- *Safford Unified School District #1 v. Redding*, \_\_\_S.Ct. \_\_\_, 2009 WL 1789472, \_\_\_ U.S. \_\_\_, June 25, 2009 (NO. 08-489), is decided that the assistant principal had reasonable suspicion that student was distributing contraband drugs but the reasonable suspicion did not justify a strip search.

## **Current Awareness**

- The Center for Education Reform has daily news headlines under “Press Room – Daily Headlines” and “Issues”  
<http://www.edreform.com/index.cfm?fuseAction=section&pSectionID=5>
- *The Chronicle of Higher Education*. <http://chronicle.com> This publication has very good coverage of issues especially legal.
- *ECS e newsletters*. <http://www.ecs.org/> The Education Commission of the States publishes six newsletters covering six different education topics. The newsletters are located at [http://www.ecs.org/ecsmain.asp?page=/html/publications/e\\_newsletters.htm](http://www.ecs.org/ecsmain.asp?page=/html/publications/e_newsletters.htm)
- *Education Week* is a weekly news alert service. <http://www.edweek.org/ew/index.html>
- *School Law Bulletin* allows you to search by time period. The Law Library has it in print and <http://shopping.netsuite.com/s.nl/c.433425/sc.7/category.6978/>

Almost every education association has some kind of current awareness tool, some are better than others. Below is a section on associations with their websites.

## **Government Agencies and Websites**

- ERIC – Education Resources Information Center – <http://www.eric.ed.gov> ERIC provides unlimited access to more than 1.2 million bibliographic records of journal articles and other education – related materials, with hundreds of new records added twice weekly. It contains records for journal articles, books, research syntheses, conference papers, technical reports, and policy papers from 1966-. For older articles see *Education Index*, covering education literature from 1929-1997.
- U.S. Department of Education – <http://www.ed.gov/index.jsp> The Department of Education was created in 1980. It’s mission is to promote student achievement and preparation for global competitiveness. It accomplishes this mission by developing policies; distributing and monitoring federal financial aid for schools; collecting and disseminating statistics and research on American schools; bringing to national attention key educational issues; and prohibiting discrimination and ensuring equal access to education. This site includes news items, programs,

publications, statistics and related websites.

- National Library of Education – <http://www.ed.gov/NLE> The National Library of Education serves as the federal government’s primary resource center for education information, providing collections and information services to the public, education community and other government agencies on current and historical programs, activities and publications of the U.S. Department of Education, federal education policy, and education research and statistics.
- National Center for Education Statistics – <http://nces.ed.gov> The National Center for Education Statistics is the primary federal entity for collecting and analyzing data related to education.
- Education Commission of the States (ECS) – <http://www.ecs.org> The mission of the Education Commission of the States is to “help states develop policy and practice for public education by providing data, research, analysis, and leadership; by facilitating collaboration, the exchange of ideas among the states and long-range strategic thinking.” This web site provides state profiles and 50-state comparisons on a wide range of education issues, from accountability to vouchers.
- The Center For Comprehensive School Reform and Improvement – <http://www.cscclearinghouse.org> The purpose of this center is to “assist schools and school districts contemplating or engaged in school reform and improvement” by providing reliable information about research-based strategies. This site has an online database with nearly 500 abstracts of school improvement studies.

## **Research Centers**

- Brookings Institution (Brown Center on Education Policy) - [http://www.brookings.edu/gs/brown/brown\\_hp.htm](http://www.brookings.edu/gs/brown/brown_hp.htm) This center provides “periodic update on education policy to examine the problems of the American education system and to help delineate practical solutions.” This site also has a subject arrangement of Brookings’ publication on education. Topics included are: education equality, education finance, education research, education statistics, elementary and secondary education, higher education, school choice, teachers, testing and assessments. Many of these publications are available in print at the Law Library.
- The Urban Institute (Education Policy Center) - <http://www.urban.org/content/PolicyCenters/Education/Overview.htm> This center conducts research on education reform involving accountability, school vouchers, standards, after school programs, technology, teacher quality, and the new increased flexibility in using federal funds. All the publications from this center are available on this site.
- National Center for the Study of Privatization in Education - <http://www.ncspe.org> This center provides independent, non-partisan information on and analysis in privatization in education. The Center makes available on their site publications regarding privatization.

- Public Agenda – <http://www.publicagenda.org> This organization has on its site research and surveys on wide range of issues including education.  
([http://www.publicagenda.org/issues/frontdoor.dfm?issue\\_type=education](http://www.publicagenda.org/issues/frontdoor.dfm?issue_type=education).)

### **School Reform Organizations**

- Annenberg Institute for School Reform at Brown University - <http://www.annenberginstitute.org> “The Annenberg Institute for School Reform develops, shares, and acts on knowledge that improves the conditions and outcomes of schooling for all students, especially in America’s urban communities.”
- Center on Reinventing Public Education (CPRE) - <http://www.crpe.org> This center “seeks to develop and evaluate methods of public oversight that can allow individuals schools to be focused, effective and accountable.” The site contains several publications and good comparisons and data on the individual states.

### **Advocacy Groups**

- American Civil Liberties Union – Student Rights – <http://www.aclu.org/StudentsRights/StudentsRightsMain.cfm>
- Center for Education Policy – <http://www.ctredol.org> The center advocates for public education and more effective public schools. Includes full text of reports done by the center.
- Center for Education Reform – The Center “advocates reforms that produce high standards, accountability and freedom.” The web site includes the Center’s publications.
- Home School Legal Defense Association – <http://www.hslda.org/Default.asp?bhcp=1> “Home School Legal Defense Association is a non-profit advocacy organization established to defend and advance the constitutional rights of parents to direct the education of their children and to protect family freedom.”

### **National Organizations and Associations**

- American Association of School Administrators – <http://www.aasa.org> “Policy and Legislation”, issue reports, topical issues.
- American Federation of Teachers (AFT) – <http://www.aft.org> The American Federation of Teachers was founded in 1916 to represent the economic, social and professional interests of classroom teachers. It is an affiliated international union of the AFL-CIO.
- Brookings Institution’s Education Research Topics Page – [http://www.brookings.edu/gs/brown/brown\\_hp.htm](http://www.brookings.edu/gs/brown/brown_hp.htm) This site has extensive analysis and

commentary, policy briefs.

- The Center for Education Reform - <http://www.edreform.com> The Center for Education Reform “drives the creation of better educational opportunities for all children by leading parents, policymakers and the media in boldly advocating for school choice, advancing the charter school movement, and challenging the education establishment”.
- The Edjurist. <http://www.edjurist.com> - “The purpose of The Edjurist is to serve educational and legal practitioners as a resource for information and current events concerning laws and policies of our nation’s K-12 schools.” It is also a place that fosters debate and growth in the educational law scholarly community.
- Education Commission of the States – <http://www.ecs.org> This site has state comparisons on a wide range of issues.
- Education Law Association (formerly NOLPE – National Organization on Legal Problems) - <http://educationlaw.org> Education Law Association provides information about current legal issues affecting education and the rights of those involved in education both public and private K-12 schools, universities, and colleges.
- Education Law Center (ELC) - <http://www.edulawcenter.org> The Education Law Center’s work falls into three major areas: making sure that all children have access to school and school programs; providing families reliable, understandable information about education laws and policies; and improving schools.
- Education Policy Center (The Urban Institute) – <http://www.urban.org/center/epc/index.cfm> This site contains full-text research reports.
- National School Boards Association (NSBA) – <http://www.nsba.org> The National School Boards Association is a not-for-profit organization representing state associations of school boards and their member districts before federal government agencies.
- National Council of School Attorneys (COSA) – [http://www.nsba.org/site/page\\_cosa.asp?](http://www.nsba.org/site/page_cosa.asp?) This organization represents the interests of the nation’s local school board members before Congress.
- NACUA (National Association of College and University Attorneys) - <http://www.nacua.org> Educates attorneys and administrators to the nature of campus legal issues and provides continuing legal education of university counsel.
- National Association of Elementary School Principals – <http://www.naesp.org> This organization serves the members by providing research and networking opportunities.
- National Association of Secondary School Principals – <http://www.naesp.org>

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- National Education Association (NEA) – <http://www.nea.org> The NEA is the nation’s largest professional employee organization and is committed to advancing the cause of public education.

### **Other Web Sites**

- Affirmative Action in College Admissions – *Gratz and Hamacher/Grutter v. The Regents of the University of Michigan*. <http://www.lib.umich.edu.govdocs.affirm.html> “contains documents which chronicle events surrounding this historically significant case up to the present.”

- Brown v. Board of Education Digital Archive – <http://www.lib.umich.edu/exhibits/brownarchive> “contains documents and images which chronicle events surrounding this historically significant case up to the present.”

- Brown v. Board of Education: May 17, 1954 - <http://www.ll.georgetown.edu/guides/brown/index.cfm> “features among other things links to original document images of the *Brown* case, including the decision, letters, and pictures.

- Campus Legal Information Clearinghouse – <http://counsel.cua.edu>  
This web site has summaries of federal laws related to higher education and examples of Innovative Compliance Practice from other schools.

- U.S. Charter Schools – [http://www.uscharterschools.org/pub/uscs\\_docs/index.htm](http://www.uscharterschools.org/pub/uscs_docs/index.htm) This site provides information and promising practices about charter schools.

- Wrightslaw – <http://www.wrightslaw.com>. This site is created and maintained by an attorney who represents children with special needs. It contains legislation, court decisions and briefs related to special education.

### **Education Blogs**

- Education Law – <http://educationlaw.foxrothschild.com>
- School and Education Law Blog – <http://schoolandeducationlaw.blogspot.com>
- Special Education Law Blog – <http://specialedlaw.blogs.com>
- The Wrightslaw Way – <http://www.wrightslaw.com/blog/>