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EDUCATION LAW, POLICY,
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Cases and Materials

*Third
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EDUCATION LAW, POLICY, AND PRACTICE

Cases and Materials

Third Edition

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To our parents and for our children

PREFACE TO THE THIRD EDITION

What makes a “good” education law class? The class should engage students on at least three interdependent levels. First, the students should be exposed to the meaningful constitutional, statutory, and judicial authorities that shape basic education law doctrine. Second, the students should develop practical skills and professional judgment that will enable them to apply the legal doctrine to situations presented to them by persons trusting in their counsel. Third, the students should be encouraged to examine and reexamine the fundamental political and philosophic assumptions underlying education law. Educational best practices also indicate that a good law school or graduate school class is one in which students are allowed to co-construct their own knowledge, to participate in shaping their own learning, to experiment with alternative instructional methods that reflect their multiple learning styles and intelligences, and to have the comfort and freedom to analyze critically the values underlying commonly accepted procedures and standards.

This book is designed to facilitate a “good” education law class. Its objective is to empower, engage, and inspire students to integrate education law, policy, and practice. The Third Edition includes carefully edited versions of the latest and most significant Supreme Court, lower federal court, and state court decisions interpreting the constitutional and statutory provisions governing American education. The cases have been organized to permit students to track the evolution of legal standards in each area of education law. Significant and provocative dissenting opinions are included as well. Students are encouraged to analyze these authorities critically and to reconcile and evaluate competing judicial perspectives.

The text also raises “real world” questions, hypotheticals, and practicums designed to push the students into applying the settled law in difficult, unsettled situations. Each chapter places the student into the various roles assumed by stakeholders in the education process,

including students, caregivers, taxpayers, legislators, educators, administrators, school board members, financial planners, union representatives, and, of course, lawyers. The practical situations created by the book require students to balance the interests of these stakeholders in an environment invariably characterized by scarce educational resources. They also invite the students to hone their counseling, drafting, negotiating, litigating, and even strategic planning skills.

Throughout its chapters, the book entreats readers to return to first principles. The book begins by asking whether the legal and political structure governing American education facilitates or inhibits the creation of a nation of “good” schools. That question never goes away. The opening sections are devoted to educational philosophy so that students will be able to examine the assumptions about human behavior and learning that underlie education law and policy. This edition also provides an international and comparative law perspective on the major legal, political, and pedagogical questions facing American education. The materials in the text give students the tools to understand the moral authority supporting principles of American education law, but they also challenge students to develop the intellectual autonomy to question that authority.

The topic of education law certainly lends itself to such fundamental questions. The subject is always current. This Third Edition thus includes authorities addressing controversial issues such as racial desegregation, the Pledge of Allegiance, vouchers, school choice, charter schools, school prayer, affirmative action, gender discrimination, inadequate and inequitable school funding, access to early childhood education programs, teacher rights and responsibilities, student rights and responsibilities, student harassment and speech codes, federalism, local control, school governance, and special education.

Yet the book also raises issues that resonate in the heart and soul of every student. Law students and graduate students inevitably arrive at their education law course with a wealth of personal experience. They understand what makes a “good” school from their own lives. The materials in the text are designed to encourage the students to draw on their own diverse experiences to create a lively debate about the legal and political structure of American schools.

As we grapple with the myriad legal, political, and pedagogical questions confronting American education, we should be ever-mindful of the Supreme Court’s recognition in *Brown v. Board of Education*, 347 U.S. 483 (1954) that:

education is perhaps the most important function of state and local governments. . . . It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument

in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life, if he is denied the opportunity of an education.

347 U.S. at 493.

If education is perhaps the most important governmental function, then the law governing education is perhaps the most important legal subject. This book was born out of our profound respect for the subject of education law and for the students who will explore its materials. We sincerely hope that the book will help to awaken students to the task of shaping a legal and political structure conducive to the development of a nation of “good” schools.

Michael J. Kaufman
Sherelyn R. Kaufman

2013

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