

2011  
**UNITED STATES  
SCHOOL LAWS  
AND  
RULES**

edited by  
**Michael I. Levin, Esq.**

**Volume 1**

**WEST®**

2011  
UNITED STATES  
SCHOOL LAWS  
AND  
RULES

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Michael I. Levin, Esq.

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Public Law 112-23  
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Rules Current Through  
76 F.R. 39794  
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Volume 1

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Every effort has been made to insure that this book is a complete and accurate reference. The material is reprinted from West's *United States Code Annotated* and the *Code of Federal Regulations*. However, since it is a compilation of selected statutes, rules and other materials, the book may not include every provision that might be considered important by every user.

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## FOREWORD

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*United States School Laws and Rules* is a compilation of federal statutes, regulations and guidance documents, with research aids, that govern education in America. Edited by Michael I. Levin in cooperation with an Editorial Advisory Board of prominent school attorneys and administrators, it provides an authoritative and up-to-date reference, in a convenient and affordable format, for education policy-makers, school board members, school administrators, teachers and their representatives, other school employees, attorneys, and the general public.

*United States School Laws and Rules* is the only publication that brings together in two volumes federal statutes from the *United States Code* and related U. S. government agency regulations from the *Code of Federal Regulations*.

Statutory provisions, complete to June 29, 2011, are compiled for four areas of particular concern to the school law community—education, labor, the environment, and civil rights—and include:

- General Education Provisions Act, 20 U.S.C.A. §§ 1221–1234i, including the Family Education Rights and Privacy Act
- Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400–1491o
- Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C.A. §§ 2301–2471
- Elementary and Secondary Education Act, 20 U.S.C.A. §§ 6301–7941
- Goals 2000: Educate America Act, 20 U.S.C.A. §§ 5801–6084
- Fair Labor Standards Act, 29 U.S.C.A. §§ 201–218c
- Consolidated Omnibus Budget Reconciliation Act, 29 U.S.C.A. §§ 1161–1168
- Age Discrimination in Employment Act, 29 U.S.C.A. §§ 621–634
- Americans with Disabilities Act, 42 U.S.C.A. §§ 12101–12213
- Asbestos School Hazard Detection and Control Act, 20 U.S.C.A. §§ 3601–3611
- Toxic Substances Control Act, 15 U.S.C.A. §§ 2601–2629
- Asbestos Hazard Emergency Response Act, 15 U.S.C.A. §§ 2641–2656
- Voting Rights Act, 42 U.S.C.A. §§ 1971–1973aa–6
- Title IV of the Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000c–2000c–9, and
- Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000d–2000d–7

Summaries of statute sections referred to less often appear at the end of the Chapter or Subchapter to which they belong. Each summary consists of the appropriate citation and a brief description of the law.

Federal agency rules, complete to July 7, 2011, include provisions on education, labor, age discrimination, equal employment, disabilities, the environment, and civil rights.

## FOREWORD

Research aids include a User's Guide, containing background information and hints for effective use; a Guidance Documents section, containing interpretations of statutes and regulations; and a detailed Subject Index, incorporating both legal and popular terminology for quick access to the law.

This 2011 Edition marks the nineteenth year of publication of *United States School Laws and Rules*, which has quickly become an essential resource for everyone involved with education and the law. Our plan is to recompile and republish annually, assuring that the work will remain the most comprehensive and timely publication of its kind on the market. We would greatly appreciate your comments and suggestions for improvements to future editions.

For additional information or research assistance call the West reference attorneys at 1-800-REF-ATTY (1-800-733-2889). Contact West's editorial department directly with your questions and suggestions by e-mail at [west.editor@thomson.com](mailto:west.editor@thomson.com). Visit West's home page at [west.thomson.com](http://west.thomson.com).

THE PUBLISHER

August 2011

## ABOUT THE EDITOR

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**Michael I. Levin** is owner of the Levin Legal Group, P.C., a law firm concentrating in public school law, labor law and civil rights litigation. He is also president of E-Forms, Inc., a software company manufacturing electronic forms for school districts and employers. A graduate of Temple University, he earned his J.D. at the Dickinson School of Law, where he was on the editorial staff of the Law Review. Prior to entering private practice, he served as a clerk for the Honorable Lee F. Swope, President Judge of the Court of Common Pleas of Dauphin County.

Mr. Levin serves as General Counsel to the Pennsylvania School Boards Association, the Pennsylvania School Boards Association Insurance Trust and School Boards Insurance Company of Pennsylvania, Inc. He is a past Chairman of the School Law Section of the Pennsylvania Bar Association. He is a member of the Labor Law Section of the American Bar Association. He is a member of the National Council of School Attorneys and has served on its Board of Directors.

Mr. Levin has lectured statewide and nationally on numerous topics pertaining to public school law and labor law and has been a guest lecturer at the Dickinson School of Law, Columbia University and the University of Pennsylvania. He has several school law-related articles to his credit, including: "Grievances and Arbitration," *Public Employee Labor Law*, PBI Publication No. 1981-154, p. 169 (1981); "School Employees' Rights: Dismissals and Demotions," *School Law*, PBI Publication No. 1983-213, p. 1 (1983); "Educational Placement of the Handicapped—Selected Issues," *Schools and the Law of the Handicapped*, National Council of School Attorneys (1980); and "Constitutional Considerations in Labor Relations," *Annual School Law Seminar*, National Council of School Attorneys (1987). He is the author of a treatise on *Pennsylvania School Personnel Actions*, editor of *Pennsylvania School Laws and Rules Annotated*, and author of the chapter on "Schools, Colleges and Universities," contained in West's Legal Forms. He is co-author of *Municipal Liability* in Pennsylvania and editor of *Pennsylvania School Laws and Rules*.

Mr. Levin has repeatedly been honored as a "Pennsylvania Super Lawyer" by Law and Politics and is the inventor of the two player rules for the popular board game Risk.

In 2007, Mr. Levin was the recipient of the President's Award for Distinguished Career Achievement in School Law presented by the Pennsylvania School Boards Solicitors Association.

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# USER'S GUIDE

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## INTRODUCTION

*United States School Laws and Rules* is a compilation of federal statutes, regulations, and guidance documents, with research aids, that govern education in America. Edited by Michael I. Levin (see About the Editor) in cooperation with an Editorial Advisory Board of prominent school attorneys and administrators, it contains the full text (or a summary) of the federal laws and rules referred to most often by education policy-makers, school board members, school administrators, teachers and their representatives, other school employees, attorneys, and the general public.

*United States School Laws and Rules* is the only publication that brings together in two volumes education statutes from the United States Code and related U.S. government agency regulations from the *Code of Federal Regulations*. Statutory provisions, complete to June 29, 2011, are compiled for four areas of particular concern to the school law community—education, labor, the environment, and civil rights. Federal agency rules, complete to July 7, 2011, include provisions on education, labor, age discrimination, equal employment, disabilities, the environment, and civil rights.

In addition, selected documents from federal agencies are included to provide guidance in interpreting statutes and regulations including several guidance documents under the No Child Left Behind Act (“NCLB”). NCLB guidance includes discussions on school choice; paraprofessionals, and unsafe school choice. Guidance documents are also provided for sexual harassment and disciplining students with disabilities.

Research aids include this User's Guide; a Federal Reference Table, listing additional, less frequently used statutory and rule provisions; and a detailed Subject Index, incorporating both legal and popular terminology for quick access to the materials.

This User's Guide describes features of the publication and provides hints for effective use. It is intended to assist both new and experienced users and may be read in whole or in part, as needed.

## THE CONSTITUTION OF THE UNITED STATES

The United States Constitution is reprinted in its entirety, with all amendments to date.

The United States Constitution enumerates the rights and liberties of citizens and establishes the powers of the federal government and the states. The Tenth Amendment declares that those powers not delegated to the federal government are reserved to the states. Certain Amendments are applicable to the states through specific enforcement clauses, while courts have held that the Bill of Rights applies to the states through the Fourteenth Amendment.

*United States School Laws and Rules* contains the full text of the U.S. Constitution, with amendments to date, unannotated. For case law and other annotations, see West's *United States Code Annotated*.

## USER'S GUIDE

### UNITED STATES CODE—SELECTED PROVISIONS

This part of the book contains selected provisions of the United States Code relating to education. The materials are reprinted from West's *United States Code Annotated*. Following a detailed Table of Contents, individual provisions are arranged in numerical order by title and section number. The full text of each section is printed, together with its official heading and current legislative history. Summaries of sections referred to less often appear at the end of the Chapter or Subchapter to which they belong.

#### How to Cite

In informal communications, *United States School Laws and Rules* can be cited using standard bibliographic notation; for example, "42 U.S.C.A. § 2000d, as reprinted in *United States School Laws and Rules* (West, 1998)."

For legal citations, according to *A Uniform System of Citation* (Sixteenth Edition), cite the *United States Code Annotated* in the following manner:

x U.S.C.A. § y (West 19zz)

where "x" is the title number of the Code, "y" is the section number, and "19zz" is the year of publication of the volume, the year appearing on the title page, or the latest copyright year. For example, 42 U.S.C.A. § 300g-6 (West 1994) cites section 300g-6 from Title 42 of a volume of the *United States Code Annotated* that was published by West in 1994.

### CODE OF FEDERAL REGULATIONS—SELECTED PROVISIONS

This part of the book contains the full text of administrative rules relating to education promulgated by the U.S. Department of Education and other federal agencies. The regulations are published first in the *Federal Register* (FR), which is issued daily. They are then compiled into the multi-volume *Code of Federal Regulations* (CFR). Within the CFR, the rules are arranged by subject matter into fifty (50) titles and updated annually.

#### How to Cite

According to *A Uniform System of Citation* (Sixteenth Edition), regulatory material, with the exception of Treasury materials, should be cited to the *Code of Federal Regulations* (CFR). When a regulation is known by name, the name should also be included, followed by the title and year; for example:

DOE Chapter 1 Program in Local Educational Agencies, 34 C.F.R. § 200.1 (1989).

Because agency regulations change frequently, the CFR and the FR must be used together to find the most recent version of a regulation. The following instructions are quoted from the CFR:

To determine whether a Code volume has been amended since its revision date . . . consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.



## USER'S GUIDE

Federal agencies should be contacted to determine whether they have issued any interpretative bulletins or can offer any guidance. Among the agencies which can provide assistance to the education community are the following:

### Federal Agencies

U.S. Commission on Civil Rights  
624 9th Street, N.W.  
Washington, D.C. 20425  
(202) 376-7700 (Main number)  
(202) 376-8116 (Locator number)  
Internet Homepage: <http://www.usccr.gov>

Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
(202) 260-2090 (Locator number)  
Internet Homepage: <http://www.epa.gov>

Federal Election Commission  
999 E. Street, N.W.  
Washington, D.C. 20463  
800-424-9530  
Internet Homepage: <http://www.fec.gov>

National Transportation Safety Board  
490 L'Enfant Plaza East, S.W.  
Washington, D.C. 20594  
(202) 314-6000 (Main number)  
(202) 314-6230 (Locator number)  
Internet Homepage: <http://www.nts.gov>

### U.S. Departments

U.S. Department of Education  
400 Maryland Avenue  
Washington, D.C. 20202  
(202) 401-3000 (Main number)  
(202) 401-2000 (Locator number)  
Internet Homepage: <http://www.ed.gov>

The U.S. Department of Education provides, free of charge, the *Guide to U.S. Department of Education Programs*. This publication supplies direction for beginning the application process to receive funding from federal education programs. These programs are offered through the Offices of Elementary and Secondary Education, Postsecondary Education, Educational Research and Improvement, Bilingual Education and Minority Languages Affairs, Vocational and Adult Education, and Special Education and Rehabilitative Services.

## USER'S GUIDE

### INDEX

An in-depth Subject Index integrates topical references to the U.S. Constitution, statutes, regulations, guidance documents, and the Federal Reference Table included in *United States School Laws and Rules*.

Index cross references are included to eliminate unnecessary duplication of entries under multiple headings and to assist users in researching related topics.

Every effort has been made to afford quick and easy access to the material. Index headings include frequently-used nonlegal terms as well as the language of the law.



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# CONSTITUTION OF THE UNITED STATES

## PREAMBLE

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

### ARTICLE I

**Section. 1.** All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

**Section. 2.** The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]<sup>1</sup> The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

<sup>1</sup> The clause of this paragraph inclosed in brackets was amended, as to the mode of apportionment of representatives among the several states, by the Fourteenth Amendment, § 2, and as to taxes on incomes without apportionment, by the Sixteenth Amendment.

**Section. 3.** [The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.]<sup>1</sup>

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]<sup>2</sup>

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

<sup>1</sup> This paragraph, inclosed in brackets, was superseded by the Seventeenth Amendment.

<sup>2</sup> The clause of this paragraph inclosed in brackets was superseded by the Seventeenth Amendment.

**Section. 4.** The Times, Places and Manner of holding Elections for Senators and Representatives, shall