



Advances in
**Educational
Administration**
Volume 24

Legal Frontiers in Education

Complex Law Issues for
Leaders, Policymakers and
Policy Implementers



Edited by
Anthony H. Normore • Patricia A. L. Ehrensall
Patricia F. First • Mario S. Torres, Jr.

ADVANCES IN EDUCATIONAL ADMINISTRATION
VOLUME 24

**LEGAL FRONTIERS IN
EDUCATION: COMPLEX LAW
ISSUES FOR LEADERS,
POLICYMAKERS AND POLICY
IMPLEMENTERS**

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ADVANCES IN EDUCATIONAL ADMINISTRATION

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INTRODUCTION

This book examines complex law issues in education and its implications for leaders, policy makers, and policy implementers. As professors of educational law, the four of us discussed the need for a book that focuses on laws and policies in education. It began at the 2014 annual Educational Law Association (ELA) conference in San Diego, CA, where professors, administrators, and attorneys gathered to discuss current policy making and policy implementation issues in the discipline. As a result of various presentations and a discussion with the presenters at ELA, a potential book was born. A follow-up dialogue resulted two weeks later at the 2014 annual Convention of University Council for Educational Administration (UCEA) in Chicago, IL. It was at UCEA where the four of us met as co-editors and agreed to spearhead the project. Several presenters at the ELA conference were willing to contribute to the book. A common theme that resonated with us focused on the various dynamics and complexities of law making process; how laws are negotiated into policy; how these same laws are implemented; and, the impact of these laws on education and educational leaders.

Making new laws is usually a very slow process involving a number of layers and stages where key issues are debated and negotiated before being finalized as official government policy, or before being passed as a law. Based on the Education and Training Guide (2015), the policy and law making process is described as follows:

It is the responsibility of the legislative branch (Parliament) of government to approve policies and pass new laws to give legal effect to the policies. But this is a long and slow process during which the policy or law proposed by the ruling party is debated and negotiated with various stakeholders, such as opposition parties, the public, non-government organizations, and so forth It can take a few years before a proposed law or policy is implemented and before its impact is felt on the ground.

A policy outlines what a government ministry hopes to achieve and the methods and principles it will use to achieve them. A policy document is not a law but it will often identify new laws needed to achieve its goals. Laws set out standards, procedures and principles that must be followed. Policy sets out the goals and planned activities of a ministry and department but it may be necessary to pass a law to enable government to put in place the necessary institutional and legal frameworks to achieve their aims Laws must be guided by current government policy. (para. 1–6)

It is with this in mind authors in this volume examine topics such as First Amendment, Fourth Amendment, search and seizure, immigration, cyberbullying, anti-bullying, English academic language development, English language learners, law enforcement, equity in resource allocation, homelessness, collective bargaining, and special education – to name a few. The book is organized into 14 chapters with an epilogue at the end that summarizes the current state of educational law.

In Chapter 1, James Vines examines selected state laws regarding cyberbullying. The online bullying has left school leaders in a legal dilemma as to how and when to address an incident that occurs off school grounds. The findings in recent research reveal that some state bullying laws define specific terms such as electronic communication, and intimidation, and harassment. The varying school cyberbullying laws and policies mean that leaders across the United States do not have a unified way to handle issues originating off-campus. Vines includes a critical examination of current laws in the states and a review of proposed federal legislations presently stalled in the U.S. Congress. In Chapter 2, Janet R. Decker and Suzanne E. Eckes focus on the complexities involving special education law and bullying. Recent litigation illustrates how plaintiffs have alleged violations under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973 and/or the Americans with Disabilities Act when students with disabilities are bullied in schools. The authors examine several illustrative recent cases and the 2014 Guidance to highlight the relevant issues for school leaders. Chapter 3 focuses on the First Amendment in public school with specific focus on cyberbullying and harassing forms of communication. Kathleen Conn reviews the jurisprudence pertaining to the First Amendment as applied to the school setting. Conn emphasizes legislative, judicial, and societal responses to cyberbullying and cyber harassment in the school setting, from the elementary level to higher education. She offers recommendations for policies and procedures for dealing with cyberbullying and cyber harassment in schools.

In Chapter 4, Chinasa A. Elue and Patricia F. First review the rights to education of immigrant children as it stands amidst confusion in the absence of meaningful immigration reform by the U.S. Congress and the puzzle of the states arbitrarily denying rights flowing from the Fifth and Fourteenth Amendments of the U.S. Constitution. Chapter 5 is presented by Caron Mellblom-Nishioka who articulates the barriers for success for multilingual language learners. She examines the literature related to language development and second language learning and the laws and mandates that drive our classroom practice. Delia Racines presents Chapter 6.

Racines examines two established legal policy research methodologies, specifically the four-step method of analysis and the quantitative method of "simple box scoring," to systematically analyze case law outcomes and identify seven litigation trends from cases over the past 40 years. Her research bridges the gap of critical knowledge needed to help educators, attorneys, and professors who prepare school leaders and teachers to meet legal requirements for ELs, each of whom are entitled by law to access mainstream curriculum. In Chapter 7, Kevin P. Brady and Cynthia A. Dieterich provide a detailed legal/policy update of the leading legal considerations and concerns involving K-12 students with autism. These authors conclude with a detailed discussion of how today's school officials can become more legally literate and better serve the legal needs of students with autism in their schools. Chapter 8 is presented by Jeffrey Burke and Mario S. Torres, Jr.. These authors examine the relationship between community educational attainment and Fourth Amendment legal principles being implemented in public schools. Their findings suggest community educational attainment has little to no predictive influence on aspects related to student searches examined in the study, which include the intrusiveness level of the search and the number of searches occurring during a single search event.

In Chapter 9 Hollie J. Mackey explores the foundations of the inclusion of native languages into current federal policy and argues that the placement might be better suited as stand-alone legislation in order to more effectively promote community development and self-determination for Native American peoples. Susan C. Bon and Nicole D. Snyder discuss the McKinney-Vento Act in Chapter 10 and how the Act relates to educational access and opportunity. These authors provide analysis regarding the legal rights of homeless youth, including an overview of significant cases and federal policy updates, and concludes with several recommendations for school leaders to establish clear guidelines and implement procedures to address the educational needs of homeless students. In Chapter 11, the authors Anthony H. Normore, Darius Bone, Delaney Jones, and Stacy Spell provide a historical context of School Resource Officers' programs in the United States and highlight concerns and challenges of school communities. These authors briefly present the case of SRO in Los Angeles, and its implications for educational leadership.

In Chapter 12, Patricia A. L. Ehrensall explores the underlying values in schools that rejected the speech of Fraser while accepting the speech act of cheerleaders' dance routines. She examines how the interpretation of these speech acts by school officials contributes to gender reproduction, with all

the inequalities imposed. Chapter 13 focuses on allocation of educational resources. Author Lori L. Taylor compares and contrasts the various strategies states use to make geographic cost adjustments to their school funding formula, describes the implications of geographic adjustment for interstate and intrastate measures of school finance equity (and corresponding litigation), and discusses the impact that such adjustments could have on the distribution of federal aid for economically disadvantaged students under Title I of the Elementary and Secondary Education Act. Chapter 14 is the final chapter. Author Mark Paige discusses the historical and legal framework of collective bargaining in public education. He identifies significant changes to collective bargaining statutes that have occurred or have been proposed, and suggests recommendations to policymakers and leaders that will assist them in understanding both the potential and limits of collective bargaining in improving schools. Concluding the book is an epilogue by Jacqueline Stefkovich. Stefkovich provides an in-depth summary of the book's content, its significance, how the fields of law and education work together, and why school leaders must have a greater understanding of the law.

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Editors

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CHAPTER 1

INCONSISTENCIES ACROSS THE STATES: AN EXAMINATION OF ANTI-BULLYING LAWS

James Vines

ABSTRACT

The purpose of this chapter is to examine selected state laws regarding cyberbullying. The advances in technology have allowed bullying to take an online form, where bullies can remain anonymous and access their targets 24 hours a day. The online bullying has left school leaders in a legal dilemma as to how and when to address an incident that occurs off school grounds. The laws which guide school leaders are found at the state level. The major inconsistencies between state laws are illustrated in this chapter. The findings in recent research reveal that some state bullying laws define specific terms such as electronic communication, and intimidation, and harassment. Some state laws provide a detailed protocol for how teachers and administrators should report and handle online bullying that has an impact on the school environment. However, some states leave developing a protocol up to individual school districts. The varying school cyberbullying laws and policies mean that leaders across the United States do not have a unified way to handle issues originating off-campus. However, school leaders should have a comprehensive policy which helps

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to address cyberbullying issues. This chapter includes a critical examination of current laws in the states and a review of proposed federal statutes presently stalled in the U.S. Congress.

INTRODUCTION

The purpose of this chapter is to examine selected state laws regarding cyberbullying. The advances in technology have allowed bullying to take an online form, where bullies can remain anonymous and access their targets 24 hours a day. The online bullying has left school leaders in a legal dilemma as to how and when to address an incident that occurs off school grounds. The laws, which guide school leaders, are found at the state level, but there are major inconsistencies. State laws vary in defining specific terms such as electronic communication, intimidation, and harassment. Some state laws provide a detailed protocol for how teachers and administrators should report, and handle online bullying that has an impact on the school environment. Meanwhile, some states leave developing a protocol up to individual school districts. Inconsistencies in school cyberbullying laws and policies mean that school leaders across the United States do not have a unified way to handle issues originating off-campus. School leaders should have a comprehensive policy, which helps to address cyberbullying issues. The chapter includes a discussion of proposed federal legislation that could guide state laws in the future.

BRIEF OVERVIEW OF CYBERBULLYING

The definition of cyberbullying varies depending on if you ask researchers, schoolteachers, policy-makers, or students. This chapter is guided by Hinduja and Patchin's definition of cyberbullying. Cyberbullying is defined as willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices (Hinduja & Patchin, 2015, p. 13).

Cyberbullying has become a major concern for students, school officials, parents, and policy-makers. Patchin and Hinduja (2010) postulated there is a need to examine cyberbullying because "as technology evolves, so do many of the problems faced by those who have access to it" (p. 615). The advances in technology have provided a new venue for bullying behavior to

occur. Kowalski and Limber (2007) found that bullying occurred in chat rooms, through email and instant messages. Although taking place online, cyberbullying can be just as damaging as traditional face-to-face bullying.

Willard (2006) noted that cyberbullying may produce consequences ranging from low self-esteem, anxiety, anger, depression, school absenteeism, poor grades, an increased tendency to be violent against others, and suicide. Many, who experience cyberbullying, also face traditional face-to-face bullying. Hinduja and Patchin (2009) found that 42% of victims of cyberbullying were also victims of traditional face-to-face bullying. Cyberbullying victims often felt frustrated, sad, angry, scared and embarrassed. Given the impact of cyberbullying many states have adopted anti-bullying laws and policies.

SELECTED STATE LAWS

The following provides a detailed description of five state cyberbullying laws. The description includes language from the laws, which identifies the varying ways each state addresses cyberbullying issues. Following the description, Table 1 provides a condensed and compact overview of the selected state laws. This table is meant to further highlight the inconsistencies. The states were selected to represent different regions within the United States. Arizona, the District of Columbia, Florida, Idaho, and Texas policies on cyberbullying differ in regard to addressing a cyberbullying incident.

Some states include electronic communication in their definition of bullying. Certain state policies include language that would make cyberbullying a criminal offense. The variances in the five selected state laws serve to illustrate the inconsistencies, which exists in current state laws across the country. There are not consistent guidelines for teachers, and school administrators to follow when cyberbullying concerns arise.

ARIZONA

Arizona has two laws regarding bullying. H.B. 2368 was enacted in 2005. Under H.B. 2368 school district develop procedures for addressing intimidating, bullying, and harassing other students (H.B. 2368, 2005).