LAW AND PUBLIC EDUCATION: CASES AND MATERIALS

FOURTH EDITION

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Philip T. K. Daniel

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LAW AND PUBLIC EDUCATION

CASES AND MATERIALS

Fourth Edition

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DEDICATION

I dedicate this Fourth Edition to The People of Ohio, who have given me the rare privilege of returning home.

— President Gee

To Tolly, Mae, Thomas, Esther, Henry, Fannie, Jessie, Alice, Charlotte, James, Joan, David, and John. All the best.

— Professor Daniel

Preface

All three branches of government, legislative, executive, and judicial, play a significant role in shaping and influencing the enterprise of American public education. Certainly, since the decision in Brown v. Board of Education, the federal government has reformed educational policy, and much decision making undertaken by local and state school officials has been litigated in the courts. This fourth edition of Law and Public Education represents the authors' efforts to keep pace with the changes in education and the dynamic impact the law has had on this transformation of authority. The changes have been substantial since the publication of the third edition in 1995 and, as a result, much of the current edition represents a rewriting of materials and the introduction of the most recent case law.

In focusing on the institution of public education, an education law course divides the law vertically and therefore intersects horizontal slices of the law, particularly administrative and constitutional law. Law and Public Education can thus serve as an advanced course of study in these areas, enabling students to further develop their analytical and critical skills by focusing on the application of general administrative and constitutional law principles to the particular institution of public education, and, it is hoped, provide occasions for them to rethink such principles in light of this analysis. The book can be used additionally as an introduction to the general areas of the law for students who have not yet been exposed to the horizontal courses. In view of the dynamic development of the challenging field of law, we offer this book to students, attorneys, educators, and others concerned with public education for study and analysis as an end in itself.

Although primarily a legal work, the book also contains historical, pedagogical, economic, and other social science literature as required to understand and analyze the subject matter. Three themes pervade these materials. The first concerns the decision making process and the proper allocation of decision making power among those who compete for it. The other two themes relate to the substance of the decisions made by this process: the conflicts involved in a liberal, democratic society seeking to inculcate values in its young; and the tensions that pervade a nation and an educational system torn between values of national unity, secularism and universalism on the one hand and the desire to preserve pluralism and enhance sectarian and parochial subgroup cultures and values on the other.

The cases and other materials in this book have generally been included in fuller versions than in many other casebooks, as we believe it important for the student to deal with the complexities, ambiguities, and nuances of meaning that can only be experienced when the cases are edited with a slight hand. Where substantive material has been removed from cases or other materials, the deletions are indicated. Citations and footnotes contained in cases and materials have, however, been eliminated without indication. Where such footnotes have been included, they retain their original numbers. The editors' footnotes are indicated by asterisks. Some clearly typographical errors in cases or other materials have been corrected without indication.

The first edition of this book was written by Professor Stephen R. Goldstein while teaching at the University of Pennsylvania Law School. He is currently the Edward Silver Professor of Civil Jurisprudence at the Hebrew University of Jerusalem. The following former students provided valuable research assistance in developing the first edition: Rita L. Bernstein, Ellen Josephson, Linda Lipton, Roderick R. McKelvie, Helen M. Pomerantz, Sherri E. Raiken, Stephen A. Saltzburg, Stephen J. Shapiro, and Diana J. Simon.

President Gee, who assumed major responsibility for the second edition of the book, would like to thank Jeanne Bryan, a former student at the J. Reuben Clark Law School, Brigham

Young University, and Susan Marks, a former student at the West Virginia University College of Law, who acted as research assistants.

Professor Daniel and President Gee, who authored the third edition, extend appreciation for research assistance to Patrick Pauken, J.D., Ph.D., a former student in both law and educational administration at The Ohio State University. They also thank Suzanne Cupp, Angela Doerschlag, Marianne L. Johnson, and Dina M. Minton for their contributions toward preparing the manuscript for publication.

The fourth edition is authored by Professor Daniel and President Gee. We are grateful for the research assistance of Jill Meinhardt, Chris Montgomery, Rachel Shapiro, and Lisa Whittaker, all former students at The Ohio State University Moritz College of Law.

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Philip T.K. Daniel

Columbus, Ohio

September, 2008

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