
TEACHERS

*and
the* LAW

Fourth Edition

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TEACHERS AND THE LAW, Fourth Edition

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Preface

Americans are a litigious people. This attitude is not recent; over a hundred years ago, a sensitive French visitor, Alexis de Tocqueville, observed that in the United States all issues become “sooner or later a subject of judicial debate.”

Today's schools function in the midst of a complex legal environment, and it is difficult not to be aware of a wide range of legal issues that influence the lives of teachers, students, parents, and administrators. It is, in fact, increasingly clear that educators ignore the law at their peril. In 1975, the U.S. Supreme Court ruled that teachers and administrators may be held personally liable in money damages for violating students' clearly established constitutional rights.

This book is about teachers and the law that affects them—law established by state and federal statute, constitutions, and court decisions. The law has little significance, unless educators know about it and make the effort to see that it is carried out.

It is not the purpose of this book to encourage teachers to go to court. Going to court is expensive—emotionally as well as financially. Litigation tends to intensify conflict and polarize participants. Our goal is to help resolve educational conflicts without lawyers or courts. How? By helping teachers become *legally literate*—by providing them with information about the law that affects them, about the way the legal system works, and about the way this system can work for them in the public school. With this information, teachers can practice “preventive law.” This does not mean that they will be their own lawyers, but rather that they will know their legal rights and responsibilities and will educate other members of the school community about the law. Underlying this premise is our belief that unlawful school practices are generally not intentional but result from a misunderstanding about the law. Most school officials are anxious to avoid lawsuits; when teachers can show that a certain policy is illegal,

administrators usually prefer to change the policy voluntarily rather than by a court order. We believe also that students' educational experiences will improve when all members of the school community behave in a manner consistent with basic constitutional principles such as due process of law.

Why are educators poorly informed about the law that affects schools? One reason is that much of this law did not exist when they were students; second, most teachers learned almost nothing about this subject during their education; third, educators have had little training in applying education law during their professional careers. This book can help fill that gap. We hope in this book to demystify the law for teachers—to break through the barriers of professional jargon and legalese that lawyers use among themselves and translate this language into everyday English.

In short, the purpose of this book is to empower teachers to take the law constructively into their own hands—to provide them with the knowledge necessary to comply with the law, assert their rights, and bring violations to the attention of administrators and colleagues.

No single volume can address all the issues involving school law; this book covers only those issues most central in the daily lives of teachers. It does not, for example, address issues related to the use of school property, school boundaries, liabilities of school districts, school board procedures, and teacher retirement. School law is a broad and burgeoning field, and only some portions of it are directly relevant to the professional roles of most teachers; we focus on these portions.

HOW THIS BOOK IS ORGANIZED

This book is divided into two parts. Part I, "The Legal Aspects of Teaching," addresses questions related to teacher contracts, dismissals, tenure, collective bargaining, liability, child abuse, defamation, and copyright laws. Part II, "Teachers' and Students' Rights," explores legal issues related to the scope and limits of personal freedom of expression, religion and conscience, and association; personal appearance, due process, and privacy. This part also includes material on the rights to be free from racial and sexual discrimination and rights related to school records, compulsory schooling, bilingual students, and students with disabilities. Part II concludes with a look at issues of importance for the 1990s. The Topic Overview that follows the Contents lists the questions covered in each chapter.

The book follows a question-and-answer format. Most of the questions and answers are based on reported court cases. By introducing educators to the law through the use of real conflicts, we provide material to which classroom teachers may personally relate. We find that this type of format offers a more lively and effective way for prospective teachers to relate to the law than does a focus on theoretical issues or legal abstractions. At the same time, each chapter—especially in the Summary—goes beyond the outcome of specific cases

and identifies the underlying principles that are likely to apply in similar cases in the future.

Books about law typically begin with a description of the legal system and court structure. Since such discussions are often hard to understand in the abstract, these concepts are introduced in the context of an actual case in which a teacher sued her school district when her contract was not renewed. This introductory chapter examines such questions as whether the teacher would bring suit in state or federal court, and how he or she would identify the law relevant to the particular case.

The appendices contain additional background information: relevant sections of the U.S. Constitution, an overview of pertinent Civil Rights laws, a list of legal resources, a glossary of common legal terms, and a bibliography.

An *Instructor's Manual* is available that includes edited Supreme Court cases as well as discussion questions, references to additional cases, suggested teaching activities, and a bibliography for each chapter.

NEW TO THIS EDITION

Much of the law examined in these pages is neither simple nor unchanging. Many of the cases are as difficult to resolve for lawyers and judges as they are for educators. This is so because cases involving school law often do not address simple conflicts or right against wrong, but rather complex issues encompassing the conflicting interests of teachers, parents, administrators, and students. Moreover, education law is constantly changing. New legislation is passed, regulations are amended, school boards revise their practices, and the Supreme Court denies or supports the constitutionality of particular policies. Because of this diversity and change, our discussion, while as current as we can possibly make it, is intended to be illustrative, not exhaustive. In adding and deleting case references, we have chosen to highlight major cases and legislation of general interest to teachers rather than focus on legal details. Citations to cases are in a form designed to be useful to teachers, rather than in the form used in legal treatises and law review articles. All the cases and legal references have been updated for this edition to provide the most important recent decisions.

Specific new features include:

- A new introductory chapter that introduces readers to the legal system through the true story of a teacher who sued her school district for sexual discrimination. This chapter focuses on how to find a competent attorney, how to identify the relevant law, and how to determine where to bring suit.
- New court cases from the U.S. Supreme Court as well as from federal and state appeals courts and trial courts.
- A new chapter on troubling issues for the 1990s which highlights controversies that are likely to be confronted during the remainder of the twentieth century, including the rights of gay and lesbian teachers and

students, school choice, sexual harassment, students and teachers with AIDS, equitable school funding, and the prohibition of gang clothing and provocative T-shirts.

A FINAL NOTE

If you contemplate legal action, you should first consult with your professional association and/or a knowledgeable lawyer. But since judicial resolution of an educational dispute is often an unhappy, expensive, difficult, and time-consuming process, bringing suit should be the *last* resort. We hope this book will help you resolve disputes through discussion and negotiation rather than litigation.

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