



10

Legal Perspectives on Education

LEARNING OUTCOMES

After reading and studying this chapter, you should be able to:

1. Explain the relationships between the U.S. Constitution and the role and responsibilities of the states in ensuring the availability of public schools for all children. (InTASC 9: Professional Learning and Ethical Practice)
2. Summarize key components of the rights and responsibilities of teachers as determined by key U.S. Supreme Court decisions (InTASC 7: Planning for Instruction; InTASC 9: Professional Learning and Ethical Practice)
3. Describe teacher's rights and responsibilities including appropriate and inappropriate teacher and student uses of social media. (INTASC 3: Learning Environments, INTASC 8: Instructional Strategies, INTASC 9: Professional Learning and Ethical Practice)
4. Distinguish between students' rights and responsibilities as citizens and their rights and responsibilities as students. (InTASC 3: Learning Environments; InTASC 7: Planning for Instruction; INTASC 9: Professional Learning and Ethical Practice)

EDUCATION in the NEWS

PATERSON TEACHER SUSPENDED FOR FACEBOOK POST SHOULD BE FIRED, JUDGE RULES

By LESLIE BRODY

Staff Writer, *The Record*; NorthJersey.com

THE RECORD

The Paterson teacher who called her first-grade students "future criminals" in a Facebook post should lose her tenured job, an administrative law judge has ruled.

In a decision made public Tuesday, Judge Ellen Bass said Jennifer O'Brien's conduct would be "inexcusable" in any district, but especially in a city burdened by poverty and violence.

"O'Brien has demonstrated a complete lack of sensitivity to the world in which her students live," the judge wrote. "The sentiment that a 6-year-old will not rise above the criminal element that surrounds him cuts right to the bone."

Bass also noted that O'Brien, who lives in Elmwood Park, did not express genuine remorse at an August hearing in Newark.

"I came away with the impression that O'Brien remained somewhat befuddled by the commotion she had created," the judge wrote.

Bass said that with sensitivity training, O'Brien—a Paterson teacher since 1998—could return to a public school classroom, but not in Paterson, due to her damaged relationship with the community.

The judge also found that the district's need to efficiently operate its schools outweighed O'Brien's right to free speech.

"In a public education setting, thoughtless words can destroy the partnership between home and school that is essential to the mission of the schools," she wrote.

The state education commissioner has forty-five days to accept, reject or modify the judge's recommendations.

O'Brien's lawyer, Nancy Oxfeld, said she would appeal to the commissioner to let O'Brien keep her job. Oxfeld said O'Brien's words had been misinterpreted and that she never thought her students would become criminals. The teacher was concerned about a few students' behavior and believed they needed help, the lawyer said.

QUESTIONS FOR REFLECTION

1. What do you think—was the judge right or wrong to fire Jennifer O'Brien?
2. Do you think that a teacher's constitutional right to free speech should have protected her from dismissal?

3. Do you have any material on your Facebook, Twitter, e-mail, or other social media account that might become a problem during your student teaching or first years as a teacher?

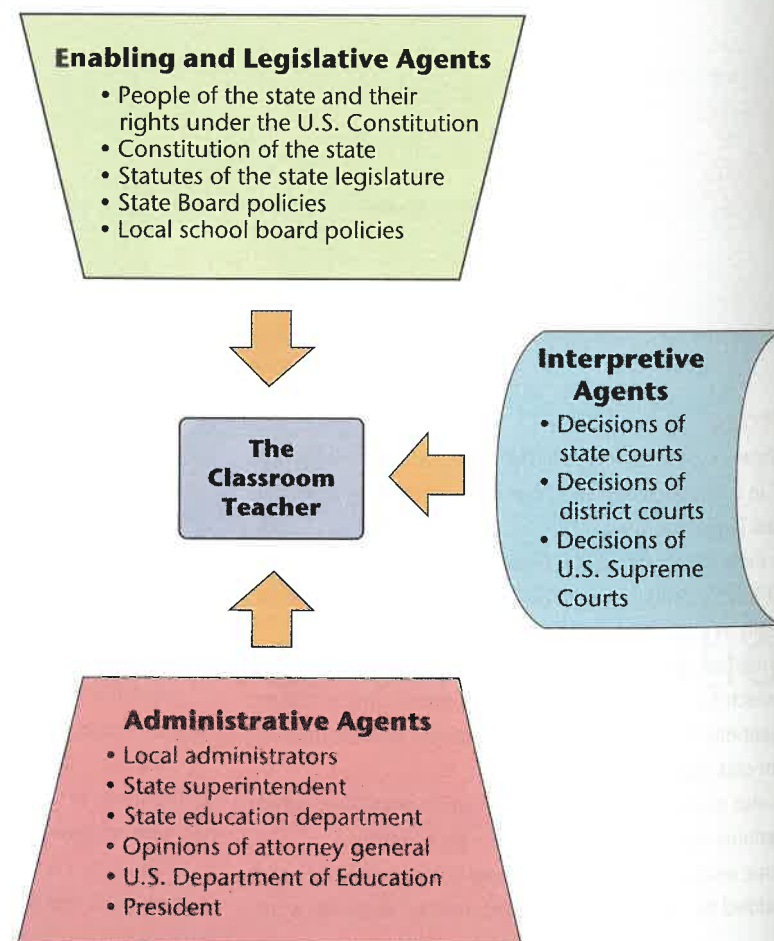
Source: *The Record* (Bergen, County, NJ)/North Jersey.com.

LEGAL ASPECTS OF EDUCATION

A critical component of becoming a teacher is to develop basic familiarity with the legal perspective. Teachers not only need to understand the law as it relates to their rights and responsibilities but also must be knowledgeable about the rights of their students. As is readily apparent in the "Education in the News" story, a newly emerging area of legal disputes is inappropriate uses of social media by teachers and students. As students and teachers increase their use of these technologies, there are a growing number of challenges in the courts, and policy makers are grappling with what rules of use need to be established.

Learning about the legal aspects of education begins with developing an understanding of the importance of the U.S. Constitution and the Bill of Rights. All else evolves from interpretations of the Constitution. Within the boundaries of U.S. law, each state is guided by its own constitution. Several additional sources of laws exist at the federal, state, and local levels, and a number of processes are in place for addressing disputes. As illustrated in Figure 10.1, the teacher in many

FIGURE 10.1 Sources of Legal Control in U.S. Education as They Affect the Classroom Teacher



ways is the implementer at the intersection between those who enact laws, those who administer laws, and those who interpret them.

Some laws are developed out of the legislative process. These are referred to as **enabling laws**, or those that provide opportunity or make it possible for educators to do certain things. Also, laws can impose restrictions or prohibitions. Another form of law, **administrative law**, is made up of the rules and regulations that the executive branches of government create. Once the legislative branch of government has established a new statute or policy, a government office, such as the U.S. Department of Education and/or the state education department, will develop rules and procedures related to implementing the new policy. These rules and procedures can have the force of law too.

Once legislation is enacted into law and the rules and procedures are in place. If a question of interpretation is raised, then the **judicial interpretive process** is engaged. The judicial process also is used when it appears that a law has been violated. The interpretations of the state and federal court systems' decisions form a body of **case law**. The sampling of legal topics presented in this chapter includes examples from constitutional law, state and federal statutes, and case law based on court interpretations. All apply directly to schools, teachers, and students.

Legal Provisions for Education: The U.S. Constitution

The U.S. Constitution is the fundamental law for the nation. When Congress develops a new statute, it must be in accordance with the U.S. Constitution. When a state legislature develops a new law, it must be in accordance with the U.S. Constitution and that state's constitution.

Three of the amendments to the U.S. Constitution are particularly significant to the governance of education, both public and private. Interpretations by the courts of each of these amendments—the Tenth, First, and Fourteenth—have had profound impacts on the role and purpose of schools, the opportunities of all students to have access to an education, and the responsibilities and rights of teachers, students, and school administrators (see Figure 10.2).

TENTH AMENDMENT. *The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people* (From *All Amendments to the United States Constitution*. Published by U.S. Constitution, 2015).

The U.S. Constitution does not specifically provide for public education; however, the Tenth Amendment has been interpreted as granting this power to the states. Therefore, education in the United States is not nationalized as it is in many other nations of the world. Each state has provided for education either in its constitution or in its basic statutory law. For example, Part 6, Section 2, of the Ohio Constitution reads:

The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state (From *Constitution of the State of Ohio, Section 2, Part 6*. Published by The Supreme Court of Ohio, 2015.).

Through such statements, the people of the various states commit themselves to a responsibility for education. The state legislatures are obliged to fulfill this commitment.

FIRST AMENDMENT. *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.*

As illustrated in the cases presented later in this chapter, two important clauses in the First Amendment have been applied repeatedly to issues confronting public education: (1) the

enabling laws Laws that make it possible for educators to do certain things.

administrative law Rules and regulations that the executive branch of a government create based in statute.

judicial interpretive process The judicial process of drawing conclusions about the intent of the wording in the Constitution and statutes.

case law Law based on decisions of state and federal courts.

FIGURE 10.2 Key Elements of the U.S. Constitution That Are Significant to the Governance of Education

Not Provided for: Responsibility for education.

Tenth Amendment: Grants responsibility for education to each state.

First Amendment: Ensures freedom of speech, of religion, and of the press.

Fourteenth Amendment: Ensures equal educational opportunity.

establishment clause, “Congress shall make no law respecting an establishment of religion,” and (2) the *free speech clause*, which has direct implications for teacher and student rights.

FOURTEENTH AMENDMENT. *No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

The application of the Fourteenth Amendment to public education as considered in this chapter deals primarily with the equal protection clause: “nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws” (From *All Amendments to the United States Constitution*. Published by U.S. Constitution, 2015). Equal educational opportunity is protected under the Fourteenth Amendment. In effect, the rights of citizens of the United States are ensured by the Constitution and cannot be violated by state laws or action.

JOURNAL FOR REFLECTION 10.1

Before reading this chapter, did you know that the U.S. Constitution makes no reference to education and that therefore the state has the responsibility for education? Or did you think that education was the responsibility of the federal government? Now, what do you see as the ideal balance between the state, the federal government, and local control?

Some of the enduring legal issues related to education are summarized in the next several sections of this chapter. You need to become familiar with each topic. With each issue we will be illustrating the legal reasoning and pointing out key decisions that have direct implications for you as a teacher. Later in the chapter, we will return to the increasing challenges related to uses of social media.

Church and State

Our nation has a strong religious heritage. For example, in colonial times, education was primarily a religious matter, and many of those who attended school were destined for the ministry. Now, with school attendance open to everyone, there are serious questions about the place of religion in education. Many private schools today are under religious sponsorship. But debate about the rightful role of religion in public education continues. Should public funds be used to support students in religious schools? Can prayer be said at high school commencement services or in classrooms? Does the teaching of creationism amount to public support for religion, or is it merely the presentation of an alternative scientific view? Agreements have not been reached through the debate process, so proponents of differing viewpoints have turned to the courts.

Court cases concerned with separation of church and state most frequently involve both the First and Fourteenth Amendments of the U.S. Constitution. The First Amendment is interpreted as being applicable to the states by the Fourteenth Amendment. For example, a state law requiring a daily prayer to be read in classrooms throughout the state could be interpreted as “depriving persons of liberty” (see the Fourteenth Amendment’s due process clause) and as the state establishing a religion, or at least “prohibiting the free exercise thereof” (see the First Amendment’s establishment clause). States are not permitted to make laws that abridge the privileges of citizens, and the right to the free practice of religion must be ensured.

Court cases related to the separation of church and state can be classified in three categories: (1) those dealing with the use of public funds to support religious education, (2) those dealing with the practice of religion in public schools, and (3) those dealing with the rights of parents to provide private education for their children. Key cases related to each of these categories are presented and summarized in Table 10.1.

PUBLIC FUNDS AND RELIGIOUS EDUCATION. In the 2013–2014 school year, the most recent year for which statistics have been compiled, 10 percent (5.4 million) of all pre-k to 12th-grade students were enrolled in private schools. Of the students who attend nonpublic schools, 40 percent (2.1 million) were enrolled in parochial (Catholic) schools, and 707,000 were enrolled in conservative Christian and affiliated schools¹ In states with relatively large enrollments in parochial schools,

¹ All data reported in this chapter, unless otherwise noted, are from the U.S. Department of Education, National Center for Education Statistics.

ongoing efforts have been made to obtain public financial assistance of one form or another for nonpublic school students. These attempts have often been challenged in the courts. We present a sample of these cases and issues here to illustrate the reasoning and to assess trends in this difficult area. A summary of cases related to the use of public funds for private education is presented in Table 10.1.

Transportation for Students of Church Schools. The landmark case on the use of public funds to provide transportation for students to church schools was *Everson v. Board of Education*, ruled on by the U.S. Supreme Court in 1947. The Court held that in using tax-raised funds to reimburse parents for bus fares expended to transport their children to church schools, a New Jersey school district did not violate the establishment clause of the First Amendment. The majority

TABLE 10.1

Selected U.S. Supreme Court Cases Related to the Use of Public Funds for Private Education

CASE	ISSUE	DECISION
<i>Everson v. Board of Education</i> (1947)	Use of tax-raised funds to reimburse parents for transportation of students to church schools	Court ruled that reimbursement did not violate the First Amendment.
<i>Lemon v. Kurtzman</i> (1971)	Legislation to provide direct aid for secular services to nonpublic schools, including teacher salaries, textbooks, and instructional materials	Court ruled the legislation unconstitutional because of the excessive entanglement between government and religion.
<i>Wolman v. Walter</i> (1977)	Provision of books, standardized testing and scoring, diagnostic services, and therapeutic and remedial services to nonpublic school pupils	Court ruled that providing such materials and services to nonpublic school pupils was constitutional.
Provision of instructional materials and field trips to nonpublic school pupils	Court ruled that providing such materials and services to nonpublic school pupils was unconstitutional.	
<i>Grand Rapids School District v. Ball</i> (1985) and <i>Aguilar v. Felton</i> (1985)	Instruction of nonpublic school students in supplementary education by public school teachers	Court ruled that the action violated the establishment clause in that it promoted religion.
<i>Zobrest v. Catalina Foothills School District</i> (1993)	Provision of a school district interpreter for a deaf student attending a Catholic high school	Court ruled that government programs that neutrally provide benefits to a broad class of citizens without reference to religion are not readily subject to an establishment clause challenge.
<i>Board of Education of Kiryas Joel Village School District v. Grumet</i> (1994)	Creation and support of a public school district for Hasidic Jews by New York State	Court ruled that the district violated the establishment clause in that it was a form of “religious favoritism.”
<i>Agostini v. Felton</i> (1997)	School districts’ provision of Title I teachers to serve disadvantaged students in religious schools	Court overturned ban provided the district assigns teachers without regard to religious affiliation, all religious symbols are removed from classrooms, teachers have limited contact with religious personnel, and public school supervisors make monthly unannounced inspections.

of the members of the Court viewed the New Jersey statute permitting free bus transportation to parochial school children as “public welfare legislation” to help get the children to and from school safely and expeditiously. Since the *Everson* decision, the highest courts in several states, under provisions in their own constitutions, have struck down enactments authorizing expenditures of public funds to bus children attending denominational schools; others have upheld such enactments.

The Lemon Test: Excessive Entanglement. A useful rubric emerged from the U.S. Supreme Court decision in *Lemon v. Kurtzman* (1971). This case dealt with an attempt by the Rhode Island legislature to provide a 15 percent salary supplement to teachers who taught secular subjects in nonpublic schools and a statute in Pennsylvania that provided reimbursement for the cost of teachers’ salaries and instructional materials in relation to specified secular subjects in nonpublic schools. The Court concluded that the “cumulative impact of the entire relationship arising under the statutes in each state involves excessive entanglement between government and religion.” (1971) The Court pointed out another defect of the Pennsylvania statute: It provided for the aid to be given directly to the school. In the *Everson* case, the aid was provided to the students’ parents, not to the church-related school. The Court posed three questions that have since become known as the *Lemon* test: (1) Does the act have a secular purpose? (2) Does the primary effect of the act either advance or inhibit religion? and (3) Does the act excessively entangle government and religion? Most subsequent cases dealing with the use of public funds in nonpublic school settings have referred to this test.

Special Situations. The U.S. Supreme Court seems to have wavered from a strict application of the *Lemon* test in two more cases: *Kiryas Joel v. Grumet* and *Zobrest v. Catalina*. In a 1994 case, *Board of Education of Kiryas Joel Village School District v. Grumet*, the U.S. Supreme Court ruled that a New York State law that created a public school to serve children with disabilities in a village of Hasidic Jews was a form of “religious favoritism” that violated the First Amendment. Interestingly, in this case, as in some others recently, the justices ignored the *Lemon* test in making the decision. Instead, the focus was on the legislature’s creation of a special school district; the justices noted the risk that “the next similarly situated group seeking a school district of its own will receive one” (From *Board of Education of Kiryas Joel Village School District v. Grumet*, U.S. Supreme Court, 1994). Another implication of this decision was the indication that the court was willing to revisit *Aguilar v. Felton* (1985) and *Grand Rapids School District v. Ball* (1985), which invalidated sending public school teachers to private religious schools to provide supplemental instruction.

Whether a public school district could provide an interpreter for a student who was deaf who attended a Catholic high school was the central question in *Zobrest v. Catalina Foothills School District* (1993). Under a federal statute, the Individuals with Disabilities Education Act (IDEA),



In *Zobrest v. Catalina*, the Supreme Court ruled that no establishment clause was violated in the case of providing an interpreter for a student who was deaf who attended a Catholic school.

students who are deaf are entitled to have a sign language interpreter in all regular classes. In *Zobrest v. Catalina*, the Court concluded that no establishment clause violation occurred because the provision of the interpreter was a “private decision of individual parents.” In terms of the federal statute, the Court determined that this was a situation in which “government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an establishment clause challenge just because sectarian institutions may also receive an attenuated benefit.”

Child Benefit Theory. The use of public funds to provide secular services has led to a concept referred to as **child benefit theory**. More recent decisions supporting the use of public funds for transportation and textbooks for students in private schools have generally been based on child benefit theory; this theory emerged out of commentary about the *Everson v. Board of Education* case. The reasoning was that transportation and books provide benefits to the children, not to the school or to a religion. Those opposed to the child benefit theory argue that aid to children receiving sectarian education instruction is effectively aiding the institution providing instruction.

The child benefit theory, as supported by the U.S. Supreme Court, has penetrated federal legislation. For example, the original Elementary and Secondary Education Act of 1965 (ESEA) and its subsequent reauthorizations, including No Child Left Behind, provide assistance to both public and nonpublic schoolchildren. For example, Title I of ESSA, which deals with assistance for the education of children from low-income families, states that children from families attending private schools must be provided services in proportion to their numbers.

Title I Teachers in Religious Schools. In *Agostini v. Felton* (1997), the U.S. Supreme Court seemed to be providing increased flexibility and easing the tensions created by *Aguilar v. Felton* (1985). In *Aguilar*, the court struck down the use of Title I funds to pay public school teachers who taught in programs to help low-income students in parochial schools. But in *Agostini*, the court decided that, under specific safeguards, Title I teachers can be sent to serve disadvantaged students in religious schools.

The issue of public aid to church-related schools seems to have been settled. It is clear that aid for certain secular services (such as transportation, textbooks, and—under prescribed circumstances—testing, diagnostic, therapeutic, and remedial services) can be provided. Still, this is a difficult problem area. In fact, the whole body of law in this area continues to be somewhat confused and contradictory. Figure 10.3 summarizes our current understanding related to public funds and religious education.

RELIGIOUS ACTIVITIES IN PUBLIC SCHOOLS. The limits and boundaries of the First Amendment in relation to public schools have been and will continue to be tested in the courts, especially in relation to what might be seen as support of religion. Many cases have dealt with prayer in school, the teaching of creationism and evolution, and the religious use of public facilities. Each case has contributed to a gradual process of clarification of what can be done and what should

child benefit theory A criterion used by the U.S. Supreme Court to determine whether services provided to nonpublic school students benefit children, not a particular school or religion.

FIGURE 10.3 Summary Statements on Church and State Related to Public Funds and Religious Education

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| <ul style="list-style-type: none"> • Laws and policies that have the effect of establishing religion in the schools will not be upheld by the courts. • Use of public tax funds to pay for secular textbooks for loan to students and transportation of religious school children has been upheld by the courts. • Use of public tax funds to pay for salaries of teachers in religious schools has not been upheld by the courts. • Use of public funds to pay tuition of religious school children has not been upheld; in Minnesota, a tax deduction has been upheld for parents of children in public and private schools. | <ul style="list-style-type: none"> • Special support services such as speech and hearing teachers may be provided to students in religious schools. • Religious schools may be reimbursed for administrative costs of standardized tests, test scoring, and record keeping required by the state. • Public tax funds may not be used in support of public school teachers offering remedial or enriched instruction in religious schools. |
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TABLE 10.2

Selected U.S. Supreme Court Cases Related to the Practice of Religion in Public Schools

CASE	ISSUE	DECISION
Creationism		
<i>Edwards v. Aguillard</i> (1987)	Balanced treatment of biblical and scientific explanations of the development of life	A state cannot require that schools teach the biblical version of creation.
Practice of Religion		
<i>Wallace v. Jaffree</i> (1985)	Legislation authorizing prayer in public schools, led by teachers, and a period of silence for meditation or voluntary prayer	Court held that state legislation authorizing a minute of silence for prayer led by teachers was unconstitutional.
<i>Mozert v. Hawkins County Public Schools</i> (1987)	Request that fundamentalist children not be exposed to basal reading series in the public schools of Tennessee	Rejected by the U.S. Court of Appeals for the Sixth Circuit, which reasoned that the readers did not burden the students' exercise of their religious beliefs.
<i>Board of Education of the Westside Community Schools v. Mergens</i> (1990)	The right of a student religious club to hold meetings at a public school	Court ruled that based on the Equal Access Act (EAA) of 1984, if only one non-curriculum-related student group meets, then the school may not deny other clubs.
<i>Lee v. Weisman</i> (1992)	Inclusion of a religious exercise in a graduation ceremony where young graduates who object are induced to conform	Prayers as an official part of graduation exercises are unconstitutional.
Use of Facilities		
<i>Police Department of the City of Chicago v. Mosley</i> (1972)	Government's refusal of use of a public forum to people whose views it finds unacceptable	"There is an equality of status in the field of ideas," and "government must afford all points of view an equal opportunity to be heard."
<i>Lamb's Chapel v. Center Moriches Union Free School District</i> (1993)	A church's screening of a family-oriented movie on public school premises after school hours	The district property had been used by a wide variety of audiences, so there was no danger of the district's being perceived as endorsing any given religion.
<i>Santa Fe Independent School District, Petitioner v. Jane Doe</i> (2000)	School district policy supporting student-led prayer before football games	"The policy is invalid on its face because it establishes an improper majoritarian election on religion, and unquestionably has the purpose and creates the perception of encouraging the delivery of prayer at a series of important school events."

not be done to ensure the separation of church and state. Table 10.2 summarizes selected U.S. Supreme Court judgments in some of these cases.

Prayer in School. A number of attempts have been and continue to be initiated by school districts to incorporate some form of prayer into public school classrooms and activities. One such case began when the school district for Santa Fe High School in Texas adopted a series of policies that permitted prayer initiated and led by a student at all home athletic games. In June 2000, the

U.S. Supreme Court ruled in *Santa Fe Independent School District, Petitioner v. Jane Doe* that the clear intent of the district policies was in violation of the establishment clause. The six-to-three majority observed, "The District, nevertheless, asks us to pretend that we do not recognize what every Santa Fe High School student understands clearly—that this policy is about prayer." Later in the decision, the Court noted, "This policy likewise does not survive a facial challenge because it impermissibly imposes upon the student body a majoritarian election on the issue of prayer." In other words, the district would be imposing a particular religious activity of the majority on all, a clear violation of the establishment clause. "It further empowers the student body majority with the authority to subject students of minority views to constitutionally improper messages. The award of that power alone, regardless of the students' ultimate use of it, is not acceptable." In concluding, the Court stated, "The policy is invalid on its face because it establishes an improper majoritarian election on religion, and unquestionably has the purpose and creates the perception of encouraging the delivery of prayer at a series of important school events" (From *Santa Fe Independent School District, Petitioner v. Jane Doe*, U.S. Supreme Court, 1994). Figure 10.4 summarizes findings related to the practice of religion in public schools.



Source: Annie Griffiths Bell/Corbis

A continuing topic of debate and judicial action is the place of prayer in public schools as determined by the First Amendment.

Evolution Versus Intelligent Design. Education has been placed at the center of what seems to be a never-ending debate between science and certain religious perspectives. The beginning of this debate is traced to the publication of *On the Origin of Species* by Charles Darwin in 1859. Following years of careful observation and documentation of the characteristics of plants and animals, Darwin theorized that today's animals and plants were the results of natural selection over thousands of years—in other words, evolution. In the approximately 150 years since that publication, the scientific base for evolution has become well established through study of the geologic record and, more recently, analysis of the genetic history of plants and animals.

Some religious perspectives and a large proportion of the population view evolution as an unproven "theory." These critics have used various strategies to challenge its teaching or to require an alternative view based on religion to be taught as well.

One of the most famous trials involving religion and a teacher occurred in Tennessee in 1925, when a science teacher, John Scopes, was found guilty of teaching evolution. Although the decision was later reversed on a technicality, the "Scopes Monkey Trial" has been kept alive

FIGURE 10.4 Summary Statements on Church and State and the Practice of Religion in Public Schools

- To teach the Bible as a religion course in the public schools is illegal; to teach about the Bible as part of the history of literature is legal.
- To dismiss children from public schools for one hour once a week for religious instruction at religious centers is legal.
- Reading of scripture and reciting prayers as religious exercises are in violation of the establishment clause.
- Public schools can teach the scientific theory of evolution as a theory; a state cannot require that the biblical version of evolution be taught.
- If school facilities are made available to one group, then they must be made available to all other groups of the same general type.

TABLE 10.3

Selected Court Cases Related to the Teaching of Evolution in Science Classes

CASE	ISSUE	DECISION
<i>The State of Tennessee v. John Thomas Scopes</i> (1925), the "Scopes Monkey Trial"	The teaching of evolution in science classes	The teacher was guilty. The decision was later overturned on a technicality.
<i>Epperson v. Arkansas</i> (1968)	Can the state ban the teaching of evolution?	The "anti-evolution" statute violated the establishment clause.
<i>Edwards v. Aguillard</i> (1987)	Can the state require that the teaching of creationism be given equal time with the teaching of evolution?	The Court ruled that the Arkansas legislature violated the establishment clause.
<i>Kitzmiller v. Dover Area School District</i> (2005)	Can a school board require its science teachers to discuss intelligent design?	The district judge ruled that "intelligent design cannot uncouple itself from its creationist, and thus religious, antecedents."

segregation Legal and/or social separation of people on the basis of their race.

de jure segregation The segregation of students on the basis of law, school policy, or a practice designed to accomplish such separation.

desegregation The process of correcting illegal segregation.

integration The process of mixing students of different races in school.

resegregation A situation in which formerly integrated schools become segregated again because of changes in neighborhood population patterns.

de facto segregation The segregation of students resulting from circumstances such as housing patterns rather than law or school policy.

in the theater and through the more recent efforts of certain religious groups advocating for the teaching in science classes of alternative views based on the Bible. In the 1970s, the alternative view was to advocate for a biblical account as scientific theory; this was called *creationism*. As the courts failed to support this theory, a new one, called *intelligent design*, has been advanced. Each of these views has argued that life is too complicated to have developed without there being a higher power involved. As summarized in Table 10.3, the courts have tended to view each of these efforts as attempts to advance religion.

Regardless of past Supreme Court decisions, some topics, such as the posting of the Ten Commandments in classrooms and Bible reading in public schools, continue to be challenged by legislatures, individuals, and various groups. One of the outcomes of these ongoing challenges is an accumulating series of judicial interpretations that can serve as guidelines about what can and cannot be done. The summary statements presented in Figure 10.4 outline the overall pattern of the many judicial decisions related to religion and the public schools.

Segregation and Desegregation

A troublesome problem for U.S. society has been the history of legal and social separation of people based on their race—in other words, **segregation**. Up until the middle of the twentieth century, the public school systems in many states contributed to this problem through the operation of two separate sets of schools, one for Caucasians and one for African Americans ("Negroes"). Segregated schools were supported by the courts, state laws, and the official actions of state and local government administrators. This kind of segregation based in legal and official actions is called **de jure segregation**.

Since 1954, the courts and communities have made intensive efforts to abolish the racial segregation of school students, a process that has been called **desegregation**. A major instrument the courts have used to accomplish this end has been **integration**, often done by busing students to achieve a balanced number of students, in terms of race, in each school within a school district. A second instrument has been the use of magnet schools, which are schools that emphasize particular curriculum areas, disciplines, or themes. The hope has been that these schools will attract a diverse set of students. These efforts to integrate the schools have had mixed success, and now there is increasing concern over the **resegregation** of schools based on where people live. Segregation—or resegregation—caused by housing patterns and other nonlegal factors is called **de facto segregation**.

"SEPARATE BUT EQUAL": NO LONGER EQUAL. Before 1954, many states had laws either requiring or permitting racial segregation in public schools (*de jure* segregation). Until 1954,

lower courts adhered to the doctrine of "separate but equal" as announced by the Supreme Court in *Plessy v. Ferguson* (1896). In *Plessy v. Ferguson*, the Court upheld a Louisiana law that required railway companies to provide separate but equal accommodations for the black and the white races. The Court's reasoning at that time was that the Fourteenth Amendment implied political, not social, equality.

The Failure of the Separate but Equal Doctrine. This separate but equal doctrine appeared to be the rule until May 17, 1954, when the Supreme Court repudiated it in *Brown v. Board of Education of Topeka*. The Court said that the separate-but-equal doctrine has no place in education and that separate facilities are inherently unequal. In 1955, the Court rendered the second *Brown v. Board of Education of Topeka* decision, requiring that the principles of the first decision be carried out with all deliberate speed.

From 1954, the time of the *Brown* decision, to 1964, little progress was made in eliminating segregated schools. On May 25, 1964, referring to a situation in Prince Edward County, Virginia, the Supreme Court said, "There has been entirely too much deliberation and not enough speed in enforcing the constitutional rights which we held in *Brown v. Board of Education*." (1969) The Civil Rights Act of 1964 added legislative power to the 1954 judicial pronouncement. The act not only authorized the federal government to initiate court suits against school districts that were laggard in desegregating schools but also denied federal funds for programs that discriminated by race, color, or national origin.

Subsequently, many efforts have been made to meet the expectations of the Court decisions and legislation. The objective of these initiatives has been to promote integration, that is, to achieve a representative mix of students of different races in schools. In the sixty-plus years since *Brown*, there have been many efforts by school districts and communities and many additional lawsuits. Table 10.4 summarizes some key Supreme Court decisions on school desegregation and integration.

TABLE 10.4

Selected U.S. Supreme Court Cases Related to School Desegregation and Integration

CASE	ISSUE	DECISION
<i>Plessy v. Ferguson</i> (1896)	Whether a railway company should be required to provide equal accommodations for the African American and white races	The Court indicated in its decision that the Fourteenth Amendment implied political, not social, equality. Thus the doctrine of "separate but equal" was established.
<i>Brown v. Board of Education of Topeka</i> (1954)	Legality of separate school facilities	The separate-but-equal doctrine has no place in education, and dual school systems (<i>de jure</i> segregation) are inherently unequal.
<i>Griffin v. County School Board of Prince Edward County</i> (1964)	Whether a county may close its schools and provide assistance to private schools for whites only	The Court instructed the local district court to require the authorities to levy taxes to reopen and operate a nondiscriminatory public school system.
<i>Board of Education of Oklahoma City Public Schools v. Dowell</i> (1991)	The conditions under which a school district may be relieved of court supervision	Court supervision was to continue until segregation was removed from every facet of school operations.
<i>Freeman v. Pitts</i> (1992)	Whether court supervision may be withdrawn incrementally, and whether a school district is responsible for segregation based on demographic changes (<i>de facto</i> segregation)	A district court is permitted to withdraw supervision in discrete categories in which the district has achieved compliance; also "the school district is under no duty to remedy imbalance that is caused by demographic factors."

One of the positive long-term effects of desegregation can be seen in today's highly diverse schools and classrooms.



Source: Myrlene Pearson/Alamy Stock Photos

Release from Court Orders. As years of court directions and school district efforts related to integration unfolded, a new question was raised: What conditions must be in place for a school district to be released from federal court supervision? Three cases in the 1990s offered instances of conditions under which the courts would back away. *Board of Education of Oklahoma City Public Schools v. Dowell* (1991) is important for at least three reasons: First, the U.S. Supreme Court made it clear that “federal supervision of local school systems was intended as a temporary measure to remedy past discrimination.” Second, the Court stated that in relation to desegregation, “the District Court should look not only at student assignments, but to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities.” (1964) Third, for the first time the Court defined what full compliance with a desegregation order would mean.

Two other cases added additional clarity to what the Court expects in order to release a school district from supervision. In *Freeman v. Pitts* (1992), the U.S. Supreme Court ruled that districts do not have to remedy racial imbalances caused by demographic changes, but the districts still have the burden of proving that their actions do not contribute to the imbalances. The third case was a return to *Brown*. The Court had ordered the U.S. Court of Appeals for the Tenth Circuit to re-examine its 1989 finding that the Topeka district remained segregated. In 1992, the appellate court refused to declare Topeka successful. The court concluded that the district had done little to fulfill the duty to desegregate that was first imposed on it in 1954. The judges wrote that to expect the vestiges of segregation to “magically dissolve” with so little effort “is to expect too much.”

These three cases in combination made it clear that it is possible for school districts to be released from court orders. The decisions also made it clear that school districts have to make concerted efforts across time to address any and all remnants of *de jure* segregation. Further, it now appears that school districts are not expected to resolve those aspects of *de facto* segregation that are clearly beyond their control.

ACHIEVING INTEGRATION IN TODAY'S DIVERSE SOCIETY. At present, more than 500 school districts have experienced some form of federal court oversight to address segregation. At the same time, instead of schools and communities becoming fully integrated, there is a clear trend toward resegregation, especially in urban areas. As well intentioned as the efforts have been to erase *de jure* segregation, *de facto* segregation is increasing. There also is increasing diversity in the number of other racial and ethnic groups in most communities. Schools continue to be challenged to ensure that all students have equal access to a quality education. The current strategy

for achieving this end is some form of **race-conscious assignment** of students. Strategies such as magnet schools, including consideration of diversity in admissions, and giving priority to siblings in school assignment are being tried. As well intentioned as these efforts may be, some people perceive them as inequities, and each strategy is being challenged in the courts.

Equal Opportunity

The equal protection clause of the Fourteenth Amendment has been instrumental in shaping many court cases and federal statutes that are directed toward preventing discrimination in schools. A judgment of **discrimination** can be defined as a determination that an individual or a group of individuals—for example, African Americans, women, or people with disabilities—has been denied constitutional rights. In common usage, the term applies to various minorities or to individual members of a minority who lack rights typically accorded the majority. The principle that discrimination violates the equal protection clause was reinforced in statutes such as Titles VI and VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments Act of 1972. Title VI of the Civil Rights Act states:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance (From *Title VI of the Civil Rights Act of 1964*. Published by U.S. Department of Education, 1964).

Title VII states:

It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin (From *Title VII of the Civil Rights Act of 1964*. Published by U.S. Equal Employment Opportunity Commission, 1964).

Title IX of the Education Amendments Act of 1972 states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance (From *Title IX of the Education Amendments Act of 1972*. Published by U.S. Department of Labor, 1972).

BILINGUAL EDUCATION. Another aspect of segregation that has been directly addressed by the courts is the provision of equal educational opportunities for students of different cultures with limited English language proficiency. In *U.S. v. Texas (San Felipe Del Rio)* (1971) the district court judge agreed with the federal government that two contiguous school districts, one predominantly white and the other Latino, should be consolidated. The judge further directed that the merged district provide bilingual education for all students.

The U.S. Supreme Court reinforced the importance of providing equal educational opportunity in *Lau v. Nichols* (1974). In this case, a class action lawsuit was filed on behalf of non-English speaking Chinese students in San Francisco. Only approximately 1,700 of the 35,000 Chinese students in need were receiving special English instruction. The Court ruled that this was a violation of the 1994 Civil Rights Act, stating in *Lau v. Nichols* (excerpts) 414 U.S. 563 (1974) that

Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful (From *Lau v. Nichols*, (1974) No. 72-6520. Published by U.S. Supreme Court, 1974).

At the turn of the twenty-first century, opposition to specialized instruction for limited English-speaking students led to initiatives in some states, for example Arizona (Prop 203, 2,000), Massachusetts (Question 2, 2002), and California (Prop 227, 1998) to mandate **English-only** instruction for all students. Ironically there now are efforts to repeal these statutes, especially in California given its multicultural and multilingual demographics. A further indication of changing times is the talk of adding some form of recognition for high school graduates who speak a second language.

race-conscious assignment The strategy of taking race into account for placement of students without making it the primary or single consideration.

discrimination Denial of constitutional rights to an individual or group.

English-only Instruction that is only done in English, regardless of the primary language of the students.

FIGURE 10.5 Events in the History of Affirmative Action	
1941 President Roosevelt issues an executive order prohibiting discrimination by government contractors.	1972 Congress passes Title IX of the Education Amendments Act that states that no person can be excluded from participation based on his or her sex.
1961 President Kennedy makes the first reference to affirmative action in an order mandating that federal contractors make employment practices free of racial bias.	1978 In <i>University of California v. Bakke</i> , the Supreme Court rules that colleges can consider race as one factor in admissions.
1964 Congress passes the Civil Rights Act.	1995 The Supreme Court limits racial preferences in federal highway contracts.
1965 President Johnson outlines specific steps federal contractors must take to ensure hiring equality.	2003 In <i>Grutter v. Bollinger</i> and <i>Gratz v. Bollinger</i> the Supreme Court rules that race can be considered by colleges in their efforts to have a diverse student body, but it cannot be done through a set formula or quota.
1970 The Nixon administration orders federal contractors to set "goals and timetables" for hiring minorities.	

AFFIRMATIVE ACTION. In the years since the 1964 Civil Rights Act, numerous statutes and court cases have encouraged steps designed to ensure that underrepresented populations have equal opportunity. These **affirmative action** initiatives have included such actions as formalizing and publicizing nondiscriminatory hiring procedures and setting aside a certain number of slots for minority students in hiring or college admissions programs. Over time, concern has increased about the possibility of **reverse discrimination**—situations in which a majority or an individual member of a majority is not accorded equal rights because of a different or preferential treatment provided to a minority or an individual member of a minority. This concern has resulted in a new set of court cases, each of which is attempting to redress what is perceived as a new imbalance. A summary of the events, policies, and court cases related to affirmative action is presented in Figure 10.5.

As mentioned, the legal basis for affirmative action is found in Titles VI and VII of the Civil Rights Act of 1964 and in Title IX of the Education Amendments Act of 1972. However, affirmative action procedures and methods continue to be clarified and increasingly questioned. As of 2012, eight states (California, Michigan, Arizona, Nebraska, New Hampshire, Oklahoma, Michigan, and Washington) had established bans against using racial and gender preferences in hiring, contracting, and college admissions. The U.S. Supreme Court has once again been called upon to define the boundaries of affirmative action.

Opportunities for Students with Disabilities

The judicial basis for current approaches to the education of students with disabilities is also closely linked to the civil rights and equal opportunity initiatives. In addition, several specifically targeted statutes address the education of people with disabilities. Three particularly important statutes are Section 504 of the Rehabilitation Act; Public Law 94-142, the Education for All Handicapped Children Act (EAHCA); and the Individuals with Disabilities Education Act (IDEA).

These statutes encourage the education of individuals with disabilities by making grants to states and local education agencies for children ages three to five, require the federal government to be responsive to the increasing ethnic diversity of society and to those with limited English proficiency, and fund programs to provide education to all children with disabilities.

SECTION 504 OF THE REHABILITATION ACT. Under this civil rights act established in 1973, recipients of federal funds are prohibited from discriminating against "otherwise qualified individuals." Note that Section 504 is a federal statute and related regulations, not a court decision. Three important themes addressed in Section 504 are equal treatment, appropriate education, and people with disabilities. Equal treatment, as in other civil rights contexts, must be addressed. However, this does not necessarily mean the *same* treatment. For example, giving the same assessment procedure to students with disabilities and other students may not be equal treatment. Educational judgments in relation to students with disabilities require a "heightened standard." The measures must fit the students' circumstances, and procedural safeguards must be employed. "Appropriate

education" means that the school system and related parties must address the individual needs of students with disabilities as adequately as the educational approaches for other students do. In Section 504, a "handicapped person" is defined as follows:

Any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. (34 CFR 104.3) (From *Part 104—Nondiscrimination On The Basis Of Handicap In Programs Or Activities Receiving Federal Financial Assistance, Section 504*. Published by U.S. Department of Education, 1973).

PUBLIC LAW 94-142 (EAHCA). First passed by Congress in 1975, Public Law 94-142 has been amended several times since. This law ensures "a free appropriate public education" to all children with disabilities between the ages of three and twenty-one. Children with exceptional needs cannot be excluded from education because of their needs. The law is very specific in describing the kind and quality of education and in stating that each child with a disability is to have an individually planned education. Details of this plan must be spelled out in a written **Individualized Education Plan (IEP)** formulated by general and special education teachers and subject to the parents' approval. Originally, the law provided for substantial increases in funding; in subsequent years, however, the funding authorizations have been lower than the original commitment. Two priorities for funding were identified: (1) the child who currently receives no education and (2) the child who is not receiving all the services he or she needs to succeed. These priorities place the emphasis on need rather than on the specific disability.

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA). Since its original inception in 1975, PL 94-142 has been amended and reauthorized several times; it is now called *IDEA*. This statute addresses how states and schools, and other public agencies, provide services to children with disabilities. The purpose of IDEA is to make available to all children with disabilities a free appropriate public education. Federal funds are made available through various grants to support services for children from birth to twenty-six years of age.

Increased Quality and Rigor. Significant updates and changes were made in the 2004 reauthorization of IDEA. There was a need to align IDEA with NCLB, including making consistent such definitions as "highly qualified" teachers and "limited English proficient." Another important element was the heavy emphasis placed on "scientifically based research." Teachers and schools are expected to use classroom practices that are based on rigorous research.

Response to Intervention (RTI). As you become a teacher, *RTI* is an acronym that you will need to understand. A key IDEA theme now for teachers, schools, and school districts is not just to say "This kid needs to be in special education." Rather, there needs to be a systematic approach to assessing what the student already knows and determining identifiable needs. Secondly, documented efforts must be made to improve the students' learning by providing student need-specific (and research-based) interventions. More than likely, these interventions will be purposeful instruction, but they could be related to student behavior or other needs.



CHECK YOUR UNDERSTANDING 10.1

Complete Check Your understanding 10.1 to gauge your understanding of the concepts in this section.

TEACHERS' RIGHTS AND RESPONSIBILITIES

Teachers have the same rights as other citizens; however, as teachers, there are some limits to those rights. The Fourteenth Amendment gives every citizen the right to **due process** of law: both *substantive due process* (protection against the deprivation of constitutional rights such as freedom of expression) and *procedural due process* (procedural protection against unjustified deprivation of substantive rights). Most court cases related to teachers evolve from either liberty or property interests. Liberty interests are created by the Constitution itself; property interests are found in forms of legal entitlement such as tenure or certification.

Teachers also have the same responsibilities as other citizens. They must abide by federal, state, and local laws and by the provisions of contracts. As professionals, they must also assume

Individualized Education Plan (IEP) A program designed to meet the needs of a child eligible for special education services. The plan helps educators understand the child's disability and provides directions for the services to be provided by teachers and other school professionals.

due process The legal procedures that must be followed to safeguard individuals from arbitrary, capricious, or unreasonable policies, practices, or actions.

affirmative action Policies and procedures designed to compensate for past discrimination against women and members of minority groups (for example, assertive recruiting and admissions practices).

reverse discrimination A situation in which a majority or an individual of a majority is denied certain rights because of preferential treatment provided to a minority or an individual of a minority.

the heavy responsibility of educating young people. We discuss specific court cases briefly here to illustrate some of the issues and court decisions related to aspects of teacher rights and responsibilities. Note that the cases selected do not necessarily constitute the last word regarding teacher rights but rather provide an overview of some of the issues that have been decided in the courts. Table 10.5 summarizes the issues and decisions in selected cases involving teacher rights and responsibilities. This summary table is not intended to provide a complete understanding of the court decisions cited. Note also that most of the court cases were decided in the 1970s and 1980s; more recently, new federal statutes have been the defining force. For example, NCLB established more rigorous standards for teacher licensure.



VIDEO NOTE 10.1

As you will see in this video, parents have due process rights. How do you see their due process rights relating to your role as a teacher?

TABLE 10.5

Selected U.S. Supreme Court Cases Related to Teachers' Rights and Responsibilities

CASE	ISSUE	DECISION
Discrimination		
<i>North Haven Board of Education v. Bell</i> (1982)	Allegation by former women faculty members of sex discrimination in employment	Court ruled that school employees as well as students are protected under Title IX.
<i>Cleveland Board of Education v. LeFleur</i> (1974)	Rights of pregnant teachers	Court struck down the board policy forcing all pregnant teachers to take mandatory maternity leave.
<i>Burkey v. Marshall County Board of Education</i> (1981)	Paying female coaches half the salary of male coaches	Court ruled that the policy violated the Equal Pay Act, Title VII of the Civil Rights Act of 1964.
Contract Rights		
<i>Board of Regents of State Colleges v. Roth</i> (1972)	Rights of nontenured teachers	Teacher had been hired under a one-year contract. Court concluded that he did not have a property interest that would entitle him to procedural rights under the Fourteenth Amendment.
<i>Perry v. Sindermann</i> (1972)	Rights of nontenured teachers	Court ruled that a state employee may acquire the property interest if officially fostered customs, rules, understandings, and practices imply a contract promise to grant continuing contract status and thus establish a de facto tenure system.
Bargaining		
<i>Hortonville Joint School District No. 1 v. Hortonville Education Association</i> (1976)	Rights of boards of education to dismiss teachers who are striking illegally	Court said the law gave the board power to employ and dismiss teachers as a part of the municipal labor relations balance.
Academic Freedom		
<i>Pickering v. Board of Education</i> (1968)	Dismissal of an Illinois teacher for criticizing a school board and superintendent in a letter published by a local newspaper	Court upheld teacher's claim that his First and Fourteenth Amendment rights were denied.

Conditions of Employment

Many conditions must be met for you to be hired as a teacher. **Conditions of employment** typically include your successful completion of a professional preparation program, being credentialed or licensed by the state, and receiving a contract from the hiring school district. In each of these instances, you have rights established in statute and by the courts as well as responsibilities.

TEACHER CERTIFICATION AND LICENSURE. The primary purpose of each state's **teacher certification and licensure** requirements is to make sure that the teachers in public schools are qualified and competent. Certification laws usually require satisfactory completion of a preparation program, citizenship, no criminal record, and— increasingly—evidence of instructional effectiveness. Establishing rules and procedures for obtaining a teaching license will be the responsibility of the state education department and/or a professional standards board. The certifying agency may not arbitrarily refuse to issue a certificate to a qualified candidate. The courts have ruled that local boards of education may prescribe additional or higher qualifications beyond the state requirements provided that such requirements are not irrelevant, unreasonable, or arbitrary.

A teaching certificate or license is a privilege that enables a person to practice a profession—it is not a right. Teacher certification, however, is a property interest that cannot be revoked without constitutional due process.

TEACHER EMPLOYMENT CONTRACTS. Usually, boards of education have the statutory authority to employ teachers. This authority includes the power to enter into contracts and to fix terms of employment and compensation. In some states, only specific members of the school board can sign teacher contracts. When statutes confer the employing authority to boards of education, the authority cannot be delegated. It is usually the responsibility of the superintendent to screen and nominate candidates to the board. The board, meeting in official session, then acts as a group to enter into contractual agreements.

A typical teacher contract will contain the following elements: the identification of the teacher and the board of education, a statement of the legal capacity of each party to enter into the contract, a definition of the assignment specified, a statement of the salary and how it is to be paid, and a provision for signature by the teacher and by the legally authorized agents of the board. The contract is not official until it has the signatures of all parties.

Teachers are responsible for making certain that they are legally qualified to enter into contractual agreements. For example, a teacher may not enter into a legal contract without having a valid teaching certificate issued by the state. Furthermore, teachers are responsible for carrying out the terms of the contract and abiding by them. In turn, under the contract, they can legally expect proper treatment from an employer.

TEACHER TENURE. **Tenure** laws are intended to provide security for teachers in their positions and to prevent removal of capable teachers by capricious action or political motive. However, currently in many states, there are serious challenges to teachers having tenure. Many perceive public employees as having too many benefits such as paid health insurance and participation in public-funded retirement programs. There also is a perception of terminating a poorly performing teacher as not being easy. In the last few years, these views have been used in several states by Republican governors and legislators to change tenure and teacher evaluation laws.

Becoming Tenured and Tenure Rights. Beginning teachers are not automatically tenured. Instead, a teacher becomes tenured by serving satisfactorily for a stated time. This period is referred to as the **probationary period** and typically it is one to three years. The actual process of acquiring tenure after serving the probationary period depends on the applicable statute. In some states, the process is automatic at the satisfactory completion of the probationary period; in other states, official action by the school board is necessary.

conditions of employment Specified criteria, such as certification, that must be met in order to be hired.

teacher certification and licensure The process whereby each state determines the requirements for certification and for obtaining a license to teach.

tenure A system of school employment in which educators retain their positions indefinitely unless they are dismissed for legally specified reasons through clearly established procedures.

probationary period The required time, typically one to three years, during which a beginning teacher must demonstrate satisfactory performance as a basis for seeking tenure.

A big moment: Signing a contract to teach is a professional commitment by the teacher and a legal one for the school district.



Some states and some agencies at the federal level are beginning to advocate for more specific criteria including:

- An evaluation of the extent to which the teacher used data about student performance in planning instruction.
- Peer review by other teachers.
- An evaluation of the teacher's performance by the principal.
- Presentation of a work sample, or portfolio, that may include videos.

Dismissal of Tenured Teachers. Even with tenure, teachers may be dismissed for any one of numerous reasons, including “nonperformance of duty, incompetency, insubordination, conviction of crimes involving moral turpitude, failure to comply with reasonable orders, violation of contract provisions or local rules or regulations, persistent failure or refusal to maintain orderly discipline of students, and revocation of the teaching certificate” (LaMorte, 2011).

As an example, a school board in Tennessee dismissed Jane Turk from her tenured teaching position after she was arrested for driving under the influence of alcohol (DUI) (*Turk v. Franklin*, 1982). Turk's appeal was upheld by the lower court judge because there was no evidence of an adverse effect on her capacity and fitness as a teacher. The school board appealed to the Tennessee Supreme Court, which rejected the board's appeal, finding that the school board “acted in flagrant disregard of the statutory requirement and fundamental fairness in considering matters that should have been specifically charged in writing.” Tennessee law requires that before a tenured teacher can be dismissed, “the charges shall be made in writing specifically stating the offenses which are charged” (From *Turk v. Franklin Special School Dist*, U.S. Supreme Court, 1982). Nevertheless, teacher tenure may be affected by teacher conduct outside school as well as inside. This issue, in a sense, deals with the personal freedom of teachers: freedom to behave as other citizens do, freedom to engage in political activities, and academic freedom in the classroom.

Tenure laws are frequently attacked by those who claim that the laws protect incompetent teachers. There is undoubtedly some truth in the assertion, but it must be stated clearly and unequivocally that these laws also protect the competent and most able teachers. Teachers who accept the challenge of their profession and dare to use new methods, who inspire curiosity in their students, and who discuss controversial issues in their classrooms need protection from politically motivated or capricious dismissal. Incompetent teachers, whether tenured or not, can be dismissed under the law by capable administrators and careful school boards that allow due process while evaluating teacher performance.

Rights of Nontenured Teachers. Although due process has been applicable for years to tenured teachers, nontenured teachers do not, for the most part, enjoy the same rights. As an example, reread the “Education in the News” feature at the beginning of this chapter. In the end, the judge ruled that the nontenured teacher should be “fired” for her actions.

Dismissal of Nontenured Teachers. In general, tenured teachers enjoy two key rights: protection from dismissal except for cause as provided in state statutes and the right to prescribed procedures. Nontenured teachers may also have due process rights if these are spelled out in state statutes or the teacher's contract; however, in most districts and states, nontenured teachers may be nonrenewed without any reasons being given. If a nontenured teacher is dismissed (as distinguished from nonrenewed) before the expiration of the contract, the teacher is entitled to due process.

Cases in Massachusetts (*Lucia v. Duggan*, 1969) and Wisconsin (*Gouge v.*

Teachers have had to work together to obtain and then to protect continuation of many of their rights as public employees.



Source: Mark Hirsch/ZUMAPRESS/Newscom

Joint School District No. 1, 1970) point to the necessity of following due process in dismissing nontenured teachers. In the Massachusetts case, the court said that “the particular circumstances of a dismissal of a public school teacher provide compelling reasons for application of a doctrine of procedural due process” (From *Lucia v. Duggan*, 303 F. Supp. 112 (D. Mass. 1969), United States District Court, 1982).

In the Wisconsin case, the court said:

A teacher in a public elementary or secondary school is protected by the due process clause of the Fourteenth Amendment against a nonrenewal decision which is wholly without basis in fact and also against a decision which is wholly unreasoned, as well as a decision which is impermissibly based. (*Gouge*, 1970).

In 1972, the U.S. Supreme Court helped to clarify the difference between the rights of tenured and nontenured teachers. In one case (*Board of Regents v. Roth*, 1972), the Court held that nontenured teachers were assured of no rights that were not specified in state statutes. In this instance, the only right that probationary teachers had was the one to be notified of nonrenewal by a specified date. In a second case (*Perry v. Sindermann*, 1972), the Court ruled that a nontenured teacher in the Texas system of community colleges was entitled to due process because the language of the institution's policy manual was such that an unofficial tenure system was in effect. Guidelines in the policy manual provided that a faculty member with seven years of employment in the system acquired tenure and could be dismissed only for cause.

Whether or not a teacher is tenured, that person cannot be dismissed for exercise of a right guaranteed by the U.S. Constitution. A school board cannot dismiss a teacher, for example, for engaging in civil rights activities outside school, speaking on matters of public concern, belonging to a given church, or running for public office. These rights are guaranteed to all citizens, including teachers. However, as in the “Education in the News” case, if a teacher's behavior is judged to be disruptive or dishonest, a school board can dismiss the person without violating the right to freedom of speech. Figure 10.6 provides a summary of teacher rights and responsibilities. Be sure to check how well you match with these requirements.

Right to Bargain Collectively

In the distant past, teacher groups met informally with boards of education to discuss salaries and other teacher welfare provisions. Sometimes the superintendent was even the spokesperson for such teacher groups. Over time, formal **collective bargaining** procedures were established. Instead of a more informal group of teachers meeting with the superintendent or school board to negotiate salaries and working conditions, formalized procedures are followed. In this process,

collective bargaining A process through which teachers are represented as a unit to negotiate with a school board's terms and conditions of employment.

FIGURE 10.6 Summary Statements on Teachers' Rights and Responsibilities

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| <ul style="list-style-type: none"> • Prospective teachers must fulfill the requirements of laws and policies regarding certification before being employed as teachers. • Boards of education have the authority to employ teachers, including authority to enter into contracts and to fix terms of employment and compensation. • School districts are prohibited from use of discriminatory practices; discrimination in employment and salary of teachers on the basis of sex is in violation of Title IX of the Education Amendments Act. • Most states have tenure laws that provide teachers with protection against arbitrary dismissal; rights of nontenured teachers are found in state laws. • Teachers may speak out on matters of public concern, even in criticism of their school board, as long as their speech is not disruptive or a lie. | <ul style="list-style-type: none"> • Boards of education may remove books from library shelves under their authority to select materials for schools; however, the removal of a book merely because someone disagrees with its content was not upheld by the U.S. Supreme Court. • Many states provide for school boards and teacher unions to bargain collectively on wages, hours, and terms and conditions of employment. • Teacher strikes are unlawful when a statute is violated; in some states, it is legal for teachers to strike. • Teachers are expected to exercise due care in foreseeing possible accidents and in working to prevent their occurrence; teachers may be sued for their negligence that led to pupil injury. |
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a bargaining unit, such as a teachers' union, meets with a representative of the district, such as the assistant superintendent for human resources. Through bargaining, an agreement is reached that applies to all teachers. The procedures must comply with the National Labor Relations Act (NLRA), and the collective agreement is enforceable under state law.

A contract arrived at by a teachers' union means that salaries, working conditions, and other matters within the scope of the collective bargaining agreement can no longer be decided unilaterally by the school administration and board of education. Instead, the contract outlines how the teachers' union and its members will participate in formulating the school policies and programs under which they work.

THE FIRST COLLECTIVE BARGAINING AGREEMENTS. The first teachers' group to bargain collectively with its local board of education was the Maywood, Illinois, Proviso Council of West Suburban Teachers, Union Local 571, in 1938. In 1957, a second local, the East St. Louis, Illinois, Federation of Teachers was successful in negotiating a written contract. The breakthrough, however, came in December 1961 when the United Federation of Teachers, Local 2 of the American Federation of Teachers (AFT), won the right to bargain for New York City's teachers. Since then, collective bargaining agreements between boards of education and teacher groups have grown phenomenally. Both the AFT and the National Education Association (NEA) have been active in promoting collective bargaining.

COLLECTIVE BARGAINING IS NOW BEING CHALLENGED. Beginning in 2011 in several states, including Ohio, Florida, Pennsylvania, Wisconsin, and Arizona, the right of teachers to bargain collectively has come under major attack. The most visible example unfolded in Wisconsin where the Republican Governor, Scott Walker, and the Republican-controlled legislature passed a law eliminating teacher collective bargaining. The stated rationale was a need to balance the budget. However, collective bargaining agreements with other groups of public employees, such as police and fire, were not treated in the same way. Ironically, in 1962, Wisconsin was the first state to pass collective bargaining language similar to that found in NLRA.

JOURNAL FOR REFLECTION 10.2

You may be living in a state where teachers have or had collective bargaining rights, or maybe you live in a "right-to-work" state. Either way, what is your position about paying union dues? Do you see belonging to a teachers' union as an important benefit or a waste of your money?

Academic Freedom

A sensitive and vital concern for educators is **academic freedom**—freedom to control what one will teach and to teach the truth as one discovers it without fear of penalty. Academic freedom is thus essentially a principle of pedagogical philosophy that has been applied to a variety of professional activities. A philosophical position, however, is *not necessarily* a legal right. Federal judges have generally recognized certain academic protections in the college classroom while exhibiting reluctance to recognize such rights for elementary and secondary school teachers. For example, the contract of a history teacher at the University of Arkansas–Little Rock was not renewed after he announced that he taught his classes from a Marxist point of view. The court ordered that the teacher be reinstated in light of the university's failure to advance convincing reasons related to the academic freedom issue to warrant his nonrenewal (*Cooper v. Ross*, 1979). In another case, a university instructor claimed that he was denied tenure because he refused to change a student's grade. He argued that awarding a course grade was the instructor's right of academic freedom. Because the university had given several valid reasons for the nonrenewal of the instructor's contract, however, the court did not order a reinstatement (*Hillis v. Stephen F. Austin University*, 1982).

ACADEMIC FREEDOM FOR ELEMENTARY AND SECONDARY TEACHERS. Although federal courts generally have not recognized academic freedom for elementary and secondary school teachers, the most supportive ruling was made in 1980 (*Kingsville IDS v. Cooper*, 1980). The case involved a high school history teacher whose contract was not renewed after she used a simulation game to introduce her students to the characteristics of rural life during the post–Civil War Reconstruction era. Although the role-playing evoked controversy in the school and the community,

academic freedom The opportunity for a teacher to teach without coercion, censorship, or other restrictive interference.

there was no evidence that the teacher's usefulness had been impaired. Therefore, the school erred in not renewing the teacher's contract, and she was ordered to be reinstated.

In *Pickering v. Board of Education* (1968), the U.S. Supreme Court dealt with academic freedom at the public school level. Marvin L. Pickering was a teacher in Illinois who, in a letter published by a local newspaper, criticized the school board and the superintendent for the way they had handled past proposals to raise and use new revenues for the schools. After a full hearing, the board of education terminated Pickering's employment, whereupon he brought suit under the First and Fourteenth Amendments. The Illinois courts rejected his claim. The U.S. Supreme Court, however, upheld Pickering's claim and, in its opinion, stated:

To the extent that the Illinois Supreme Court's opinion may be read to suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work, it proceeds on a premise that has been unequivocally rejected in numerous prior decisions of this Court. (*Pickering*, 1968)

It is difficult to define precisely the limits of academic freedom. In general, the courts strongly support it yet recognize that teachers must be professionally responsible when interacting with pupils. In most instances, teachers are not free to disregard a school board's decision about which textbook to use, but they are able to participate more when it comes to their choice of supplementary methods. Teachers have usually been supported in their rights to criticize the policies of their local school boards, wear symbols representing stated causes, participate in unpopular movements, and live unconventional lifestyles. But when the exercise of these rights can be shown to have a direct bearing on a teacher's effectiveness, respect, or discipline, these rights may have to be curtailed. For example, a teacher may have the right to wear a gothic costume to class, but if wearing the outfit leads to disruption and an inability to manage students, the teacher can be ordered to wear more conventional clothes.

In summary, academic freedom for elementary and secondary teachers is more limited than it is for higher education faculty. First Amendment protection of free speech is increasingly being limited to a teacher's actions outside of the classroom and school. Before arguing for academic freedom and free speech in the classroom, a teacher must show that she or he did not defy legitimate state and local curriculum directives, followed accepted professional norms, and acted in good faith when there was no precedent or policy.

COPYRIGHT AND FAIR USE. You should be aware that there are statutes related to use of copyrighted material. Teachers are not exempt from these laws. Any book, news article, or digital video that has been copyrighted cannot be distributed without expressed permission. Yes, there is a section of the U.S. Copyright Law (Title 17, Chapter 1, Section 107) that provides guidelines for **fair use**. It states in part, "The fair use . . . including use by reproduction in copies . . . for purposes such as . . . teaching (including multiple copies for classroom use) . . . is not an infringement of copyright" (From *Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code*. Published by U.S. Copyright Office, 2011). At the same time, the regulations indicate that further distribution is not permitted and that the use cannot infringe upon the potential market or value of the copyrighted work. In other words, teachers need to be careful about claiming that the fair use guidelines give teachers carte blanche to download, copy, and distribute materials without consideration of the copyright.

BOOK BANNING AND CENSORSHIP. Ever since the United States has had public schools, some people have taken issue with what has been taught, how it has been taught, and the materials used. The number of people challenging these issues and the intensity of feelings have escalated since the mid-1970s. Well-organized and well-financed pressure groups have opposed the teaching of numerous topics, including political, economic, scientific, and religious theories; the teaching of values grounded in religion, morality, or ethnicity; and the portrayal of stereotypes based on gender, race, or ethnicity. Some complaints have involved differences of opinion over the central role of the school—whether the school's job is to transmit traditional values, indoctrinate students, or teach students to do their own thinking.

Several court cases since the 1970s have involved the legality of removing books from the school curriculum and school libraries. The courts have given some guidance but have not fully resolved the issue. In 1972, a court of appeals held that a book does not acquire tenure, i.e. a guarantee of being on the shelf for ever, so a school board was upheld in its removal of *Down These Mean Streets*. The Court of Appeals for the Seventh Circuit in 1980 upheld the removal of

fair use Making copies of copyrighted material for classroom use is permissible as long as there is not further distribution or infringement on market potential.

the book *Values Clarification*, ruling that local boards have considerable authority in selecting materials for schools. Removal of books on the basis of vulgar language has also been upheld.

The U.S. Supreme Court treated this issue in 1982 (*Board of Education, Island Trees v. Pico*, 1982). The decision disappointed people who had hoped that the justices would issue a definitive ruling on the banning of books. Instead, Justice William Brennan ruled that students may sue school boards on the grounds of denial of their rights, including the right to receive information. The Court also indicated that removal of a book because one disagrees with its content cannot be upheld. The net effect of this decision was that the school board decided to return the questionable books to the library.

Regardless of the Court's decisions, interests groups on the left and the right continue to advocate for the banning of certain books. Those on the right tend to object because of how the past is represented. They want "to restore an idealized vision of the past." For example, every textbook adoption in Texas turns into a prolonged debate between the press for neutrality and not taking a stand for correct morality. Those on the left want books banned for being racist and sexist. "Little Red Riding Hood" and "Cinderella" not only are sexist but also are filled with materialism, stereotyping and elitism. At the same time, ever since its publication in 1885, *The Adventures of Huckleberry Finn* has been challenged by the right.²

The latest censorship battleground has to do with limiting access to websites and various social media. Many school districts and states are establishing policies that restrict access to particular types of websites and limit teacher and student uses of social media. New questions related to defining what is meant by "responsible use" and who decides—teachers, principals, school districts, or the state—are now occupying governing bodies, the courts, and principals and teachers.

Family Educational Rights and Privacy Act (FERPA), 1974 (Buckley Amendment) Act that requires schools and teachers to maintain confidentiality of student records, and enables parents to be able to review and challenge the records for their children.

tort An act (or the omission of an act) that violates the private rights of an individual.

liability Responsibility for the failure to use reasonable care when such failure results in injury to another.

duty to protect Anticipating dangers and taking actions to protect from harm

educational malpractice Culpable neglect by a teacher in the performance of his or her duties.



VIDEO NOTE 10.2

Banning books has a long history and most certainly is not limited to schools. This video provides a brief history of books that have been banned and the reasons.

<https://www.youtube.com/watch?v=DaaEWvq07dc>

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA). In 1974, Congress passed the **Family Educational Rights and Privacy Act (FERPA)**, which also is called the **Buckley Amendment**. This statute addresses the maintenance of confidentiality of student records. This statute does not prohibit teachers, principals, and other education professionals from making student information available for educational purposes as long as they take steps to maintain privacy of the information.

Even today, many school administrators and teachers—and most parents—do not realize that parents have the right to view their children's educational records. Many teachers are not aware that their written comments, which they submit as part of a student's record, must be shown at a parent's request or in response to a student's request if the student is eighteen or older. Key points teachers should know about FERPA are presented in Figure 10.7.

Students Grading One Another's Papers. A common instructional practice for teachers is to have students grade one another's work. As common as the practice is, it resulted in a suit that went all the way to the U.S. Supreme Court. In *Owasso Independent School District v. Falvo*, the plaintiff alleged violations of FERPA in regard to "peer review." The suit was funded by the Rutherford Institute, a national conservative organization. The Court of Appeals for the Tenth Circuit agreed with an Oklahoma parent that students should not grade other students' work. In 2002, the Supreme Court was unanimous in overturning the circuit court and said that the privacy law was directed at records "kept in a filing cabinet in a records room or on a permanent secure database," not the grades on a classroom paper. The Court observed:

Correcting a classmate's work can be as much a part of the assignment as taking the test itself. It is a way to teach material again in a new context, and it helps show students how to assist and respect

² Ravitch, D. (2004). *Censorship from The Right . . . Censorship from The Left*. San Francisco, CA: WestEd.

FIGURE 10.7 Important Elements for Teachers to Know About the Family Educational Rights and Privacy Act

Family Educational Rights and Privacy Act (FERPA)

Protects the privacy of student's education records and gives parents access to education records.

Schools must:

- Allow for the inspection and review of all the student's education records.
- Inform all parents of what rights they have.
- Provide copies to a parent or eligible student if she/he is otherwise not able to inspect the records.
- Set reasonable fees for copies.
- Comply within a reasonable time but no later than forty-five days after the request is made.

Parents or eligible students have rights to:

- Seek to amend information within the student's educational records that is believed to be inaccurate or misleading.
- Provide permission before others than teachers and administrators can access information from the student's educational record.

Definitions:

Education record—information directly related to a student that is maintained by the school or school district.

Eligible student—a student becomes an eligible student when he/she turns eighteen years old or attends a postsecondary school.

Parent—natural parent, guardian, or person acting as a parent in the absence of a parent or guardian.

fellows pupils. By explaining the answers to the class as the students correct the papers, the teacher not only reinforces the lesson but also discovers whether the students have understood the material and are ready to move on. We do not think FERPA prohibits these educational techniques. (*Owasso*, 2002)

Teacher Responsibilities and Liabilities

With more than 55 million students enrolled in elementary and secondary schools, it is almost inevitable that some pupils will be injured in educational activities. Each year, some injuries occasion lawsuits in which plaintiffs seek damages. Such suits are often brought against both the school districts and their employees. Legal actions seeking monetary damages for injuries are referred to as *actions in tort*. Technically, a **tort** is a legal wrong—an act (or the omission of an act) that violates the private rights of an individual. Actions in tort are generally based on alleged negligence; in other words the basis of tort liability or legal responsibility is negligence. Understanding the concept of negligence is essential to understanding liability. **Liability** is the responsibility for negligence—responsibility for the failure to use reasonable care when such failure results in injury to another.

Teachers have a **duty to protect**. Teachers must anticipate dangers and take actions to protect students from foreseeable harms. Legally, *negligence* is a failure to exercise or practice due care. It includes a factor of foreseeability of harm. The negligence of teacher supervision of pupils is an important topic that includes supervision of the regular classroom, departure of the teacher from the classroom, supervision on the playground, and supervision of extracurricular activities. Court cases on record involving negligence are numerous and varied.

EDUCATIONAL MALPRACTICE. Culpable neglect by a teacher in the performance of his or her duties is called **educational malpractice**. As you will see in the sample of cases described next, the courts have addressed many cases in which it has appeared that teachers have been negligent. During your teaching career, there are likely to be more tests of the educational malpractice question.

Teachers are responsible for student safety in school and during all other school-related activities.



Source: Steve Skjold/Alamy Stock Photo

Negligent Chemistry Teacher. In a California high school chemistry class, pupils were injured while experimenting with the manufacture of gunpowder (*Mastrangelo v. West Side Union High School District*, 1935). The teacher was in the room and had supplemented the laboratory manual instructions with his own directions. Nevertheless, an explosion occurred, allegedly caused by the failure of pupils to follow directions. A court held the teacher and the board of education liable. Negligence in this case meant the lack of supervision of laboratory work, a potentially dangerous activity requiring a high level of “due care.”

Field Trip Negligence. In Oregon, a child was injured while on a field trip (*Morris v. Douglas County School District*, 1966). Children were playing on a large log in a relatively dry area on a beach. A large wave surged up onto the beach, dislodging the log, which began to roll. One of the children fell seaward off the log, and the receding wave pulled the log over the child, injuring him. In the subsequent court action, the teacher was declared negligent for not having foreseen the possibility of such an occurrence. The court said:

The first proposition asks this court to hold, as a matter of fact, that unusual wave action on the shore of the Pacific Ocean is a hazard so unforeseeable that there is no duty to guard against it. On the contrary, we agree with the trial judge, who observed that it is common knowledge that accidents substantially like the one that occurred in this case have occurred at beaches along the Oregon coast. Foreseeability of such harm is not so remote as to be ruled out as a matter of law. (*Morris*, 1966)

Although liability for negligence is a vague concept involving due care and foreseeability, it is defined more specifically each time a court decides such a case.

Liability Insurance. Many states authorize school districts to purchase insurance to protect teachers, school districts, administrators, and school board members against lawsuits. It is important that school districts and their employees and board members be thus protected, either through school district insurance or through their own personal policies. The costs of school district liability insurance have increased so dramatically in recent years that many school districts are contemplating the elimination of extracurricular activities. Consequently, state legislatures are being pressured to fix liability insurance rates for school districts; they are also being asked to pass laws to limit maximum liability amounts for school-related cases. For teachers, membership in the state affiliates of the National Education Association or membership in the American Federation of Teachers includes the option of liability insurance programs sponsored by those organizations.

Figure 10.6, shown earlier, summarizes statements related to the rights and responsibilities of teachers.



CHECK YOUR UNDERSTANDING 10.2

Complete Check Your Understanding 10.2 to gauge your understanding of the concepts in this section.

USES OF SOCIAL MEDIA AND THE LAW

The ever-increasing variety of forms and uses of technology are sources of promising practices for teaching and learning. They also are potential sources of problems for teachers and students and are increasingly playing a part in disciplinary and legal actions.

E-mail and Texting

Two of the most ubiquitous forms of technology used in schools are e-mail and texting. E-mail seems to have become the basic form of communication between administrators and teachers. Texting is a basic form of communication between teachers and other teachers and students with other students. Teachers may use e-mail and texting to communicate with students and parents. Problems can arise by hitting the “Send” key before the message is carefully composed or by sending the message to “All” instead of only replying to the original sender. These mistakes can create embarrassing moments. But some can have more serious consequences.

EMPLOYER MONITORING OF E-MAILS. You may wonder whether it is legal for a school district to monitor the e-mails of its teachers or for the college where you are studying teacher education

to read your e-mails. If you use the college or school district’s e-mail system, then the answer is yes, it is legal to do so. The courts view the e-mail system and its content as owned by the district or college. You can have a problem if inappropriate content is discovered in your e-mails or on your computer. For example, all too frequently school officials are finding pornography on a teacher’s at-school computer.

Social Networking Risks

Using cell phones to take and share photos and the extensive social networking through Facebook and Twitter are causing concern and serious problems. Content that is of a personal or sexual nature will become the basis for dismissal as discussed in this chapter’s “Education in the News” feature. Even the accidental discovery of inappropriate content can lead to the employee being fired. Keep the tips in Figure 10.8 in mind so that you do not become involved in another case as the result of inappropriate social networking.

The innocent acts of youth can lead to legal proceedings, as teenagers in several states have discovered with **sexting**. In several cases, officials have threatened to charge or are actually doing so girls who allegedly sent nude photos of themselves with lewd exhibition and the boys who received the photos with possession of child pornography. These are very serious charges that, if convicted, would affect each student’s future for a lifetime. See the “Differing Perspectives” feature.

The misuses of social networking by students may be viewed as happening through the innocence of youth. Similar behaviors by teachers are inexcusable, and they are being prosecuted. For example, the number of incidents of teachers using technology with students in inappropriate and illegal ways is increasing. The recent case in a Los Angeles elementary school of a teacher taking bondage-style pictures of children is a case in point. The teacher had been teaching for more than thirty years. He now is charged with twenty-three counts of committing lewd acts on children.

An unfortunate part of the Los Angeles case, as well as many others, is that nothing was done when one or more of the children reported the teacher’s behavior to other teachers and/or school administration. Adults have a legal responsibility not only to report but also to make sure that possible misdeeds by teachers and students are investigated. Not doing so will make you legally responsible and potentially liable.

Cheating With Technology

Another increasing challenge for teachers is to determine when students are using technology to cheat. Instances of using a cell phone while taking a test to snap pictures of test items and having an outsider call in the correct answers are more common than teachers want to believe. Plagiarism



Source: Monkey Business/Fotolia

Inappropriate uses of social media, such as bullying and sexting, by teachers or students can result in criminal prosecution.

sexting The use of social media to send sexually explicit photos and information.

FIGURE 10.8 Think Before You Send	
- Remember: once sent, always available. - Keep them separate: What is work related and what is personal? - Acknowledge: What you have sent is yours. - Be careful: Could this embarrass you at some future time? - Does it add value? Will this improve teaching and learning?	- Reply to Sender or to All? Be sure your message is going only to whom you intend. - Your personal website is not confidential. Nonwork systems can be found and reviewed by your employer. - Wait! Take another minute to review these tips before hitting the Send key.

DIFFERING PERSPECTIVES

SHOULD STUDENTS BE PROSECUTED AS SEX OFFENDERS FOR SEXTING?

Across the United States, school districts are being confronted with information and cases of one or more students having inappropriate pictures on their Facebook or MySpace pages or texting them to others. In one recent case, two high school students in Colorado faced felony charges for having and sharing a sexually explicit video. On a dare, a girl did “things” with a guy in a car, which were recorded and then texted to friends and beyond. If the students are found guilty, the charges could lead to many years in prison and their being labeled as sex offenders. However, since the students are minors, their punishment might be limited to two years in juvenile detention. Another possibility is that the charges will be reduced or dropped with a requirement that the students participate in some form of education program. What do you think? Should incidents of students’ sexting require criminal prosecution, or should there be consideration of less severe punishment because they are minors?

What is your position and what are your reasons?

YES

In the early years of this century, criminal prosecution was most certainly the view of many in law enforcement. One of the first such cases developed in a Pennsylvania high school. School officials discovered that several boys were trading photos of female students in various states of undress. Several students’ phones were confiscated and searched. Three boys and thirteen girls were identified as either appearing in the photos or found to be in possession of them. The then–district attorney threatened the students with child porn charges unless they agreed to participate in a “diversion program,” which consisted of six months of probation, submitting to drug testing, and attending a five-week education program.

In the end, even though the charges were dropped, the photos are still part of the government record. On behalf of the girl in the photos, the ACLU has sued the district attorney, the school district, and the county for violating their constitutional rights to privacy and freedom of expression. The plaintiff is seeking to have the photos destroyed and modest reimbursement for the cost of the course (\$100) and lost wages (\$71).

NO

Threatening children with child porn charges is too far a reach. The related laws were established to prosecute adult production and distribution of child pornography. Applying these laws literally to children is failing to understand the new situations brought about by the widespread use of social media. The sensible alternative is to see most cases of student sexting as something to be handled outside of the courts. School officials and parents should work out what should be done. Such acts are likely due to the youths’ immaturity and not understanding the potential negative ramifications. Students are not likely to think ahead or understand that such photos could be spread widely on the Internet or end up in the hands of a sexual predator.

There also are questions of constitutional rights. What is probable cause? When can school officials legally take student cell phones? When can they search the content within cell phones and other social media? In the Pennsylvania case, three other students who refused to participate in the mandated education program sued to bar prosecutors from charging them with a crime. They have won a permanent injunction.

WHAT IS YOUR PERSPECTIVE ON THIS ISSUE?

on term papers is another problem. Fortunately, several websites and services are available that can be used to catch those who copy from published text. Teachers must be vigilant in the classroom and, unfortunately, suspicious of how their students are using social media and other forms of technology.

JOURNAL FOR REFLECTION 10.3

Today’s teachers have responsibilities never imagined in earlier times. School districts specify expectations and evaluate teachers—especially probationary teachers—clearly and closely. Teachers need to know about curriculum standards and be sure that their students have learned the material that will be on the tests. Always present is the possibility of legal action. Take a few minutes to summarize the key points you have learned from reading about teachers’ rights and responsibilities. Which of these points had you not anticipated? Which will you need to be sure to learn more about?

CHECK YOUR UNDERSTANDING 10.3

Complete Check Your Understanding 10.3 to gauge your understanding of the concepts in this section.

STUDENTS’ RIGHTS AND RESPONSIBILITIES

The rights of students have changed since the late 1960s. Before 1969, school authorities clearly had the final say on educational matters as long as what they decided was seen as reasonable. The school administration was seen as equivalent to parents in relation to discipline. A key U.S. Supreme Court decision in 1969 changed the balance by concluding that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” (*Tinker*, 1969) Going further on behalf of student rights, in 1975, the Court decided that the principle of due process applied to students. These decisions led to several successful student challenges of school policies and procedures. However, since the late 1980s, Court decisions have moved back toward increasing the authority of public school officials. Along the way, student life has become more complex, not only because of such threats as the increased use of drugs and the presence of weapons and gangs but also because a diverse multicultural and shifting political context has made it more difficult to determine what is and what is not appropriate to do and say within a school environment.

To illustrate some of the issues and decisions related to student rights and responsibilities, we present specific court cases here. Note that the cases do not necessarily constitute the last word regarding student rights but rather provide an overview of some of the issues that have been decided by the courts. Table 10.6 is a summary of key cases; however, it is not intended to provide a complete understanding of the court decisions. You should read the following subsections to learn more about these and other student rights issues. You should also be increasing your understanding of the reasoning that is the basis for court decisions. Legal reasoning is based in interpretation of the words in statutes and the precedents of earlier judgments. Court decisions are made in isolation or simply what some might see as common sense.

Students’ Rights as Citizens

Through a series of court decisions, all children in the United States have been granted the opportunity for a public school education. Further, although school officials have a great deal of authority, children as students maintain many of the constitutional rights that adult citizens enjoy all the time. As obvious as each of these points might seem, each has been the subject of debate and court decisions.

STUDENTS’ RIGHT TO AN EDUCATION. Children in the United States have a right to an education; this right is ensured in many state constitutions. It has been further defined by court decisions and is now interpreted to mean that each child has an equal opportunity to pursue education.

The right to an education, however, is not without certain prerequisites. Citizenship alone does not guarantee a free education. Statutes that establish public school systems also generally establish how operating costs will be met. As was previously described in Chapter 9, estate taxes are the usual source of funds, so proof of residence is necessary for school attendance without tuition. *Residence* does not mean that the student, parent, or guardian must pay real estate taxes; it means that the student must live in the school district in which he or she wants to attend school. Residence, then, is a prerequisite to the right of a free public education within a specific school district. The “Perspectives on Diversity” feature illustrates one teacher’s dilemma in striving to involve an undocumented parent.

ALIEN AND HOMELESS CHILDREN HAVE THE RIGHT TO GO TO SCHOOL. In 1982, the U.S. Supreme Court ruled in *Plyler v. Doe* that the children of illegal aliens had a right to a free public education. Although today some continue to question this right, the courts have been consistent in holding that the Equal Protection Clause applies to all. In addition, the Court considered the impact on society of the failure to educate all students.

Education has a fundamental role in maintaining the fabric of society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests. (From *Plyler v. Doe*, 457 U.S. 202 (1982). Published by U.S. Supreme Court, 1982)

TABLE 10.6

Selected U.S. Supreme Court Cases Related to Students' Rights and Responsibilities

CASE	ISSUE	DECISION
<i>Plyler v. Doe</i> (1982)	Rights to education of illegal aliens	Court struck down Texas law that denied a free public education to children of illegal aliens.
<i>Goss v. Lopez</i> (1975)	Suspension of high school students without a hearing	Court ruled that only in an emergency can a student be suspended without a hearing.
<i>Wood v. Strickland</i> (1975)	Question of whether school board members can be sued for depriving students of their constitutional rights (through suspension)	Students can seek damages from individual school board members but not from the school district.
<i>Tinker v. Des Moines Independent Community School District</i> (1969)	Free speech rights of students to wear black armbands to protest U.S. involvement in Vietnam	Court ruled against school district—recognizing to an extent constitutional rights of pupils.
<i>Board of Education, Island Trees Union Free District No. 26 v. Pico</i> (1982)	School board's decision to remove books from the school library	Court issued decision that under certain circumstances, children may challenge board's decision to remove books.
<i>Ingraham v. Wright</i> (1977)	Power of states to authorize corporal punishment without consent of the student's parent	Court ruled that states may constitutionally authorize corporal punishment.
<i>Bethel School District No. 403 v. Fraser</i> (1986)	Power of school officials to restrain student speech	School officials may discipline a student for making lewd and indecent speech in a school assembly attended by other students.
<i>Hazelwood School District v. Kuhlmeier</i> (1988)	School district control of student expression in school newspapers,	School administrators have broad authority to control student expression in the official student newspaper, which is not a public forum but is seen as part of the curriculum.
<i>Honig v. Doe</i> (1988)	Violation of the Education for All Handicapped Children Act (P.L. 94-142); school indefinitely suspended and attempted to expel two emotionally disturbed students	P.L. 94-142 authorizes officials to suspend dangerous children for a maximum of ten days. Justice Brennan said, "Congress very much meant to strip schools of unilateral authority to exclude disturbed students."
<i>New Jersey v. T.L.O.</i> (1985)	Search and seizure	School officials must have a reasonable cause when engaged in searches.

A related problem is the more than 500,000 homeless children in the United States. Because access to public school usually requires a residence address and a parent or guardian as well as transportation, homeless children in the past were squeezed out of the system. Congress addressed this growing problem in 1987 with passage of the Stewart B. McKinney Homeless Assistance Act, which requires that "each State educational agency shall assure that each child of a homeless individual and each homeless youth have access to a free, appropriate public education" (From *Stewart B. McKinney Homeless Assistance Act*. United States District Court, 2006). The law was amended in 1990 to require each school district to provide services to the homeless that are comparable to the services offered other students in the schools. These services include allowing homeless children to finish the school year in the school they were in before they lost their housing, providing transportation to school, tutoring to help students catch up, and giving homeless children the opportunity to take part in school programs offered to other children.

PERSPECTIVES on DIVERSITY

What If Your Student's Mother Is Undocumented?

Greg, a second year teacher of science, was in a reflective mood. He had found that his weekend bike rides were a good time to reflect on how things were going. "A lot better than last year." He also reflected on how much his students were learning. "Most of them seem to be doing well."

One of the challenges was the continual arrival of new students, especially those whose first language was not English. For example, one of the girls, Neide, had recently arrived from Brazil. It was amazing how fast she was learning English in social situations. However, her academic vocabulary most definitely needed help. One of the strategies for improving vocabulary in the content areas is to have a parent go over a vocabulary list with the student.

Greg had checked with Neide about the possibility of his meeting with her mother to work out a vocabulary homework plan. But Neide avoided answering and seemed somehow reluctant. As he reflected further, a light bulb went on: "What if her mother is an illegal alien? Now, what do I do?"

WHAT IS YOUR PERSPECTIVE?

1. Should Greg pursue this problem?
 2. If Neide's mother is an illegal and this is found out, will Neide be removed from school?
 3. What would you do, or not do, in this situation?
- (Hint: For part of the answer take a look at Table 10.6)

STUDENTS' RIGHT TO SUE. The U.S. Supreme Court has affirmed that students may sue school board members who are guilty of intentionally depriving students of their constitutional rights. In *Wood v. Strickland* (1975), the Court held that school officials who discipline students unfairly cannot defend themselves against civil rights suits by claiming ignorance of pupils' basic constitutional rights. As a result of this decision, Judge Paul Williams, a federal judge in Arkansas, ordered that certain students who had been suspended could seek damages from individual school board members—though not from the school district as a corporate body. The judge also ruled that the school records of these pupils must be cleared of the suspension incident. From these decisions, it is apparent that the U.S. Supreme Court is taking into account the rights of students.

STUDENTS' RIGHT TO DUE PROCESS. Much of the recent involvement of the courts with student rights has concerned due process of law for pupils. Due process is guaranteed by the Fourteenth Amendment. The equal protection clause states, "nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws" (From *All Amendments to the United States Constitution*. Published by U.S. Constitution, 2015). Due process of law means following those rules and principles that have been established for enforcing and protecting the rights of the accused. As explained earlier, due process falls under two headings—procedural and substantive. *Procedural due process* has to do with whether the procedures used in disciplinary cases are fair; *substantive due process* is concerned with whether the school authorities have deprived a student of basic substantive constitutional rights such as personal liberty, property, or privacy (LaMorte, 2012, pp. 5–8).

The application of due process to issues in schools is a recent phenomenon. Historically, schools functioned under the doctrine of *in loco parentis* ("in the place of a parent"). This doctrine meant that schools could exercise almost complete control over students because they were acting as parent substitutes. Under the doctrine of *in loco parentis*, the courts have usually upheld the rules and regulations of local boards of education, particularly about pupil conduct. However, the courts have not supported rules that are unconstitutionally "vague" and/or "overboard." The cases discussed next illustrate the difficult balance between protecting students' right to due process and giving schools sufficient authority to pursue their mission.

PROCEDURAL DUE PROCESS IN CASES OF SUSPENSION AND EXPULSION. Zero tolerance policies have complicated the local schools' ability to balance students' right to due process and serving students' educational needs. Procedural due process is scrutinized especially in cases of suspension and expulsion. These cases most often result from disciplinary action taken by

in loco parentis

Meaning "in the place of a parent," this term describes the implied power and responsibilities of schools.

the school, which may or may not have violated a pupil's substantive constitutional rights. For example, in *Goss v. Lopez* (1975), the U.S. Supreme Court dealt with the suspension of high school students in Columbus, Ohio. In that case, the named plaintiffs claimed that they had been suspended from public high school for up to ten days without a hearing. The action alleged deprivation of constitutional rights. Two students who were suspended for a semester brought suit charging that their due process rights were denied—because they were not present at the board meeting when the suspensions were handed out.

In ruling that students cannot be suspended without some kind of hearing, the Court said:

The prospect of imposing elaborate hearing requirements in every suspension case is viewed with great concern, and many school authorities may well prefer the untrammelled power to act unilaterally, unhampered by rules about notice and hearing. But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his defalcation and to let him tell his side of the story in order to make sure that an injustice is not done. Fairness can rarely be obtained by secret, one-sided determination of the facts decisive of rights . . . Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. (*Goss*, 1975)

Procedural due process cases usually involve alleged violations of the Fourteenth Amendment, which provides for the protection of specified privileges of citizens, including notice to the student, impartiality of the hearing process, and the right of representation. These cases might also involve alleged violations of state constitutions or statutory law that call for specific procedures. For example, many states have procedures for expulsion or suspension. Expulsion usually involves notifying parents or guardians in a specific way, perhaps by registered mail, and giving students the opportunity for a hearing before the board of education or a designated hearing officer. Suspension procedures are usually detailed as well, designating who has the authority to suspend and the length of time for suspension. Teachers and administrators should know due process regulations, including the specific regulations of the state where they are employed.

SUBSTANTIVE DUE PROCESS AND STUDENTS' RIGHTS TO FREE SPEECH. Substantive due process frequently addresses questions of students' constitutional rights to free speech versus the schools' authority to maintain order in support of education. The *Tinker* case (*Tinker v. Des Moines Independent Community School District*, 1969) was significant. It involved a school board's attempt to keep students from wearing black armbands in a protest against U.S. military activities in Vietnam. In 1969, the U.S. Supreme Court ruled against the Des Moines school board. The majority opinion of the Court was that

[T]he wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which we have repeatedly held, is entitled to comprehensive protection, under the First Amendment . . . First Amendment rights, applied in the light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. (*Tinker*, 1969)

In the *Tinker* opinion, the Court clearly designated that the decision "does not concern aggressive, disruptive action or even group demonstrations" (*Tinker*, 1969). The decision did make it clear that whatever their age, students have constitutional rights, and that decision has had a widespread effect on the operation of schools in the United States. Schools have had to pay attention to U.S. law. Educators as well as lawyers have been guided by the principles set forth in the decision regarding the constitutional relationship between public school students and school officials.

A subsequent U.S. Supreme Court decision appeared to narrow the breadth of application of the *Tinker* ruling. The case involved Matthew Fraser, a high school senior in a school outside Tacoma, Washington. In the spring of 1983, Fraser was suspended from school for two days after he gave a short speech at a school assembly nominating a friend for a position in student government. School officials argued that Fraser's speech contained sexual innuendos that provoked other students to engage in disruptive behaviors unfavorable to the school setting. The U.S. District Court for the Western District of Washington held that Fraser's punishment violated his rights to free speech under the First Amendment and awarded him damages. The U.S. Court of Appeals for the Ninth Circuit affirmed the decision, holding that Fraser's speech was not disruptive under

the standards of *Tinker*. However, the Supreme Court reversed the decision. In the majority opinion in *Bethel School District No. 403 v. Fraser* (1986), Chief Justice Warren Burger wrote, "The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board" (From *Bethel School District No. 403 v. Fraser* (No. 84-1667). Published by U.S. Supreme Court, 1986).

In a more recent decision, the Court reduced further student free speech and increased the authority of school administrators. The case began in 2002 when the Olympic torch was passing through Juneau, Alaska. A high school senior, Joseph Frederick and some friends, unfurled a banner that stated "Bong Hits 4 Jesus." The school principal, Deborah Morse, raced across the street and took down the banner. She charged him with promoting the use of illegal drugs and suspended Frederick for ten days. In the lawsuit *Morse v. Frederick*, 551 U.S. (2007), he said he was not encouraging drug use and it was just "meaningless and funny nonsense. . . ." In 2007 in a five-to-four decision, the U.S. Supreme Court ruled that students have lesser protection of their Constitutional rights and that schools may "take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use" (From *Morse et al. v. Frederick* 551 U.S. 393. Published by U.S. Supreme Court, 2007). However, the Court did not agree with Morse' broader argument that administrators can censor student speech whenever it is inconsistent with school's educational mission.

Students' Rights and Responsibilities in School

The right, or privilege, of children to attend school also depends on their compliance with the rules and regulations of the school. To ensure the day-to-day orderly operation of schools, boards of education have the right to establish reasonable rules and regulations controlling pupils and their conduct. Boards' actions have been challenged in numerous instances, however. Challenges have concerned questions such as dress codes and grooming, corporal punishment, the rights of married students, abuse and neglect, student publications' freedom of expression, disabilities, and searches.

DRESS CODES AND GROOMING. Lower court cases dealing with grooming have been decided in some instances in favor of the board of education—in support of their rules and regulations—and in other instances in favor of the student. A general principle seems to be that if the dress and grooming do not incite or cause disruptive behavior or pose a health or safety problem, the court ruling is likely to support the student. Dress codes, once very much in vogue, are less evident today. Although the U.S. Supreme Court has yet to consider a so-called long-hair case, federal courts in every circuit have issued rulings in such cases; half of them found regulations on hair length unconstitutional, and half upheld them. In all, over a two-decade period, federal and state courts decided more than 300 cases on this subject. If there is a trend, it is that students have won most of the cases that dealt with hairstyle. The courts have usually refused to uphold dress and hair length regulations for athletic teams or extracurricular groups unless the school proves that the hair or dress interfered with a student's ability to play the sport or perform the extracurricular activity (*Long v. Zopp*, 1973).

In the late 1970s and continuing through the 1980s, courts entertained fewer challenges to grooming regulations. The later decisions, however, continued to be consistent with earlier court rulings. Courts have supported school officials who attempted to regulate student appearance if the regulation could be based on concerns about disruption, health, or safety. Presumably, controversy over the length of students' hair or grooming in general is no longer critical because officials and students have a more common ground of agreement about what is acceptable. However, as the twenty-first century unfolds, new questions could be raised in relation to the emergence of some new clothing trend. Another area could be school safety being threatened by the clothing and grooming of gangs.

CORPORAL PUNISHMENT. In 1977, the U.S. Supreme Court ruled on and finally resolved many of the issues related to corporal punishment (*Ingraham v. Wright*, 1977). The opinion established that states may constitutionally authorize corporal punishment without prior hearing or notice and without consent by the student's parents or may as a matter of policy elect to prohibit or limit the use of corporal punishment. It also held that corporal punishment is not in violation of the Eighth Amendment (which prohibits "cruel and unusual punishments").

In response to the greater sensitivity to student rights, many school districts have adopted administrative rules and regulations to restrict the occasions, nature, and manner of administering corporal punishment. Some school districts specify that corporal punishment can be administered only under the direction of the principal and in the presence of another adult.

SEX DISCRIMINATION. Until late in the Twentieth Century, educational institutions could discriminate against females—whether they were students, staff, or faculty. In 1972 the Ninety-Second Congress enacted Title IX of the Education Amendments Act to remove sex discrimination against students and employees in federally assisted programs. The key provision in Title IX states, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance” (From *Title IX, Education Amendments of 1972*. Published by U.S. Department of Labor, 1972). Title IX is enforced by the Department of Education’s Office of Civil Rights. An individual or organization can allege that any policy or practice is discriminatory by writing a letter of complaint to the secretary of education. An administrative hearing is the next step in the process. Further steps include suing for monetary damages under Title IX, which the U.S. Supreme Court affirmed in *Franklin v. Gwinnett County Schools* (1992).

MARRIAGE AND PREGNANCY. Until the last ten to twenty years, it was not unusual for school officials to expel students who married. Some educators reasoned that marriage brought on additional responsibilities, such as the establishment of a household, and therefore that married students could not perform well in school. They also believed that exclusion would help deter other teenagers from marrying. Courts tended to uphold school officials in these positions. Both courts and school officials acted consistently in not rigidly enforcing compulsory attendance statutes for underage students who married.

School officials today cannot prohibit a student from attending school merely because he or she is married. This position is based on the previously mentioned Title IX and on the notion that every child has a right to attend school. Public policy today encourages students to acquire as much education as they can. Not only are married students encouraged to remain in school but also are entitled to the same rights and privileges as unmarried students. Thus, they have the right to take any course the school offers and to participate in extracurricular activities open to other students. That is, participation in extracurricular activities cannot be denied a student solely on the basis of marital status. However, a student’s attendance and participation rights can be removed if his or her behavior is deleterious to other students.

Today’s schools enroll pregnant students without hesitation. Title IX prohibits their exclusion from school or from participation in extracurricular activities. Many school systems have reorganized their school programs so that courses can be offered during after-school hours or in the evenings to accommodate married and pregnant students. This arrangement makes it easier for students to work during the day and complete their education at a time that is convenient for them. Such programs often include courses and topics aimed at the specific audience as well as counseling programs to assist students with their adjustment to marriage and family life.

EDUCATORS MUST REPORT SUSPECTED CHILD ABUSE AND NEGLECT. Government bodies in the United States have the right to exercise police power, which means that the government is entrusted with the responsibility of looking after the health, safety, and welfare of all of its citizens. In effect, each state acts as a guardian over all of its people, exercising that role specifically over individuals who are not able to look after themselves. This guardianship extends to care for children who have been either abused or neglected by their parents. All fifty states have statutes dealing with this issue. These statutes generally protect children under the age of eighteen, but the scope of protection and definitions of abuse and neglect vary considerably among the states. In 1974, Congress passed the Child Abuse Prevention and Treatment Act, which provides financial assistance to states that have developed and implemented programs for identifying, preventing, and treating instances of child abuse and neglect.

The severity of this problem has been highlighted by the requirement of mandatory reporting of suspected abuse and neglect to social service agencies. Formerly, this reporting was limited mainly to physicians, but today educators are also required to report instances of suspected abuse and neglect. Some teachers are reluctant to do so because they fear a breakdown in student–teacher–parent relationships and the possibility of lawsuits alleging invasion of privacy, assault, or slander. Their fear should be diminished, however, by statutes that grant them immunity for acting in good faith.

STUDENT PUBLICATIONS. A significant decision relative to “underground” student newspapers was made in Illinois in 1970 (*Scoville v. Board of Education*, 1970). Students were expelled for distributing a newspaper named *Grass High*, which the students produced at home and which

criticized school officials and used vulgar language. The students were expelled under an Illinois statute that empowered boards of education to expel pupils guilty of gross disobedience or misconduct. A federal court in Illinois supported the board of education, but on appeal, the Court of Appeals for the Seventh Circuit reversed the decision. The school board was not able to validate student disruption and interference as required by *Tinker*. The expelled students were entitled to collect damages. An implication is that the rights of students regarding newspapers they print at home are stronger than their rights of free expression in official school publications.

Early in 1988, in a landmark decision (*Hazelwood School District v. Kuhlmeier*), the U.S. Supreme Court ruled that administrators have broad authority to control student expression in official school newspapers, theatrical productions, and other forums that are part of the curriculum. In reaching that decision, the Court determined that the *Spectrum*, the school newspaper of the Hazelwood District, was not a public forum. A school policy of the Hazelwood District required that the principal review each proposed issue of the *Spectrum*. The principal objected to two articles scheduled to appear in one issue. One of the articles was about girls at the school who had become pregnant; the other discussed the effects of divorce on students. Neither article used real names. The principal deleted two pages of the *Spectrum* rather than delete only the offending articles or require that they be modified. He stated that there was no time to make any changes in the articles and that the newspaper had to be printed immediately or not at all.

Three student journalists sued, contending that their freedom of speech had been violated. The U.S. Supreme Court upheld the principal’s action. Justice Byron White decided that the *Spectrum* was not a public forum but rather a supervised learning experience for journalism students. In effect, the censorship of a student press was upheld by the Supreme Court. In Justice White’s words:

[S]chools must be able to set high standards for the student speech that is disseminated under [their] auspices—standards that may be higher than those demanded by some newspaper publishers and theatrical producers in the “real” world—and may refuse to disseminate student speech that does not meet those standards.

Accordingly, we hold that the standard articulated in *Tinker* for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. (*Hazelwood*, 1988)

The issue of institutional control over publications has not yet been fully resolved. In response to questions about student publications and their distribution, school boards have endeavored to write rules and regulations that will withstand judicial scrutiny. A prompt review and reasonably fast appeal procedures are vital. Students should also be advised of distribution rules and abide by them.

RIGHTS OF STUDENTS WITH DISABILITIES. Before the early 1970s, the access to education of students with disabilities was left to the discretion of different levels of government. In the early 1970s, court decisions established the position that students with disabilities were entitled to an “appropriate” education and to procedural protections against arbitrary treatment. As was described earlier, Congress subsequently specified a broad set of substantive and procedural rights via Section 504 of the Rehabilitation Act and Public Law 94-142, the Education for All Handicapped Children Act (EAHCA). Since that time, there has been a continuing series of legislative and legal refinements and extensions of the intents to see that students with special needs have appropriate educational opportunities. The problem has been to define what is meant by “appropriate.” This examination and clarification process continues to unfold.

One early test case regarding student rights dealt with a violation of P.L. 94-142. That law requires public school officials to keep disruptive or violent students with disabilities in their current classrooms pending hearings on their behavior. In the decision made in *Honig v. Doe* (1988), the U.S. Supreme Court upheld lower court rulings that San Francisco school district officials violated the act in 1980 when they indefinitely suspended and then attempted to expel two students who were, as officials claimed, emotionally disturbed and dangerous.

The act authorizes officials to suspend dangerous children with disabilities for a maximum of ten days. Longer suspensions or expulsions are permissible only if the child’s parents consent to the action taken or if the officials can convince a federal district judge that the child poses a danger to himself or herself or to others. The rules under which school officials must operate are also more limiting if the misbehavior is a manifestation of the student’s disability.

It is clear that Congress meant to restrain the authority that schools had traditionally used to exclude students with disabilities, particularly students who are emotionally disturbed, from school. But P.L. 94-142 did not leave school administrators powerless to deal with dangerous students.



VIDEO ANALYSIS 10.1

View the following video to see some of the elements of the important role general education teachers have before, during, and after IEP meetings. Then answer the questions that follow the video in your Pearson eText.

STUDENT AND LOCKER SEARCHES. Most courts have refused to subject public school searches to strict Fourth Amendment standards. In general, the Fourth Amendment protects individuals from search without a warrant (court order). Many lower courts, however, have decided in favor of a more lenient interpretation of the Fourth Amendment in school searches. The rationale is that school authorities are obligated to maintain discipline and a sound educational environment and that that responsibility, along with their *in loco parentis* powers, gives them the right to conduct searches and seize contraband on reasonable suspicion without a warrant. First, however, school officials may only search for evidence that a student has violated a school rule or a law. Also, there must be a valid rule or law in place.

School authorities do not need a warrant to search a student's locker or a student vehicle on campus. For searches of a student's person, however, courts apply a higher standard. Where reasonable suspicion exists, a school official's actions will likely be upheld. Reasonable suspicion exists when one has information that a student is in possession of something harmful or dangerous or when there is evidence of illegal activities such as drug dealing (money, a list of customers, or rolling papers). The second consideration is the way in which the search of a student's person is conducted. School officials are advised to have students remove contents from their clothing rather than having a teacher or administrator do it.

A further caution is not to force students to remove all their clothing or undress to their underwear. In a nearly unanimous eight-to-one decision in 2009, the U.S. Supreme Court put school districts on clear notice that strip searches are "categorically distinct" from other efforts to combat illegal drugs. In *Safford Unified School District #1 v. Redding*, the Court concluded that an intrusive search of a thirteen-year-old girl for suspicion of hiding ibuprofen was an overreaction.

In writing for the majority, Justice Souter said that what was missing "was any indication of danger to the students from the power of the drugs or the quantity, and any reason to suppose that Savana was carrying pills in her underwear" (From *Safford Unified School District #1 v. Redding*, United States District Court, 2009). Concern about strip searches being degrading has led a number of states and school districts to ban strip searches.

PEER SEXUAL HARASSMENT. Title IX prohibits sex discrimination, and this includes students' harassing other students. Teasing, snapping bra straps, requesting sexual favors, making lewd comments about one's appearance or body parts, telling sexual jokes, engaging in physical abuse, and touching inappropriately are examples of peer sexual harassment. It is important for teachers to make it clear that sexual harassment will not be tolerated. School districts are supposed to have in



Source: David Duprey/AP Images

Where reasonable suspicion exists, school authorities do not need a warrant to search a student's locker or a student's vehicle on campus.

FIGURE 10.9

Summary Statements on Students' Rights and Responsibilities

- State constitutions provide that a child has the right to an education; to date, students have been unsuccessful in suing school board members on the ground that they have not learned anything.
- The due process clause provides that a child is entitled to notice of charges and the opportunity for a hearing prior to being suspended from school for misbehavior.
- Students enjoy freedom of speech at school unless that speech is indecent or leads to disruption; courts are in agreement that school officials can regulate the content of student newspapers. Underground newspapers are not subject to this oversight.
- Students may be awarded damages from school board members for a violation of their constitutional rights if they can establish that they were injured by the deprivation and that the school official deliberately violated those rights.
- The use of corporal punishment is not prohibited by the U.S. Constitution, but excessive punishment may be barred by the Fourteenth Amendment. Students may be restricted in their dress when there are problems of disruption, health, or safety.
- Assignments of students to activities or classes in general on the basis of sex is not consistent with Title IX. These assignments may be made in such areas as sex education classes or when sports are available for both sexes.
- Restricting a student's activities on the basis of marriage or pregnancy is inconsistent with the equal protection clause and Title IX.
- Teachers are required to report to proper authorities suspected instances of child abuse and neglect.
- Parents have the right to examine their children's educational records. Students age eighteen or older have the right to examine their records.
- School officials may search students, lockers, and student property without a search warrant, but they must have reasonable grounds for believing that a student is in possession of evidence of a violation of a law or school rule.

place a grievance procedure for sex discrimination complaints. Students and/or their parents can also file a complaint with the Office of Civil Rights. All allegations must be investigated promptly, and schools must take immediate action in cases in which harassment behaviors have been confirmed. Keep in mind that sexual harassment is not limited to high school students; middle school and in some cases elementary schoolchildren are also sexually harassed. To summarize the topics covered in this section, Figure 10.9 lists brief statements related to the rights and responsibilities of students.

RIGHTS OF LGBT STUDENTS. As there has been increasing awareness of differences in gender identity and sexual orientation, school administrations, legislative bodies, and the courts are being asked to address a number of new questions. One has to do with determining which toilet transgender students will use and where they will change clothes for physical education. At this time, different states, school districts, and courts are making different decisions. The U.S. Department of Education's position is quite clear: Transgender students are protected from discrimination by federal law. They should use the bathroom of their gender identity. At the local level, different communities are deriving different solutions.

CYBERBULLYING: AN INCREASING PROBLEM. Bullying has been a continual student behavior problem. Now, with the ease of accessing the many forms of social media, there are many new ways for students to bully fellow students. It is much more difficult to detect when cyberbullying has occurred, and it is easier for the instigator to do the deed anonymously. The Center for Disease Control and Prevention (CDC) has identified three elements related to cyberbullying: (1) unwanted aggressive behavior, (2) involving and or perceived power imbalance, and (3) repeated multiples times or are likely to be repeated.³ At this time, legislative and legal systems have been slow to establish related statutes. It is incumbent on teachers and administrators to be sensitive to the potential for cyberbullying and be ready to step in early if it is suspected.

EMERGING CHALLENGES. Teachers, students, and administrators must continually be aware of their responsibilities and the legal safeguards that protect students as well as educators. There are likely to be new cases related to drug testing, searches, weapons, and surely questionable uses of

³ Centers for Disease Control and Prevention (CDC). Understanding Bullying: Fact Sheet (2015). https://www.cdc.gov/violenceprevention/pdf/bullying_factsheet.pdf

social media. There most certainly will be new policies, administrative directives, and court cases related to appropriate and inappropriate social networking. Be sure that you, today as a teacher education candidate and in the future as a teacher, are fully cognizant of your responsibilities under the law. As the saying goes, ignorance of the law is no excuse.

JOURNAL FOR REFLECTION 10.4

Now it should be clear to you that students have rights and that teachers need to be aware of them. Teachers should always be sure that another teacher or administrator is present when disciplinary action is taken. When taking any such action, teachers must be sure that the principal or other administrators are informed. As a way of making these rights and responsibilities real for you, think back across your years as a student. Compare some of the things that you experienced or witnessed with what you have just read about the legal rights and responsibilities of students.



CHECK YOUR UNDERSTANDING 10.4

Complete Check Your Understanding 10.4 to gauge your understanding of the concepts in this section.

SUMMARY

LEGAL ASPECTS OF EDUCATION

- The U.S. Constitution is the starting point for viewing schools from the legal perspective.
- Education is not mentioned directly in the U.S. Constitution.
- The Tenth Amendment has been interpreted as assigning responsibility to each state for education of its citizens.
- Title IX protects school district employees and students from discrimination.
- Interpretations of law and the resolution of disputes, whether they are about separation of church and state, desegregation, or teachers' rights, ultimately are decided by the U.S. and state supreme courts.
- Public funds can be used to support some kinds of education services offered by church schools.

TEACHERS' RIGHTS AND RESPONSIBILITIES

- Teachers' rights as citizens and employees, including procedural and substantive due process, are protected.
- However, teachers do not have absolute academic freedom.
- FERPA protects the privacy of student records.

- Teachers must be vigilant in guarding against placing students in risky situations.
- Teachers can be sued for negligence and malpractice.

USES OF SOCIAL MEDIA AND THE LAW

- Teacher and student use of school district e-mail systems can be monitored.
- Teachers and teacher education candidates can be dismissed based on what is discovered on their social networking sites.
- Teachers must be vigilant in monitoring the use of technology to cheat.

STUDENTS' RIGHTS AND RESPONSIBILITIES

- Students, too, have rights as citizens, including the right to an education.
- They have due process rights; protection from discrimination; and, within limits, freedom of expression.
- However, schools have the authority to determine when student conduct is disruptive.
- Teachers must always be aware of their and their students' legal rights and responsibilities.

DISCUSSION STARTERS

1. How do you view the use of public funds to support certain activities in church schools? Do you see a trend toward "excessive entanglement"? Where do you see the line needing to be drawn so as not to conflict with the establishment clause?
2. In *Ingraham v. Wright* (1977), the U.S. Supreme Court ruled that states may authorize the use of corporal punishment as school policy. The U.S. military has not allowed corporal punishment for more than one hundred years.

Why should it be disallowed in the military but be permissible in schools? Is it ever appropriate in schools?

3. As a teacher, in your classroom, where will you draw the line between what are appropriate and inappropriate uses of social media?

4. What are your thoughts about balancing student rights against school officials' need to maintain an environment conducive to learning? Should school officials have more authority? Should students have greater freedom?

SCHOOL-BASED OBSERVATIONS

1. Beginning teachers do not have the same rights as tenured teachers, but they do have rights. With a partner, compare and contrast the rights of beginning teachers as stated in the employment contracts of two school districts. Some of the items to check are length of the probationary period, the basis for a tenure decision, how the tenure decision-making process works, and the due process rights of probationary teachers.
2. Interview an experienced teacher about students' rights. Ask him or her to provide examples of situations in which it was important for the teacher to be aware of student rights. What were the critical points to be considered? What were the related responsibilities of the teacher? What advice would this teacher have for today's beginning teachers?

PORTFOLIO DEVELOPMENT

1. Pick a school district where you think you would like to work as a teacher. Obtain a copy of the teacher employment contract from the district human resources/personnel office and study it. What does the contract say about your rights as a district employee and as a teacher? What does it say about your responsibilities? There may be references to other legal documents such as an employee handbook and board policies; if so, become familiar with those documents too. Together, these documents set the parameters for what you can, should, and should not do as a teacher. Place these documents and your notes in a folio file folder and save them for later use.
2. From time to time, newspapers and weekly news magazines carry reports about disagreements between students and school officials. Collect several of these reports, paying special attention to the legal interpretations drawn by each side, and consider the implications for you. In all instances, keep in mind that both teachers and students have legal responsibilities as well as rights. These clippings and notes may be a useful resource for you someday when as a teacher you are confronted with a question about student and teacher rights.

WEB SOLUTIONS

A continuing dilemma for teachers is deciding what they and their students should place on their Facebook pages and other social media accounts. It should be clear that neither teachers nor students have absolute First Amendment rights to say and display whatever they like. Even the media are doing "investigative" reports of what teachers have on their social media pages. Search the following websites for examples of teachers and students being disciplined for content on their personal social media pages. Based on your review, develop three to five guidelines that you see as being important for you and your students to follow in order to not be exposed in the media, disciplined at school, or lose your teaching position.

A good place to start your analysis would be to read the article "Social Networking Nightmares" by Mike Simpson, which can be found on the NEA website. Other websites to check out for related information include the following:

The Dirksen Congressional Center offers a newsletter, curriculum resources, and links for educators to aid in improved understanding of Congress.

The Cornell Law School's Legal Information Institute (LII) website provides access to court decisions, news related to court cases, directories, and current awareness items.

CNN operates a number of useful websites including the Law Center, which reports on state, national, and international court proceedings.

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We dedicate this seventeenth edition to all educators who use interpretive, normative, organizational, and critical perspectives to wrestle with the demands of our rapidly changing society. There is no question that these four perspectives of *Foundations of American Education* are crucial components for making reasonable decisions in light of so many uncertainties. Without the thoughtful involvement of educators who struggle to open spaces for reflection and diverse voices, closed mindedness and violence will run rampant. As never before, the forthcoming generation of effective and reflective teachers will foster understanding our differences and facilitate continuing development of a peaceful and pluralistic societal fabric.

James A. Johnson, Diann Musial, Gene E. Hall, and Donna M. Gollnick