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Education and the American Legal System

Key Concepts in This Chapter

- ◆ Sources of Law
- ◆ Court System
- ◆ Legal Resources
- ◆ Legal References and Citations

INTRODUCTION

Education in the United States is predominantly a state function under the Tenth Amendment of the federal Constitution, which states that “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.” Even so, many federal laws currently affect the day-to-day operations of public schools. Before any presentation of the legal issues that arise in public education can occur, it is essential for readers to understand the legal framework under which American schools operate on both the federal and state levels. Accordingly, this introductory chapter examines the sources and types of laws in the American legal system while also presenting information on how these laws influence the daily operations of public schools. In addition, the chapter provides an overview of the American court systems and a basic primer on using and understanding legal resources and references.

SOURCES OF LAW

There are four sources of law in the United States: constitutions, statutes, regulations, and judicial decisions. These sources exist at both the federal and state levels. A constitution is the fundamental law of a nation or state (Garner, 2004). A statute is an act of the legislative body, a law enacted by Congress or a state legislature (Garner, 2004). All statutes, whether federal or state, must be consistent with the controlling constitutions within their respective jurisdictions. Most statutes are accompanied by implementing regulations or guidelines issued by the agencies responsible for their execution and

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—*U.S. Constitution,
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enforcement. Regulations are usually more specific than the statutes they are designed to implement, because they interpret legislative intent as to how laws should work in practice. Moreover, the frequent opinions issued by the federal and state courts interpreting the constitutions, statutes, and regulations compose a body of law known as case, judge-made, or common law.

Case law, which occupies a central role in this, or any, law book, provides further insight into how constitutions, statutes, and regulations should be applied to factual situations (Russo, 2005). Case law relies greatly on the notion of binding precedent, that is, the principle that a ruling of the highest court in a jurisdiction is binding on all lower courts in that jurisdiction. Even though cases from other jurisdictions have no binding effect on courts outside of their jurisdictions, they are referred to as persuasive precedent. In other words, decisions of courts in one jurisdiction are of no legal effect in other jurisdictions but may have some influence on how courts interpret the laws of their states.

Constitutions

The Constitution of the United States is the law of the land. Accordingly, all federal statutes and regulations, state constitutions, state laws and regulations, and ordinances of local governmental bodies, including school boards, are subject to the Constitution as it has been interpreted by the U.S. Supreme Court and other courts. In fact, very few sections of the U.S. Constitution are implicated in education-related litigation. For the most part, the sections of the Constitution that impact most dramatically on the operation of the schools are those protecting individual rights, such as the First, Fourth, Fifth, and Fourteenth Amendments.

In the same way, state constitutions are the supreme law in their respective jurisdictions and are the measure by which all of their state's

statutes, regulations, and ordinances are judged. State constitutions typically deal with many of the same matters as the U.S. Constitution and may provide even greater protection than their federal counterpart.

Statutes and Regulations

As noted, under the Tenth Amendment to the Constitution, education is reserved to the States (*Epperson v. State of Arkansas*, 1968). Even so, Congress has the power to enact laws under the general welfare clause of Article I, Section 8 of the Constitution by offering funds for purposes that it believes will serve the public good. For example, Congress has enacted a series of statutes, such as the Civil Rights Act of 1964 (2006) that subject public school systems to its antidiscrimination in employment provisions.

When federal statutes make funds available to state and local governments, the money is conditioned on the governments' acceptance of explicit requirements for its use. As discussed below, when states accept federal funds, school officials are bound by whatever conditions Congress has attached to the legislation associated with the funds. If challenged, governmental agencies must satisfy federal courts that those conditions pass constitutional muster. In 1987, for instance, Congress expanded its authority by defining a "program or activity" as encompassing "all of the operations of [an entity] any part of which is extended Federal financial assistance" (Civil Rights Restoration Act of 1987, 2006). This broad general prohibition covers "race, color or national origin," (42 U.S.C. § 2000d) "sex," (20 U.S.C. § 1681) and "otherwise qualified handicapped individuals," (29 U.S.C. § 794), categories that have become increasingly important in school settings. By way of illustration, in order to receive funding for special education under the Individuals With Disabilities Education Act (2006), states, typically through state and local educational agencies (or school boards), must develop detailed procedures to identify and assess children with disabilities before offering each qualified student a free appropriate public education in the least restrictive environment.

Another recent example of federal involvement in education, the No Child Left Behind Act (NCLB, 2006), was enacted by Congress in 2002.

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States receiving federal financial assistance under the NCLB must take steps to improve academic achievement among students who are economically disadvantaged; assist in preparing, training, and recruiting “highly qualified” staff; provide improved language instruction for children of limited English proficiency; make school systems accountable for student achievement, particularly by imposing standards for annual yearly progress for students and districts; require school systems to rely on teaching methods that are research based and that have been proven effective; and afford parents better choices while creating innovative educational programs, especially if local school systems are unresponsive to their needs.

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Regulations issued by the federal Department of Education and other administrative agencies give the executive branch the means to implement statutes by carrying out their full effect. Put another way, while statutes set broad legislative parameters, regulations allow administrative agencies to provide details to satisfy the requirements of the law. By way of illustration, while statutes set the number of days that children must attend school to satisfy state compulsory attendance laws, regulations fill in such details as how long class days should be and what subjects students must study. Regulations generally carry the full force of the law and are presumptively valid unless or until such times as courts strike them down as conflicting with the underlying legislation.

Most of the statutes impacting public schools come from state legislatures. While state legislatures are subject to the limitations of federal law and of state constitutions, they are relatively free to establish their own systems of education. The law is well settled that state and local boards of education, administrators, and teachers have the authority to adopt and enforce reasonable rules and regulations to ensure the smooth operation and management of schools. Rules and regulations are subject to the same constitutional limitations as statutes passed by legislative bodies. Thus, if it is unconstitutional for Congress or state legislatures to enact laws violating the free speech rights of children, it is also impermissible for teachers to do so by creating rules that apply only in their classrooms. Put another way, while teachers are certainly free to institute their own classroom rules, they, too, must act in a manner that is consistent with the Constitution. It is also significant to note that legislation or rule-making on any level, whether federal or state, cannot conflict with a higher authority.

Common Law

The function of the courts is to interpret the law. When there is no codified law, or if statutes or regulations are unclear, courts apply common

law. Common law is basically judge-made law, meaning that courts may adjust the law to new or changing circumstances. The collective decisions of the courts make up the body of common law. When disputes involve legislation, the task of the courts is to discover, as best they can, the intent of the legislative bodies that enacted statutes. To the degree that judicial decrees establish precedent, they have considerable weight in terms of providing guidance on how statutes and regulations are to be applied to everyday situations.

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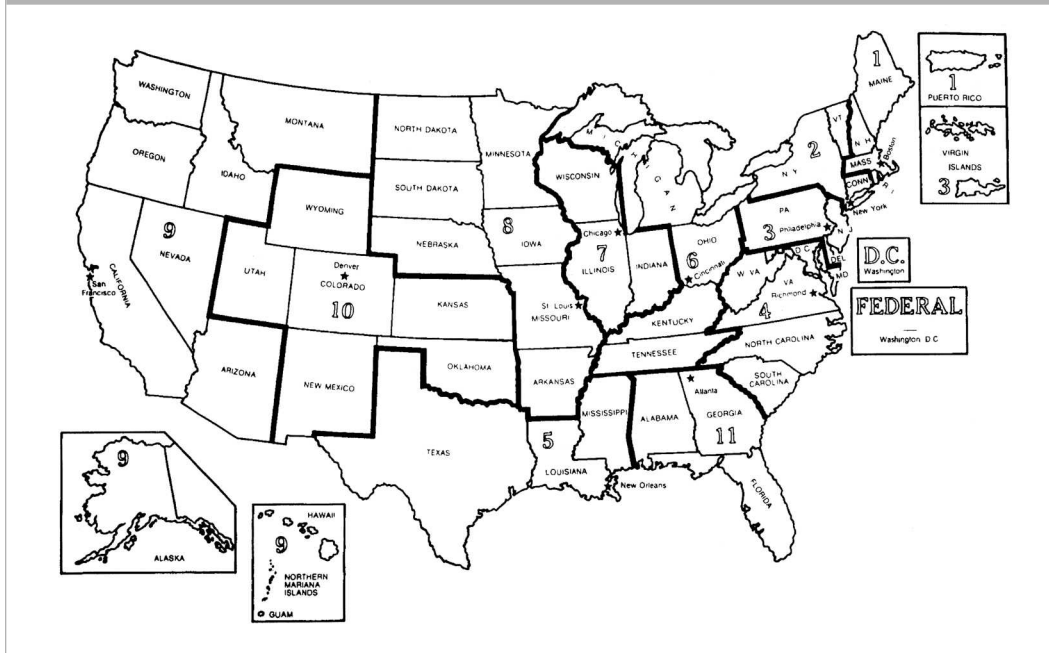
Court Systems

The federal court system and most state judicial systems have three levels. The lowest level in the federal system consists of trial courts that are known as federal district courts. Each state has at least one federal district court, while larger states, such as California and New York, may have as many as four. District courts are the basic triers of fact in legal disputes. These trial courts review evidence and render decisions based on the evidence presented by the parties to disputes. Depending on the situation, trial courts may review the record of any administrative hearings that have been held, hear additional evidence, and/or hear the testimony of witnesses.

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Parties that are dissatisfied with the decisions of trial courts may appeal to the federal circuit court of appeals within which their states are located. For example, a decision issued by a federal trial court in New York would be appealed to the Second Circuit, which, in addition to New York, consists of the states of Connecticut and Vermont. There are 13 federal judicial circuits in the United States. The circuits were created for judicial and administrative ease and convenience so that parties seeking to appeal judgments with which they disagree would not have to travel too far from home to do so. The map in Figure 1.1 shows the location of the federal circuits and the states that fall within each circuit.

Individuals who are still dissatisfied with the judgments of the circuit courts may appeal to the U.S. Supreme Court. Owing to the sheer volume of cases appealed, the Supreme Court accepts less than one percent of the approximately 8,000 cases annually in which parties seek further review. Cases typically reach the Court in requests for a writ of *certiorari*, which literally means “to be informed of.” When the Supreme Court agrees to hear an appeal, it grants a writ of *certiorari*. At least four of the nine Justices must vote to grant *certiorari* in order for a case to be heard. Denying a writ of

Figure 1.1 Federal Circuit Courts of Appeal

certiorari has the effect of leaving a lower court's decision unchanged and is of no precedential value.

The court systems in each of the 50 states and various territories are arranged in an organizational fashion that is similar to the federal format except that the names of the courts vary. In most states, there are three levels of courts: trial courts, intermediate appellate courts, and courts of last resort. Readers are cautioned to pay particular attention to the names of state courts, as they are not consistent from state to state. For example, people generally think of a supreme court as being the highest court. However, in New York, the trial court is known as the Supreme Court, the intermediate level is named the Supreme Court Appellate Division, while the state's high court is called the Court of Appeals, typically the name for intermediate appellate courts in most jurisdictions.

When courts render their judgments, their opinions are binding only within their jurisdictions. In other words, a judgment of the federal trial court for Rhode Island is binding only in Rhode Island. The federal trial court in Maine, which is in the same federal circuit, may find a decision of the Rhode Island court persuasive, but it is not bound by its order. Nonetheless, a ruling of the First Circuit Court of Appeals is binding on all states within its jurisdiction, and lower courts in Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico must rule consistently.

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A decision by the Supreme Court of the United States is, of course, enforceable in all 50 states and American territories.

Readers should keep in mind that a court's jurisdiction can refer to either the types of cases that it can hear or to the geographic area over which it has authority. The preceding paragraph referred to jurisdiction by geographic area. At the same time, courts are typically limited by the type of jurisdiction, or ability to hear cases, with which they are empowered. For example, as discussed in a bit more detail in the next paragraph, trial courts typically have jurisdiction over cases that have yet to be tried, while the judicial authority of appellate courts is usually restricted to cases that have already proceeded through at least one level of judicial review.

As indicated earlier, the complex American court systems operate at both the federal and state levels. The most common arrangement of these systems is a three-tiered organization with trial courts, intermediate appellate courts, and courts of last resort, most commonly named supreme courts. Trial courts have general jurisdiction, so that there are few limits on the types of cases that they may hear. Trial courts hear the facts behind the dispute and apply the law to the circumstances. Trial courts are generally presided over by a single judge or justice. Intermediate courts, generally known as appellate courts or courts of appeal, review cases when a party is dissatisfied with the decision of the lower court. Appellate courts are not triers of fact but, rather, review lower courts' application of the law. In rare cases an appellate court may reject a lower court's interpretation of the facts of a case if it is convinced that the lower court's interpretation was clearly erroneous. Appellate courts usually consist of a panel of judges. For example, at the federal level appeals are heard by a panel of three judges. Finally, issues may be appealed to a court of last resort. At the federal level this is the Supreme Court. The Supreme Court has discretion to review rulings of lower federal courts and state high courts that involve federal constitutional, statutory, or regulatory issues.

Insofar as education is a state function and federal courts exist for federal matters, most disputes involving education are resolved by state courts. Unless there is a substantial federal question, such as a disagreement over a provision in the U.S. Constitution, a federal statute, or a federal regulation, cases must be tried in state courts. If a substantial federal question is involved with a state question, a dispute may be litigated either in a state or federal court. When federal courts examine cases involving both state and federal law, they must follow interpretations of state law made by the state courts within which they sit. Special education disputes provide a good example of cases that frequently have mixed questions of federal and state law. To the extent that special education is governed by state laws as well as federal laws, claims are often brought on the basis of

both sets of statutes. Final due process hearing decisions may be appealed to either the federal or state courts, but the vast majority of published opinions come from the federal courts.

Legal Resources and References

Federal statutes appear in the United States Code (U.S.C.), the official version, or the United State Code Annotated (U.S.C.A.), published by West Publishing Company. Agency regulations are published in the Code of Federal Regulations (C.F.R.). Copies of education statutes and regulations can be downloaded via links on the U.S. Department of Education's Web site. Legal materials are also available online from a variety of sources, most notably WestLaw and LexisNexis. State laws and regulations are commonly available online from the Web sites of their states. Appendix D provides a list of Web sites on which legal materials can be found.

The written opinions of most courts are generally available in a variety of published formats.

The written opinions of most courts are generally available in a variety of published formats. The official versions of U.S. Supreme Court opinions are found in the *United States Reports*, abbreviated U.S. The same opinions, with additional research aids, are published in the *Supreme Court Reporter* (S. Ct.) and the *Lawyer's Edition*, now in its second series (L. Ed.2d). Opinions issued by the federal circuit courts of appeal are located in the *Federal Reporter*, currently in its third series (F.3d), while federal district court decisions are published in the *Federal Supplement*, presently in its second series (F. Supp.2d). State court cases are published in a variety of publications, most notably West's *National Reporter* system, which divides the country up into seven regions: Atlantic, North Eastern, North Western, Pacific, South Eastern, South Western, and Southern. Most education-related cases are also republished in *West's Education Law Reporter*.

Before being published in hardbound volumes, most decisions are released in what are known as slip opinions, a variety of loose-leaf services, and electronic sources. There are also many commercial services available that publish decisions in a specialized area. For example, special education court decisions, as well as due process hearing decisions, are reproduced in a loose-leaf format in the *Individuals With Disabilities Education Law Reporter* (IDELR) published by LRP Publications.

UNDERSTANDING LEGAL CITATIONS

As complicated as they may seem to readers who are unfamiliar with them, since legal citations are fairly easy to read once one understands the

format, this brief description of how they work should help put the minds of some readers at ease. Most citations begin with a number followed by an abbreviation and another number. The first number indicates the volume in which the case, statute, or regulation is located, and it is followed by the abbreviation of the book or series in which the material may be found. The second number indicates the page on which a case begins or the section number of a statute or regulation. For references to judicial opinions, the last part of a citation provides the name of the court, for lower court cases, and the year in which the dispute was resolved. For example, the citation for *Farrin v. Maine School Administrative District No. 59*, 165 F. Supp.2d 37 (D. Me. 2001) can be located in volume 165 of the *Federal Supplement* second series beginning on page 37. The case was decided by the District Court for the District of Maine in 2001. Similarly, the citation for the Individuals with Disabilities Education Act, 20 U.S.C. § 1400–1482 (2006) can be found in Volume 20 of the United States Code beginning with Section 1400 and continuing through Section 1482. The latest official version of the United States Code was published in 2006. Statutes are always cited to the most recent publication of the code, not the year the particular statute was passed.

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SUMMARY

As an entity subject to laws and regulations, our public educational institutions must work within the American legal system. Although education is generally considered to be a function of the states, during the past several decades the federal government has passed a number of laws that have a direct impact on the day-to-day operation of our public schools. In addition, many other laws, such as civil rights laws, which were passed for the general welfare, have implications for schools. Thus, school administrators need to be familiar with a myriad of legal requirements.

The American legal system is one of constitutions, statutes, regulations, and court decisions. Collectively, all of these make up the law under which school systems operate. Although it may appear to be complex, educators can find a plethora of legal resources at their fingertips once they understand how to access and use legal references.

This chapter has provided a basic primer on the American legal system for readers who do not have an extensive background in this area. Those who are interested in more comprehensive information on legal research may wish to consult *Research Methods for Studying Legal Issues in Education*, edited by Steve Permuth and Ralph Mawdsley and published by the

Education Law Association. *User's Guide to The Bluebook* (2006) by Alan L. Dworsky is an excellent quick resource for legal citations. The law is constantly evolving. Thus, educators who are in positions that require knowledge of the law must keep constantly updated.

RECOMMENDATIONS FOR PRACTITIONERS

- Attend local, state, and national conferences and workshops on legal issues to keep abreast of new developments. Share handouts with all staff.
- Subscribe to one of many monthly newsletters that provide updates on education law. LRP Publications is one publisher of such newsletters. Prepare summaries of new developments and provide them to all staff.
- Subscribe to an education newspaper such as *Education Week*.
- Read law review articles such as those found in *West's Education Law Reporter* and the *Journal of Law and Education*.
- Join professional organizations that regularly provide updated legal information. The Education Law Association is the premier source of information on education law. The Council for Exceptional Children, one of the leading professional organizations in special education, provides updates on new legislation and court decisions in the field.
- Purchase new editions of texts on education law topics. Make these available to all staff in a professional library.
- Enroll in or audit courses on school law at local colleges and universities.
- Invite the school board's legal counsel or experts on school law to present professional development workshops in your school system for all staff.

WHAT'S NEXT

The second chapter provides information about the legal requirements regarding discipline in general. It includes an overview of the due process safeguards school administrators must provide to all students prior to implementing any serious disciplinary consequences. The chapter also reviews basic student rights. Subsequent chapters focus specifically on disciplining students with disabilities and the additional procedures that educators must implement in this regard.

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