SCHOOL LAW REVIEW

CALIFORNIA STATE UNIVERSITY, NORTHRIDGE
MICHAEL D. EISNER COLLEGE OF EDUCATION
EDUCATIONAL LEADERSHIP & POLICY STUDIES
SOURCES OF LAW

- Federal Sources of Law
  - Constitution of the United States
  - Statutes
  - Regulations
  - Case Law

- State Sources of Law (California)
  - California State Constitution
  - Statutes
  - Regulations
  - Case Law
General Welfare Clause: found in both the body and the preamble of the U.S. Constitution.

First Amendment: includes rights of religion and freedom of speech. The Religion Clause is comprised of two parts: the Establishment Clause and Free Exercise Clause.

Fourth Amendment: protects against unreasonable search and seizure.

Fifth Amendment: guarantees due process rights.

Tenth Amendment: covers any powers not granted to the federal government by the Constitution and reserves those rights to the states or to the people.

Fourteenth Amendment: protects against the government taking of life, liberty or property without due process of law, and provides persons within the jurisdiction the equal protection of the law.
Equal Access Act of 1984– PL 98–377: Denial of Equal Access Prohibited. It is unlawful for a public secondary school that receives federal funds and has created a limited open forum to deny recognition of student-initiated groups on the basis of religious, political, or philosophical content at on-campus meetings.

- A limited open forum (or limited public forum) is created when a non-curriculum related student-initiated group is allowed to meet on campus during non-instructional time.

- Examples of curriculum related groups: Math Club or Student Government Club. Non-curriculum based student groups: Ski Club or Skinhead Club.
FEDERAL STATUTES

- Title VII of the Civil Rights Act of 1964:
  - It is unlawful to discriminate in employment against any individual with respect to race, color, religion, sex, or national origin

- Title IX of the Education Amendments:
  - School districts that are recipients of federal financial assistance may not discriminate against students in respect to gender
The California State Constitution provides students with a free public education.

The California State Constitution established the position of Superintendent of Public Instruction and a State Board of Education.

The California Legislature has plenary (full) power to establish the public school system, and to establish standards and curriculum in public schools.

The California Education Code is the statute that governs public education in California.

Certificated employees who are evaluated are entitled to receive a written copy of the evaluation at least 30 days prior to the last day of school scheduled on the calendar.
The RODDA Act of 1975: authorizes teacher collective bargaining in California.
- PERB: Public Employees’ Relations Board
- Injunction and Impasse

The Brown Act: regulates open meetings at the local level

California school employees are covered by Workers’ Compensation.

School property is considered to be state property in California.

California Administrative Code, Title V: Regulations governing public education in California
In California:

- Local boards have the authority to award and reject bids for contractual services.
- Boards are responsible for establishing duties of all district personnel and for hiring and firing employees.
- Board members have authority to take action only when convened at official meetings.
- Discretionary Board of Education authority refers to matters not covered by federal and state statutes, regulations, and laws.
SCHOOLS AND THE STATE

Federal Case Law:

- Pierce v. Society of Sisters: affirmed the doctrine of private school compulsory attendance requirements.
- Abington Township v. Schempp: the Bible may be used in schools as literature.
- Plyler v. Doe: funding for children who are not in the country legally cannot be withheld from public, local schools.
- Lee v. Weisman: prayers mandated or organized by school officials at graduation exercises are unconstitutional.
SCHOOLS AND THE STATE

Lemon v. Kurtzman: Lemon test: a three-part Establishment Clause test. A governmental practice must (1) reflect a clearly secular purpose; (2) have a primary effect that neither advances nor inhibits religion; and (3) avoid excessive entanglement with religion.

California case law on school fees:

- Hartzell v. Connell: the imposition of fees for educational activities offered by public high schools violates free school guarantee of the California Constitution.
STUDENTS AND THE LAW

First Amendment Freedom of Speech:

- **Tinker v. Des Moines**: students’ rights to freedom of speech and freedom of expression
- **Bethel School District v. Fraser**: upheld public schools’ authority to punish students and to prohibit students’ use of vulgar, obscene, lewd and offensive speech in public discourse.
- **Hazelwood School District v. Kuhlmeier**: upheld authority of school officials to censor school newspaper written by students as a curricular activity.
- **Jeglin v. San Jacinto**: California Dress Code that prohibits student from wearing gang related clothing in public high schools.
Fourteenth Amendment Due Process:

- Goss v. Lopez – upheld students’ rights to due process prior to exclusion from school in cases of suspension and expulsion in public schools.

Fourth Amendment Search and Seizure

- New Jersey v. T.L.O. – justifies student searches based on reasonable suspicion.

California Education Code

- Corporal Punishment; Classroom dismissal; Detention
TEACHERS AND THE LAW

First Amendment Freedom of Speech:

- Pickering v. Board of Education: established that public school teachers have the First Amendment right of freedom of expression.
- Mt. Healthy District v. Doyle: upheld a nontenured teacher’s freedom of expression.

California Education Code:

- California Education Code cites reasons for teacher dismissal.
  - Teachers with tenure can be dismissed for cause.
- School principals earn tenure as teachers.
TEACHERS AND THE LAW

- Probationary teachers are entitled to written notice of intent not to re-employ.
- Permanent teachers who are dismissed due to declining enrollment have 39 month re-employment rights.
- Probationary teachers employed by a district for two consecutive years become permanent when re-elected for a third year of employment.

California Penal Code
- Statutes for reporting suspected child abuse are cited in the California Penal Code.
**SCHOOL DESEGREGATION**

- Plessy v. Ferguson: established doctrine of “separate but equal.”
- Brown decision formed basis for inclusion in Special Education.

- De facto – must be accepted, but does not have sanction of laws. In fact.
- De jure – legitimate state of affairs that has force of law behind it. By right.
Individuals with Disabilities Education Improvement Act (IDEIA) of 2004: provides legal rights and procedural protection for children with disabilities.
- Free Appropriate Public Education (FAPE)
- Individualized Education Program (IEP)
- Least Restrictive Environment (LRE)

Americans with Disabilities Act (ADA): extends antidiscrimination protections in employment, public accommodations, transportation, and telecommunications.
Section 504 of the Rehabilitation Act of 1973: prohibits discrimination against students with disabilities in programs receiving federal funds. Students must not be expelled, suspended, or punished for manifestations of their disability. Requires reasonable accommodations.

Case Law:
- Hudson v. Rowley: child performs better than average child in her class. Court rules that she is receiving adequate services to constitute FAPE.


Serrano v. Priest – California finance case. Established standard of fiscal neutrality. The quality of a child’s education could not be based on the wealth of a child’s local school district. Had to be based on the wealth of the state as a whole.
SCHOOL DISTRICT LIABILITY

- Tort: a private or civil wrong.
  - Intentional torts: assault, battery, defamation
  - Negligence:
    - duty of care (standard of care; reasonable and prudent person);
    - breach of duty;
    - actual loss or injury:
    - proximate cause: the relation or nexus between defendant’s action and resulting injury.

- Teachers have liability protection within scope of duties performed.

- Court decides relative to adequate supervision.
  - Responsibility of supervision of students at off-campus activities same as on campus.
SCHOOL DISTRICT LIABILITY

- Parents are liable for tortious conduct of their children.

Defenses to Negligence:
- Assumption of risk: may be available as a defense when injured party knew of possible danger; either by agreement or actions voluntarily accepted the possibility of harm.

Case Law:
- Wood v. Strickland: addresses the issue of school board member immunity from liability (no absolute immunity).
- Peter v. San Francisco: educational malpractice case. Plaintiff’s position was not upheld. District issued diploma, yet student does not have basic academic skills.