EDUCATIONAL LEADERSHIP & POLICY STUDIES DEPARTMENT
ELPS 663 LEGAL ASPECTS OF EDUCATIONAL ADMINISTRATION

Comprehensive Exam:
SCHOOL LAW STUDY GUIDE

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Message to students and instructors

Intent of Study Guide

This study guide is meant to supplement, not supplant, the successful completion of ELPS 663 Legal Aspects of Educational Administration.

Other sources for exam preparation might include, but are not limited to, ELPS 663 textbooks, classroom notes and handouts, course assignments, and other resources.

Exam Format

The legal portion of the Comprehensive Exam is an objective examination comprised of one hundred (100) questions in a true/false and multiple choice format.
UNITED STATES CONSTITUTION
- Supremacy Clause (Article VI, Section 2)
- General Welfare Clause (Article 1, Section 8; Preamble to the U.S. Constitution)
- Obligation of Contracts Clause (Article 1, Section 10)
- First Amendment: provides 1) freedom of religion in the Establishment and Free Exercise clauses and 2) freedom of speech rights.
- Fourth Amendment: protects against unreasonable search and seizure.
- Fifth Amendment: guarantees due process rights.
- Eighth Amendment: addresses cruel and unusual punishment.
- Tenth Amendment: grants States’ rights, state controls matters not addressed in US Constitution.
- Fourteenth Amendment: provides equal protection for all citizens and due process.

FEDERAL STATUTES
- Statute – law written by the legislative branch of government
- EQUAL ACCESS: Equal Access Act of 1984 - PL 98-377, 20 U.S.C. 4071, - 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.
- FERPA: Family Educational Rights and Privacy Act of 1974, PL 93-380, 20 U.S.C. 1232G - student privacy rights regarding school records. Pupils’ cumulative records are not public records. Only those persons with a legitimate educational interest may have access to the records without parental permission. Parents and guardians have a right to challenge incorrect records. Non custodial parents may see records but have no right to challenge records.
- Every Student Succeeds Act (ESSA) of 2015 (formerly known as the No Child Left Behind Act of 2001): Elementary and Secondary Education Act, PL 107-110, 20 U.S.C. 6301 – purpose to ensure that all children have a fair, equal, and significant opportunity to obtain a high quality education and reach proficiency on state academic achievement standards.
- TITLE VII of the CIVIL RIGHTS ACT of 1964: PL 88-352, 42 U.S.C. 2000E - 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: PL 92-318, 20 U.S.C. 1681 - School districts that are recipients of federal financial assistance may not discriminate against students in respect to gender.
OTHER FEDERAL SOURCES OF LAW

• FEDERAL COURT SYSTEM / CASE LAW
  • Case Law – refers to principles of law established by courts; based on legal precedents.
  • The federal court system is comprised of three levels: district court (court of trial), court of appeals, and the highest court of the land, the U.S. Supreme Court.
  • California is in the 9th Circuit of the Federal Court System.
  • The Supreme Court grants a writ of certiorari when at least four justices have agreed to hear a case at the Supreme Court level. If a case is denied “cert” the decision of the lower court stands.

• ADMINISTRATIVE LAW
  • Code of Federal Regulations

CALIFORNIA CONSTITUTION

• California State Constitution provides students with the guarantee of a free public education.

CALIFORNIA LEGISLATURE / STATUES

• The legislature is endowed with plenary (full, entire) authority to create subordinate agencies essential to the effective supervision and management of public schools.
• The legislature may delegate this function to municipalities and counties instead of to separate school boards.
• The legislature maintains (within constitutional limits) the power to establish qualifications, number, composition, method of election, and removal of agencies designated to operate the school system.
• The legislature has the power to establish the state’s public school system.
• The legislature has authority to establish curriculum and what is taught in public schools.
• School employees are covered by Workers’ compensation.
• School property is considered to be state property.
• The California Education Code is a collection of state statutes that regulates the organization and administration of the California public school system.
• PERB, Public Employees’ Relations Board established by the RODDA Act. PERB conducts hearings relative to unfair labor practices.
• In California, a court ordered injunction is the most common method of preventing a teacher strike.
• In California, any impasse in teacher collective bargaining negotiations requires mediation.
• School officials must report attacks or threats against school employees to police.
• Written opinions by the Attorney General are not binding.
OTHER STATE SOURCES OF LAW

• **CALIFORNIA JUDICIARY / CASE LAW**
  - Case Law – refers to principles of law established by courts; based on legal precedents.
  - The California state court system is comprised of: superior court (court of trial), court of appeals, and the highest court of appeals, the California Supreme Court.

• **CALIFORNIA ADMINISTRATIVE CODE – TITLE V**
  - Title V is the administrative code (rules and regulations) established by the California Department of Education to interpret and implement the California Education Code.

STATE GOVERNANCE

• California State Board of Education – established by the California Constitution. Educ. Code sections 33000-33080. The board must oversee the efficiency of the public school system.
• State Superintendent of Public Instruction – established by the California Constitution. Educ. Code sections 33100-33193 list the powers and duties of the position.
• County Boards of Education – established by the state legislature.
• County Superintendents of Schools
• Local Boards of Education
• School District Superintendents
• Principals

LOCAL BOARDS OF EDUCATION

• A Board of Education or other regulatory school agency provides the means by which the management and supervision of the public schools find expression. Legally it is an administrative body executing and administering the statutes promulgated by the legislature.
• The composition of the School Board generally is determined by statutory provisions. Within the restrictions imposed by the Constitution, it is for the legislature to prescribe the qualifications a candidate must possess in order to qualify as a board member. Education Code Sections 33000-33080.

• **SCHOOL BOARD MEETINGS**
  - The Brown Act, Gov. Code section 54950, et. Seq., is the California statute that governs open meetings for local legislative bodies, including school board meetings.
  - All school board meetings must be conducted in conformity with the Brown Act provisions. Failure to promulgate time, place, and notice of meetings could invalidate board transactions.
  - Governing boards have the authority to conduct school business only at legally constituted meetings. All negotiations transacted under the jurisdiction of the school district must be accomplished by board members acting as a
corporate body. School districts MAY be held liable for the informal individual acts of its board members.

- Notice of meetings: items relating to general meetings, special meetings, notice thereof, place, quorum, and purpose are regulated by the legislature.
- Compliance with the Brown Act requires that the Board of Education may convene to closed or executive session to discuss litigation, negotiations, or personnel matters.

**BOARD POWERS AND DUTIES**
- Official actions and minutes: every official act taken by the governing board of every SD shall be affirmed by a formal vote of the members of the board and the board shall keep minutes of its meetings and maintain a journal of its proceedings. The minutes and the journal shall be open to inspection by any citizen during business hours. The governing board shall act by majority vote.
- The board has the authority to secure copyrights.
- Boards are responsible for establishing duties of all district personnel and for hiring and firing employees.
- The governing board of any SD shall adopt and print and make available to each certificated employee, the district rules and regulations providing for the evaluation of the performance of certificated employees in their assigned duties (Stull bill/negotiated).
- Discretionary Board of Education authority refers to matters not covered by federal and state statutes, regulations, and laws. In exercising this discretion, board members must act in good faith and with diligence.

**LEGAL AUTHORITY TO CONTRACT**
- Local boards have the authority to award and reject bids for contractual services.
- Legal authority to contract is governed by statute. The right to contract is a discretionary board power and may not be delegated.
- A SD may not make any contract unconnected with the educational purpose for which it is created.
- Contracts which were valid when negotiated are binding on members replacing the personnel responsible for the transaction.
- In California, the governing board of any SD may award contracts to the “lowest responsible bidder” - the lowest bid submitted whose offer is best qualified in quality, fitness, and ability to perform the particular requirements of the proposed work. A bidder may be found to be not a responsible bidder when previous performance for the same SD was determined unsatisfactory.

**SCHOOLS AND THE STATE**
- Compulsory attendance in California: Education Code section 48200 – all children between the ages of 6 and 18 must attend a public full time day school unless otherwise exempted. Education Code section 48010 – a child must be six years old on or before September 1st to be eligible for first grade. Compulsory attendance exemptions:
• Private tutoring exemption – Educ. Code section 48224 – teacher must hold valid California teaching credential in the grades taught, 3 hours a day, 175 days a year.
• Private school exemption – Educ. Code section 48222 – children enrolled in a full time private school
• *Pierce v. Society of Sisters*, 268 U.S. 510, – affirmed the doctrine of private school compulsory attendance requirements.
• *Plyler v. Doe*, 457 U.S. 202 - funding for children who are not in the country legally cannot be withheld from local public schools
• *Engle v. Vitale*, 370 U.S. 421 - recitation of a state written and sponsored prayer
• *Lee v. Weisman*, 505 U.S. 577 – prayers mandated or organized by school officials at graduation exercises are unconstitutional.
• *Lemon v. Kurtzman*, 403 U.S. 602 - 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.
• *Edwards v. Aguillard*, 482 U.S. 578 – teaching of evolution versus creationism
• *Good News Club v. Milford Central School*, 533 U.S. 98 – relying on the viewpoint discrimination test, the court allowed a religious club that engaged in religious activities to meet after school.
• *Hartzell v. Connell*, 35 Cal. 3d 899  – the imposition of fees for educational activities offered by public high schools violates free school guarantee of the California Constitution.
• *Berg v. Glen Cove*, 853 F.Supp. 651 – immunization upon entry to school

**STUDENTS AND THE LAW**
• *Tinker v. Des Moines*, 393 U.S. 503 – Students’ rights to freedom of speech and freedom of expression
• *Bethel School District v. Fraser*, 478 U.S. 675 – upheld public schools’ authority to punish students and to prohibit students’ use of vulgar, obscene, lewd, and offensive speech in public discourse.
• *Sherman v. Community School District*, 980 F.2d 437 – Pledge of Allegiance
• California patriotic exercises – Education Code section 52720
• *Goss v. Lopez*, 419 U.S. 565 – upheld students’ rights to due process prior to exclusion from school in cases of suspension and expulsion in
public schools. Due process rights require written notification of charges, right to a fair hearing, and appeal rights.

- California suspension and expulsion procedures, Education Code sections 48900-48900.7, 48910, 48911, 48915, 48918.
- California Education Code 44807.5: a pupil cannot be given detention during recess or lunch unless the local governing board allows teachers to restrict a certain amount of time for disciplinary purposes.
- After school detention is limited to one hour after the close of the school day and a pupil cannot be detained if that causes the pupil to miss bus transportation [California Administrative Code Title V §§ 307, 353]
- Teachers can dismiss students from classroom for two consecutive days.
- **Ingraham v. Wright**, 430 U.S. 651 – corporal punishment
- California corporal punishment – violation of California Education Code section 49000.
- **Palmer v. Merluzzi**, 868 F.2d 90 – due process for extracurricular activities
- **Beeson v. Kiowa County**, 567 P.2d 801 – married students rights

**TEACHERS AND THE LAW**

- Teacher classification – certificated employees include credentialed persons such as teachers, counselors, school psychologists, and administrators. Classified employees provide support, such as janitorial services, cafeteria, etc.
- California - Teacher evaluation under the Stull Act - Educ. Code sections 44660-44664
- 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.
- Progressive discipline – oral warning, a written warning delivered to the employee, a letter of reprimand to be placed in the employee’s file, an unsatisfactory evaluation, suspension with pay, and dismissal.
- California – teachers are classified as probationary for the first two years of service with a school district.
- The school district must notify a probationary employee on or before March 15 of the employee’s second consecutive school year of employment of the decision not to reelect him or her for the next school year; otherwise the employee is automatically reelected.
- Probationary teachers are entitled to written notice of intent not to re-employ.
• **Board of Regents v. Roth**, 408 U.S. 564 – no reason for nonrenewal required for non tenured teacher
• Tenure status is a statutory right to continued employment.
• **Pickering v. Board of Education**, 391 U.S. 563 - established that public school teachers have the First Amendment right of freedom of expression.
• Teachers with tenure can be dismissed for cause.
• California Education Code sections 44943 and 44944 cite the grounds for teacher dismissal.
• California Education Code sections 44955 -44957 cite the dismissal procedures for permanent teachers.
• School principals earn tenure as teachers.
• Permanent teachers who are dismissed due to declining enrollment have 39-month reemployment rights.
• Probationary teachers employed by a district for two consecutive years become permanent when re-elected for a third year of employment.
• A permanent classified employee may not be dismissed without notice and a hearing. A classified employee must receive written notice of a layoff thirty days in advance of the layoff.
• **Mt. Healthy District v. Doyle**, 429 U.S. 274 - upheld a nontenured teacher’s freedom of expression.
• **Fowler v. Board of Education**, 819 F.2d 657 – academic freedom or abdication of teaching duty/
• **Wilson v. Chancellor**, 418 F.Supp.1358 – academic freedom to bring in political speakers
• **East Hartford v. East Hartford**, 562 F.2d 838– 1st Amendment rights of teacher who didn’t want to wear a tie were not violated.
• **Fuhr v. City of Hazel Park**, 364 F.3d 753 – teacher not chosen to coach boys team because of her gender – discrimination
• **Eckmann v. Board of Education**, 636 F.Supp.1214 – pregnant teacher was dismissed because she decided not to get married – discrimination
• **Lehnert v. Ferris Faculty**, 500 U.S. 507 – teacher bargaining – agency shop structure upheld, but dues of non members can not be used for political lobbying.

**SCHOOL DESEGREGATION**

• **Plessy v. Ferguson**, 163 U.S. 537 - established doctrine of “separate but equal.”
• De jure – legitimate state of affairs that has force of law behind it. By right.
• **Brown v. Board of Education of Topeka** (Brown II), 349 U.S. 294 – desegregation must end with all deliberate haste
• Brown decision formed basis for inclusion in Special Education.
• **Sheff v. O’Neill**, 733 A.2d 925 – interdistrict integration, choice plans
• De facto – must be accepted, but does not have sanction of laws. In fact.
SPECIAL EDUCATION / INDIVIDUALS WITH DISABILITIES

- Child Find/Zero Reject – the LEA must locate all children with disabilities located within the district, including children in public schools, private schools, and homeless children. The LEA may not exclude children because of the severity of the disability.
- Non-discriminatory assessment – the assessment must be multi-disciplinary and cannot discriminate. Children must be assessed in all areas of suspected disability.
- Free Appropriate Public Education – (FAPE)
- Individualized Education Program – (IEP)
- Least Restrictive Environment (LRE) – to the maximum extent appropriate, children with disabilities should be educated with children who do not have disabilities. The IEP may require other arrangements in order to provide a FAPE.
- Due Process – the LEA must notify parents of their procedural rights and safeguards.
- Students must not be expelled, suspended, or punished for manifestations of their disability. FAPE must be provided when a removal is necessary.
- Hudson v. Rowley, 458 U.S. 176 – child performs better than average child in her class. Court rule that she is receiving adequate services.
- Grube v. Bethlehem, 550 F.Supp.418 – student with one kidney is otherwise qualified to play football and cannot be discriminated against because of his disability.
- The Americans with Disabilities Act (ADA), 42 U.S.C. §12132, extends antidiscrimination protections in employment, public accommodations, transportation, and telecommunications.

SCHOOL FINANCE

- Serrano v. Priest, 487 P.2d 1241 – California finance case. Education is a fundamental right. 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. Must be based on the wealth of the state as a whole.
- Rose v. Council, 790 S.W.2d 186 – Kentucky finance case. Violation of Kentucky constitution.
• Zelman v. Simmons-Harris, 536 U.S. 639 – US Supreme Court determined Cleveland voucher program met the criteria of the Lemon test and did not violate the Establishment Clause of the 1st Amendment.
• Williams v. State of California settlement – parents must be notified annually of right to hearing regarding lack of materials, state of campus, status of teaching credentials. Not necessary to provide more than one copy of textbooks to each student. No duty for districts to provide textbooks to nonpublic or private schools.

SCHOOL DISTRICT LIABILITY
• Tort – a private or civil wrong.
• Intentional torts – assault, battery, defamation
• Negligence – duty of care, breach of duty, actual loss or injury, proximate cause
• Standard of care - action by reasonable and prudent person
• Proximate cause – the relation or nexus between defendant’s action and resulting injury.
• Teachers have liability protection within scope of duties performed.
• Court decides liability relative to adequate supervision.
• 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.
  • Comparative negligence – the injury was partly the fault of several persons
  • Contributory negligence – the injured party contributed to his/her injury
• Responsibility for supervision of students at off-campus activities same as on campus.
• Wood v. Strickland, 420 U.S. 308 - addresses the issue of school board member immunity from liability.
• Carey v. Piphus, 435 U.S. 247 – court will not award large punitive damages where little or no actual harm occurred. Only nominal damages will apply.
• Parents are liable for tortious conduct of their children.
• Peter W. v. San Francisco, 131 Cal.Rptr.854 - educational malpractice case. Plaintiff’s position was not upheld. District issued diploma, yet student does not have basic academic skills.
• Gebser v. Lago Vista, 524 U.S. 274 – teacher to student harassment – school district not liable when they had no knowledge of the harassment.
• Davis v. Monroe County, 526 U.S. 629 – student to student harassment – school district was liable when they had actual knowledge of the harassment, the harassment was ongoing and caused harm, and the district acted with deliberate indifference.
• Requirements for reporting suspected child abuse are cited in the California Penal Code. Written reports must be submitted within 36 hours.
COPYRIGHT LAW

- The Copyright Act of 1976 established guidelines for the use of copyrighted material in a reasonable manner without the owner’s consent.
- Fair Use Guidelines: single copies may be made by or for a teacher for scholarly research or use to teach a class; multiple copies are restricted by brevity – not more than 10% of the work, spontaneity – not enough time to request permission to use the material, and cumulative effect – copied for one course and limited to one class term.
- Public domain – public ownership of writings, documents, or publications that are not protected by copyright or in which the copyright has expired.