

The Pearson Educational Leadership Series

SCHOOL LAW AND THE PUBLIC SCHOOLS

A Practical Guide for Educational Leaders

SIXTH EDITION



Nathan L. Essex

Sixth Edition

SCHOOL LAW AND THE PUBLIC SCHOOLS

A PRACTICAL GUIDE FOR EDUCATIONAL LEADERS

Nathan L. Essex

University of Memphis

PEARSON

Boston Columbus Indianapolis New York San Francisco Hoboken
Amsterdam Cape Town Dubai London Madrid Milan Munich Paris Montreal Toronto
Delhi Mexico City São Paulo Sydney Hong Kong Seoul Singapore Taipei Tokyo

Vice President and Editorial Director: Jeffery W. Johnston

Senior Acquisitions Editor: Julie Peters

Program Manager: Megan Moffo

Project Manager: Mary Beth Finch

Editorial Assistant: Andrea Hall

Executive Product Marketing Manager: Christopher Barry

Executive Field Marketing Manager: Krista Clark

Procurement Specialist: Deidra Skahill

Senior Art Director: Diane Lorenzo

Cover Designer: Carie Keller, Cenveo

Cover Art: Shutterstock/Jerry Sliwowski

Media Project Manager: Allison Longley

Full-Service Project Management: Kailash Jadli/Aptara®, Inc.

Composition: Aptara®, Inc.

Printer/Binder: Edwards Brothers

Cover Printer: Edwards Brothers

Text Font: Times 10/12

Credits and acknowledgments borrowed from other sources and reproduced, with permission, in this textbook appear on appropriate page within text.

Every effort has been made to provide accurate and current Internet information in this book. However, the Internet and information posted on it are constantly changing, so it is inevitable that some of the Internet addresses listed in this textbook will change.

Copyright © 2016, 2012, 2008, 2005, 1999 by Pearson Education, Inc. All rights reserved. Manufactured in the United States of America. This publication is protected by Copyright, and permission should be obtained from the publisher prior to any prohibited reproduction, storage in a retrieval system, or transmission in any form or by any means, electronic, mechanical, photocopying, recording, or likewise. To obtain permission(s) to use material from this work, please submit a written request to Pearson Education, Inc., Permissions Department, One Lake Street, Upper Saddle River, NJ, 07458, or you may fax your request to 201-236-3290.

Library of Congress Cataloging-in-Publication Data

Essex, Nathan L., author.

School law and the public schools : a practical guide for educational leaders / Nathan L. Essex, University of Memphis.—Sixth edition.

pages cm

ISBN 978-0-13-390542-7—ISBN 0-13-390542-X 1. Educational law and legislation—United States. 2. School management and organization—Law and legislation—United States. 3. Student records—Access control—United States. I. Title.

KF4119.E84 2016

344.73'071—dc23

2014024890

10 9 8 7 6 5 4 3 2 1

PEARSON

ISBN 10: 0-13-390542-X

ISBN 13: 978-0-13-390542-7

ABOUT THE AUTHOR

Nathan L. Essex is professor of Educational Law and Leadership at the University of Memphis and President of Southwest Tennessee Community College. He received a B.S. degree in English at Alabama A&M University, an M.S. degree in Educational Administration at Jacksonville State University, and a Ph.D. degree in Administration and Planning at The University of Alabama.

Essex's interests include law, educational policy, and personnel administration. He has served as consultant for more than a hundred school districts and numerous educational agencies. He served as a policy consultant with the Alabama State Department of Education for twelve years and received numerous awards in recognition of his contributions in the field of education. He is the recipient of the Truman M. Pierce Award for Educational Leadership and outstanding contributions that advanced the direction of education in the state of Alabama; the Academic Excellence Award, in recognition of professional achievement and academic excellence in the research, service, and teaching of education; Capstone College of Education Society, Academic Excellence Award, The University of Alabama; the Distinguished Service Award—*Who's Who in the State of Tennessee*; The University of Memphis Distinguished Administrator of the Year 1995–96; "Educator on the Move," The University of Memphis; Phi Delta Kappa, the President's Award for Leadership and Service to the Community, Youth Services, Inc.; *Who's Who in Corporate Memphis*, *Grace Magazine*; President Bush's Community Service Award; Alpha Beta Gamma, President of the Year 2004; and Community Hero, Memphis Grizzlies; just to name a few. Essex has published numerous articles, book chapters, and newsletters on legal issues. Many of his works appear in *The Administrator's Notebook*, *The Horizon*, *Compensation Review*, *The Clearinghouse*, *The American School Board Journal*, *American Management Association*, *Community College Review*, *Education and Law*, and many other professional journals. He is highly sought by educators at all levels to share his knowledge and expertise regarding legal issues that impact public schools.

This page intentionally left blank

*Dedicated to my wife Lorene, and my children, Kimberly, Jarvis, and Nathalie.
They have been and continue to be my inspiration and my greatest fans.*

This page intentionally left blank

CONTENTS

Preface *xix*

Chapter 1 LEGAL FRAMEWORK AFFECTING PUBLIC SCHOOLS 1

Sources of Law 1

Bill of Rights and the Fourteenth Amendment 1

The Federal Constitution 2

Key Amendments 2

State Constitutions 2

Statutes 3

Court or Case Law 3

Researching Case Law 3

LOCATING A CASE BY CITATION 4

FINDING A CASE BY CASE NAME 4

LOCATING A CASE BY TOPIC 4

State Agencies 4

STATE BOARDS OF EDUCATION 4

Local School Boards 5

SCHOOL BOARD POLICIES 7

The U.S. System of Courts 7

Federal Courts 7

State Courts 9

COURTS OF GENERAL JURISDICTION 9

COURTS OF SPECIAL JURISDICTION 9

INTERMEDIATE APPELLATE COURTS 9

APPELLATE COURTS 9

THE TRIAL PROCESS 9

Analysis of an Appellate Court Opinion 11

Case (Citation) 11

Procedure 12

Facts 12

Ruling and Justification 12

Disposition 12

The U.S. Supreme Court 12

U.S. Supreme Court Ritual 13

U.S. Supreme Court Decisions 14

Legal Information Retrieval Systems 14

Resources 15 • Case Study 15 • Endnotes 15

Chapter 2 RELIGION AND THE PUBLIC SCHOOLS 16

School-Sponsored Prayer 18

School-Sponsored Bible Reading 19

Silent Prayer and Meditation	20
Prayer at School Events	20
Student-Led Prayer at Public School Events	20
Prayer at Athletic Contests	21
Voluntary Prayer at Commencement Exercises	23
Landmark Rulings	23
Impact of Ruling	24
Prayer at School Board Meetings	25
Prayer at Legislative Meetings	26
Aid to Parochial Schools	27
Religious Symbols	28
Religious Displays	29
Ten Commandments	29
Posting Religious Mottos and Expressions	30
Religious Banners at Football Games	30
Use of School Facilities by Religious Student Groups	31
Legal Precedents	31
Use of School Facilities by Outside Religious Groups	33
Relevant Cases	34
Use of School Facilities by Community Groups	35
Right to Deny Access	35
Religious Activities and Holiday Programs	36
Merry Christmas Bill	37
Released Time for Religious Instruction	37
Teaching the Bible in Public Schools	38
Intelligent Design and School Curriculum	39
Theory of Evolution	40
Teaching the Theory of Evolution	40
Distribution of Religious Materials	42
Pledge of Allegiance	43
LANDMARK CASE	43
Religious Freedoms Involving Teachers	45
Religious Rights of Teachers in the School Environment	46
Use of Religious Garb by Teachers	46
<i>Case Studies</i>	48
<i>Endnotes</i>	51

Chapter 3 STUDENT RIGHTS AND RESTRICTIONS 53

Freedom of Expression	54
Protests and Demonstrations	57
School-Sponsored Newspapers	58

Nonschool-Sponsored Newspapers	60
Censorship	61
Dress and Appearance	62
Health and Safety Issues	63
Controversial Slogans	64
Search and Seizure	65
Reasonable Suspicion	65
Search and Social Media	67
Student Desks	68
Student Lockers	68
Book Bags	68
Automobiles	69
Strip Searches	69
Involvement of Law Enforcement Officials	70
Drug and Alcohol Testing	71
Drug Testing	72
Alcohol and Breathalyzer Testing	73
Use of Canines	74
Use of Cell Phones and Electronic Devices	76
U.S. Supreme Court and Cell Phones	78
Mobile Devices in the Classroom	79
Due Process	80
Procedural Due Process	80
Due Process of Law	80
Substantive Due Process	81
Vagueness Doctrine and Presumption Standard	81
Corporal Punishment	83
Reasonable Punishment	85
Minimal Due Process	86
Excessive Punishment	86
School Suspension	88
Expulsion	89
Student Discipline for Off-Campus Behavior	91
Classroom Harassment	93
The Supreme Court's Decision	93
A Dissenting Opinion	93
Danger Signals	94
Child Abuse	95
Pregnant Students	96
Married Students	96
Case Studies	97
Endnotes	99

Chapter 4 NATIONAL SECURITY AND SCHOOL SAFETY 101

Homeland Security 101

USA PATRIOT Act 101

No Child Left Behind and School Safety 102

Procedures for Evaluating and Responding to Threats 105

Preparing for National Emergencies 106

Handling Violence in Schools 106

Hazing 106

Bullying 107

Cyberbullying 111

MEGAN MEIER CYBERBULLYING PREVENTION ACT 111

Jeffrey Johnston Stand Up for All Students Act 112

School Violence and Negligence 112

Emerging Legal Issues 112

Freedom of Expression: Prohibitions and School Violence 114

Gangs 115

LEGAL CHALLENGES RELATED TO SCHOOL GANGS 115

GANG CHARACTERISTICS AND MEMBERSHIP 115

GANG DRESS 115

DUTY OF CARE AND GANG VIOLENCE 117

School Uniform Dress Policies, School Safety, and Students' Freedom of Expression Rights 118

EARLY LEGAL CHALLENGES 118

Zero Tolerance and School Safety 119

Zero Tolerance 119

Zero Tolerance and Due Process 119

Recent Zero Tolerance Practices 120

Metal Detectors 121

Case Studies 122 • Endnotes 124

Chapter 5 INDIVIDUALS WITH DISABILITIES 125

Individuals with Disabilities Education Act of 1990 (IDEA) and the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA) 126

Mandatory Requirements 126

National Council on Disability 128

Functional Exclusion of Disabled Children 128

Interpretation and Identification of Children with Disabilities 129

Teacher Qualifications 129

Prereferral Intervention 129

English Language Learners and Special Education 129

Response to Intervention 130

Multi-tier System of Support—Response to Intervention 130

Alternative Assessment 132

Individualized Educational Program Requirement	132
Equal Access to Assistive Technology for Students with Disabilities	133
Personal Data Assistants for Disabled Students	134
Program Review and Changes	134

Education-Related Service Requirement 135

Least Restrictive Environment	135
Inclusion of Children with Disabilities	137
Length of School Year	138
Residential Placement	138
Private School Placement	139

Isolation and Restraint Laws for Students with Disabilities 140

Disciplining Students with Disabilities 142

Expulsion	142
Suspension	144

Individuals with Disabilities Education Act of 1997 145

Amendments Regarding Discipline	145
DISCIPLINE AND OPTIONAL SANCTIONS	145
PRE/POSTSANCTION IEP REVIEW, BEHAVIOR MODIFICATION PLAN, AND FUNCTIONAL ASSESSMENT	146
PREMANIFESTATION DETERMINATION ACTION	146
MANIFESTATION DETERMINATION REVIEW	146
APPEAL FROM DISCIPLINARY ACTION	147
PLACEMENT DURING APPEALS	147
PROPOSED NEW PLACEMENT (FOLLOWING IAES)	147
PREEMPTIVE STRIKE	147
REPORTING CRIMINAL BEHAVIOR AND REFERRING TO LAW ENFORCEMENT AND JUDICIAL AGENCIES	148
TRANSMITTING STUDENT INFORMATION	148
DISCIPLINE AND BEHAVIOR ARE NOW LINKED	148
Attention-Deficit/Hyperactivity Disorder and Federal Protection	148
Section 504 Rehabilitation Act of 1973	150
The ADA Amendments Act of 2008	150
<i>Case Studies</i>	153
<i>Endnotes</i>	154

Chapter 6 SCHOOL PERSONNEL AND SCHOOL DISTRICT LIABILITY 156

The School as a Safe Place 156

Liability of School Personnel 157

Individual Liability	157
Vicarious Liability	158
Foreseeability	158
Nuisance	159
INVITEES	159
LICENSEES	160
TRESPASSERS	160
Liability Involving Students and Bus Stops	160

School Liability and Use of Technology by Students	161
Parental Access to School Premises	161
Intentional Torts	162
Assault	162
Battery	162
ASSAULT AND BATTERY INVOLVING PHYSICAL FIGHTS	163
Defamation	163
LIBEL AND SLANDER	163
Defenses Against Defamation	164
Privilege	164
Good Faith	164
Truth	164
Mental Distress	165
False Imprisonment	166
Trespassing on Personal Property	166
Unintentional Torts	167
Standard of Care	167
Breach of Duty	169
Proximate Cause	169
Injury	170
Defenses for Negligence	170
Contributory Negligence	170
Assumption of Risk	171
Comparative Negligence	172
Immunity	173
IMMUNITY COSTS	174
Proper Instruction and Student Safety	174
Duties of Supervision	175
Before School	175
During School	176
After School	177
During Field Trips	178
PARENTAL CONSENT AND WRITTEN WAIVERS	179
FIELD TRIPS AND BUSES	179
Liability Involving Civil Rights Statutes	179
Filing Charges Under Section 1983 of the Civil Rights Act of 1871	180
Liability Insurance for Teachers and Administrators	180
Educational Malpractice	180
Professionalism in Education	181
Educational Malpractice Cases	181
Case Studies	184
Endnotes	186

Chapter 7 LIABILITY AND STUDENT RECORDS 188**Sanctions for Violating Family Privacy Rights 188****Rights of Parents 190****Family Educational Rights and Privacy Act 190**

Notice of Proposed Rulemaking 190

Student Records 191

Rights of Noncustodial Parents 192**Rights of Eligible Students 192****Rights of School Personnel 192**

Student Complaints and FERPA 194

Digitizing Student Records 194

Confidentiality Issues Involving School Counselors 194

Enforcement of State or Federal Statutes 195**Family Education Rights and Privacy Act (FERPA) 195**

Landmark U.S. Supreme Court Rulings 195

U.S. Court of Appeals for the Sixth Circuit Ruling 195

No Child Left Behind Act of 2002 196

Annual Notification Requirements 196

Transfer of School Disciplinary Records 196

Armed Forces Recruiter Access 196

Student Privacy and Physical Exams 197

Defamation Involving School Personnel 197

Slander 197

Libel 197

Privilege 198

Good Faith 198

Acts of Malice 199

*Case Studies 200 • Endnotes 202***Chapter 8 TEACHER FREEDOMS 203****Substantive and Procedural Considerations 203****Freedom of Expression 204**

Speech Outside the School Environment 204

Academic Freedom 207

Teacher Use of Facebook and Social Media 209**Freedom of Association 210**

Membership in Subversive Organizations 211

Political Rights 212

Right to Hold Office 213

Participation in Political Campaigns 213

Dress and Grooming 213**Right to Privacy 215**

Religious Discrimination in Public Schools 217

Family and Medical Leave Act (FMLA) 218

Case Studies 219 • Endnotes 222

Chapter 9 DISCRIMINATION IN EMPLOYMENT 223

**Equal Protection Provisions of the Fourteenth Amendment
and Employment Discrimination 223**

Presumption Test 223

Due Process Standards and Employment Discrimination 224

Title VII: Discrimination 224

Retaliation 226

Schools and Transgender Teachers 227

Unwed Pregnant Teachers 227

Sexual Discrimination 228

Title IX 229

**The Rehabilitation Act of 1973 and the Americans with
Disabilities Act of 1990 230**

Qualifications for Employment 231

Scope of Protection: Section 504 and the ADA 232

Gender Discrimination 233

Racial Discrimination 233

Religious Discrimination 236

Age Discrimination 237

Genetic Information Discrimination 238

Pregnancy and Public School Employment 239

Sexual Harassment 241

Case Studies 243 • Endnotes 245

Chapter 10 RECRUITMENT, TENURE, DISMISSAL, AND DUE PROCESS 247

Recruitment of Personnel 247

The Employment Interview 247

Vague Interviews 248

Retention of Personnel Data 248

Hiring Discrimination 249

Tenure 249

Acquisition of Tenure 250

Nonrenewal 252

School Leader (Principal) Evaluation 254

Tenure for Principals 254

Teacher Evaluation 255

Documentation of Teaching Performance 256

Dismissal for Cause 256

Incompetency 256

- Insubordination 259
- Neglect of Duty 260
- Just Cause 261
- Documenting Teacher Misconduct 261
- Immorality 262
- Homosexuality and Employment in Public Schools 262
- Conduct Involving Morality 266
- Criminal Activity 267
- Sexual Advances Toward Students 268
- Financial Exigency (Abolition of Positions) 270
- Just Cause 272

Fair Labor Standards Act 273

Collective Bargaining 274

- Private Sector Versus Public Sector Bargaining 274

Right to Work Statutes 275

Teacher Strikes 275

- State Involvement 276
- Scope of Collective Bargaining 276
- Impasse and Bargaining 277
- Legal Issues 277
- Teachers' Union National Strike Strategy 278
- Workers' Compensation 279
- Case Studies* 279 • *Endnotes* 282

Chapter 11 THE INSTRUCTIONAL PROGRAM AND SCHOOL ATTENDANCE 283

Control of Public Schools 283

Compulsory Attendance 284

- Compulsory Attendance Exceptions 285
- Truancy 285
- McKinney-Vento Homeless Assistance Act 286
- Enrollment and Transportation 286
- Home Schools 286
- Charter Schools 288
 - FUNDING 288
 - FACILITIES 289

School Vouchers 289

Health Requirements 290

Residence 291

Curriculum Standards 292

Common Core Standards 293

Special Interest Groups and Public School Curriculum 293

No Child Left Behind Act of 2001 294

- Increased Accountability 295
- More Choices for Parents and Students 295
- Greater Flexibility for States, School Districts, and Schools 295
- Summary and Implications 296
 - ACCOUNTABILITY 296
 - PARTICIPATION 296
 - ADEQUATE YEARLY PROGRESS 296
 - PUBLIC SCHOOL CHOICE 296
 - SUPPLEMENTAL SERVICES 296
 - UNSAFE SCHOOL CHOICE OPTION (USCO) 297
 - EXCEPTIONAL STUDENTS 297
 - SCHOOL IMPROVEMENT 297
 - LIMITED ENGLISH PROFICIENCY STUDENTS 297
 - ASSESSMENTS 297
 - STRONGER ACCOUNTABILITY FOR RESULTS 298
 - PROVEN EDUCATION METHODS 298
 - TEACHER QUALITY 298
 - QUALIFIED TEACHERS 298
 - PARAPROFESSIONALS 298
 - RESTRUCTURING (CORRECTIVE ACTION) 299
 - ALTERNATIVE GOVERNANCE 299
- No Child Left Behind Act of 2013 299

Intellectual Property and Fair Use 300

- Copying Computer Software 301

Use of the Internet for Instruction 303

- School Officials' Responsibility 303
- Children's Internet Protection Act 306
- School or District Responsibility 306
- Teacher's Responsibility 307
- Parent's Responsibility 307

Grading and Academic Requirements 307

- Student Testing 308
- Grade Reductions for Absences 309
- Grade Reductions for Unexcused Absences 309
- Grade Reductions for Academic Misconduct 310
- Physical Punishment for Poor Academic Performance 311
- Withholding Diplomas 311
- Case Studies 313 • Endnotes 314*

Chapter 12 SCHOOL DESEGREGATION 315

De Jure Segregation 315

- Historical Background 315

Brown II Implementation 316

- Racial Balances or Racial Quotas 317
- One-Race Schools 317

Remedial Altering of Attendance Zones 318
 Transportation of Students 318
 Intra District Segregation 319
 ATTENDANCE ZONES 319

Busing and Desegregation 320

Free Transfer and Freedom of Choice Program 321

De Jure Segregation 322
De Facto Segregation 322
 Faculty Desegregation 323
 Student Classifications and Desegregated Public Schools 323
 Latino Students and Racial Diversity 324

No Child Left Behind and Civil Rights 325

Seeking Unitary Status 325
Case Studies 328 • *Endnotes* 328

Chapter 13 PUBLIC SCHOOL FINANCE 330

Taxation for Public Schools 330

Tax Rate 331

Equity Funding in Education 331

Legal Challenges to School Funding 332

The Landmark *Rodriguez* Case 334

Litigation Following *Rodriguez* 334

Post-*Rodriguez* Cases 334

Equity and Adequacy of Funding for Public Schools 336

Endnotes 338

**Appendix THE CONSTITUTION OF THE UNITED STATES AND SELECTED
 KEY PROVISIONS AND AMENDMENTS AFFECTING
 EDUCATION 340**

Glossary of Relevant Legal Terms 343

Case Index 347

Subject Index 352

This page intentionally left blank

PREFACE

How do educational leaders respond to the legal challenges facing their organizations in a highly litigious society? How do they ensure that their organizations are achieving their mission without unduly restricting the constitutional rights and personal freedoms of their students and staff? How do leaders know when they are operating within the law? How can they build and foster an organizational culture that places high value on the personal rights and uniqueness of each individual? These are issues this book addresses. The courts expect educational leaders to possess the necessary knowledge and skill that will enable them to meet legal challenges that impact their organizations.

School Law and the Public Schools: A Practical Guide for Educational Leaders, Sixth Edition, is based on the premise that educational leaders and policy makers must be knowledgeable of the law that governs the operation and conduct of their organizations as they face a highly litigious society. Increasingly, educational leaders need to exercise discretion in making sound and legally defensible decisions that affect students and school personnel under their authority. They need to guide the development and execution of sound and well-developed policies, rules, and regulations governing many aspects of their operation. Educational leaders must ensure that they possess the legal knowledge necessary to accomplish these important administrative tasks successfully.

NEW TO THIS EDITION

The basic intent of this sixth edition is to better equip educational leaders and policy makers with relevant and timely information that will assist them in meeting legal challenges while minimizing legal exposure as they execute their defined duties and responsibilities in a highly litigious environment. The goal of the sixth edition is to provide comprehensive and practical information regarding relevant and emerging contemporary issues that impact the organization and administration of public schools. An additional goal is to better prepare educators at all levels to perform their professional duties within the boundaries of the U.S. Constitution, statutory law, case law, and school district policies. Information included in this edition will focus on practices that are legally defensible as well as those that are not. Knowledge of existing and emerging legal issues will enable educational leaders to exercise discretion in addressing the myriad legal issues they face on a daily basis. Increasingly, school leaders are expected to operate within the context of well-defined policies, rules, and regulations governing all aspect of their organizations. This edition will ensure that they possess the legal knowledge necessary to accomplish their essential administrative tasks successfully. The sixth edition includes the following additions and revisions:

- New addition to chapter on *legal framework* to include searching case law and the trial process
 - Guidance in identifying and researching cases and a visual depiction of how the trial process works
- Revised chapter on *religion* includes a discussion of prayer at legislative meetings, religious banners at football games, and legislation on acknowledging Christmas in schools
 - Includes an in-depth discussion of all issues relating to the Exercise Clause of the First Amendment
- *Search and Social Media*
 - Provides guidance regarding the extent to which school personnel may or may not search cell phones of students in public schools
- Use of *electronic devices* by students and teachers
 - Provides guidance regarding academic advantages of electronic devices in the classroom for instructional purposes

- Procedures for *Evaluating Threats*
 - Includes steps that should be taken to properly assess and respond to threats in schools
- *Legal Liability and Hazing*
- *Zero Tolerance and Due Process*
 - Discusses the issue regarding the fairness of zero tolerance policies in the context of Fourteenth Amendment applications
- *English Language Learners and Special Education*
 - Examines the issues surrounding misclassification of English learners into special education based on English language deficiencies
- *Multitiered System of Support*
 - Discusses the tiered learning system as a mechanism to improve learning outcomes for all students including students with special needs
- *Liability at Bus Stops*
 - Discusses the legal limits of school or district liability regarding student activities at bus stops
- *School Liability and Technology Use by Students*
 - Provides guidance for school personnel regarding potential liability for negligence in failing to monitor how students use technology in schools
- *Digitizing Student Records*
 - Discusses advantages and precautions that should be exercised by school personnel regarding digitization of student records and student privacy issues
- *Student Complaints and FERPA*
 - Discusses the extent to which students are covered under FERPA when they register complaints regarding their teachers
- *Teachers' Use of Facebook and Other Social Media*
 - Discusses the dangers associated with teachers' use of Facebook and other social media and the inherent problems associated with communicating with students
- *Transgender Teachers*
 - Discusses the rights afforded transgender teachers and how they should be treated in schools
- *Unwed Pregnant Teachers*
 - Discusses the rights of pregnant teachers and the privileges they should be afforded in schools
- *Genetic Information Discrimination Act*
 - Defines actions that are discriminatory with respect to requesting or requiring disclosure of genetic information regarding a prospective employee or his/her family members when rendering an employment decision
- *Vague Interviews*
 - Provides guidance regarding the appropriateness or inappropriateness of certain inquiries during the interview process
- *Retention of Personnel Data*
 - Provides insight relative to the length of time in which certain personnel records should be maintained for legal purposes
- *School Leader Evaluation*
 - Provides guidance with respect to factors that might be considered in assessing leadership effectiveness
- *Teaching Evaluation*
 - Provides information regarding myriad factors to be considered in assessing teacher effectiveness

- *Documentation of Teacher Performance*
 - Discusses methods of recording vital information regarding teaching performance as a means of assisting teachers in improving performance
- *Insubordination Steps*
 - Provides a systematic and legally defensible process for determining whether a teacher's conduct constitutes insubordination.
- *Documentation of Teacher Misconduct*
 - Discusses legal steps that should be considered in determining teacher misconduct
- *McKinney-Vento Homeless Assistance Act*
 - Provides guidance regarding the liberty interests of homeless students to attend public schools and the support systems that are required to ensure that they are provided an opportunity to succeed.
- *Common Core Standards*
 - Provides an overview of Common Core Standards to include objectives, outcomes, and opposition regarding these standards

This book is organized and written in a style that facilitates ease of reading even for individuals who have little or no legal background. Significant court cases are carefully selected to address issues that are most relevant to effective practice. The text begins with an in-depth focused discussion of the development of the U.S. Constitution and major legal issues, followed by relevant constitutional, statutory, and case law. Legal citations are used to support and enhance the discussion of these issues, and a section on searching case law and the trial process also is included. Legal references supporting the topics under discussion are found on each page, thus enabling the reader to easily ascertain the legal sources of authority related to those particular topics.

One unique and salient feature of this text is its focus on the development of administrative guides that relate to major issues discussed in each chapter. These guides provide leaders with information pertinent to directing their day-to-day decisions and actions as they encounter a wide array of legal challenges within their organizations. No attempt was made to review or include a significant number of state statutes or interpretations because variations are numerous from state to state. The primary focus of this text involves legal sources or developments that have significant implications for effective educational leadership throughout public schools in the United States. A significant component of the book is the inclusion of case studies at the end of each chapter that provide meaningful application exercises for educational leaders, thus allowing them to make sound and legally defensible decisions.

The book concludes with appendices that include selected amendments of the U.S. Constitution, as well as an expanded glossary of important legal terms to assist the reader and provide relevance to the body of the text. *School Law and the Public Schools*, Sixth Edition, provides a practical and useful resource guide for educational leaders and is aimed at increasing their knowledge and awareness of the complex legal issues that impact their organizations. It will enable them to more effectively perform their legal duties and meet the requirements of reasonableness as they move their organization toward their mission.

The Instructor's Manual with Test Items is available online to adopters. Please contact your local Pearson representative for access.

ACKNOWLEDGMENTS

I would like to express my heartfelt appreciation to my administrative assistant, Carol Brown, for the countless hours spent preparing this document. Her energy, enthusiasm, encouragement, and support far exceeded my expectations. For her untiring efforts, I am eternally grateful.

I would also like to express my appreciation to my wife, Lorene, and my children, Kimberly, Jarvis, and Nathalie, for their love, support, and encouragement during the writing of this text. Their support provided me inspiration to persevere through the completion of this project.

I express gratitude to my daughter, Nathalie, an attorney, for her editorial research and technical assistance, which aided me greatly in the production of this book.

I would also like to thank the following reviewers for their time and input:

Brett Geier, University of South Florida; Susan Sostak, Loyola University Chicago; Joe Flora, University of South Carolina; Terry McDaniel, Indiana State University, and Richard “Kent” Murray, The Citadel.

Last, I express appreciation to my administrative team, friends, and colleagues for their support and encouragement during the writing of this sixth edition.

To my staff, colleagues, and family, I am immensely grateful.

— N.L.E.

Chapter 1

Legal Framework Affecting Public Schools

SOURCES OF LAW

Public schools as governmental agencies must operate within the boundaries of law at the local, state, and federal levels. Therefore, school personnel are expected to perform their prescribed duties within a framework of law. A number of legal sources affect the administration and operation of schools.

Bill of Rights and the Fourteenth Amendment

The Bill of Rights represents the primary source of individual rights and freedoms under the U.S. Constitution. The first ten amendments to the Constitution are viewed as fundamental liberties of free people because they place restrictions on the government's powers to intrude on the fundamental rights of all citizens. These restrictions simply mean that the government cannot exercise certain powers in relationship to free people. For example, the government cannot pass laws prohibiting the freedom of speech. Consequently, citizens may speak freely within the boundaries of the Constitution without undue interference by the government. At its inception, the Bill of Rights limited only the federal government's powers and not those of state government, which meant that each state relied on its own bill of rights to limit state powers.

However, this changed with the adoption in 1868 of the Fourteenth Amendment, which guarantees that due process of law and fundamental fairness are applied to the states. The Fourteenth Amendment stipulates, "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." Fourteenth Amendment provisions are considered federal law and are enforced by state or federal courts operating within their proper jurisdictions.

Before the adoption of the Fourteenth Amendment, very few controls were placed on state governments if they failed to abide by their own bills of rights. Relief could be sought only in the state courts without any certainty that these courts would enforce their own states' bills of rights. Federal courts had no authority to enforce a state bill of rights that was solely under the jurisdiction of state courts. By virtue of the Fourteenth Amendment, that authority is now **vested** in the federal courts.

Along with due process and equal protection provisions, the most formidable freedoms contained in the Bill of Rights include freedom of speech, press, assembly, and religion as well as freedom from unreasonable searches and protection against self-incrimination. Thus, the first ten amendments now apply to encroachment by state government. Because public schools are

agents of the state, they are subject to the provisions of the Bill of Rights, which means that school officials must recognize and respect the constitutional rights of students and school personnel. Failure to do so will result in infringement of constitutionally protected rights and possible legal challenges through the courts.

The Federal Constitution

The Constitution of the United States is the basic law of the land. It provides a framework of law in which orderly governmental processes operate. The Constitution thus becomes the primary source of law. All statutes enacted at the federal, state, and local levels as well as state constitutions, local regulations, and ordinances are subordinate to the Constitution.

The U.S. Constitution is distinguishable in its provision to protect the fundamental rights of all citizens of the United States. Inherent among these rights are those involving personal, property, and political freedoms. Although the Constitution does not make reference to education, it impacts the operation and management of schools, particularly with respect to amendments, which protect the individual rights of students, faculty, and staff.

One salient feature of the Constitution is the provision that calls for the separation of powers involving the executive, judicial, and legislative branches of government. The precept of separated powers provides each branch with the proper checks and balances on the powers of other branches.

Key Amendments

Several amendments to the U.S. Constitution have a direct bearing on the operation of public schools, namely the following:

The **First Amendment** addresses basic personal freedoms of students and school personnel involving speech, press, assembly, and religion.

The **Fourth Amendment** addresses rights to privacy and protects students and school personnel from unreasonable intrusion into their person or property.

The **Fifth Amendment** provides protection against self-incrimination in cases when the individual's life, liberty, or property is in jeopardy.

The **Eighth Amendment** does not directly apply to school discipline but has been referenced by parents and students in cases involving corporal punishment where there is an **allegation** of cruel and unusual punishment by school personnel. The intent of the Eighth Amendment is to protect individuals against cruel and unusual punishment involving those who have committed criminal offenses.

The **Tenth Amendment** reserves education as a state function, thus placing the primary responsibility for public schools on individual states.

The **Fourteenth Amendment** addresses the due process rights of students and school personnel to ensure that equal protection under the laws and fundamental fairness occur in matters involving deprivation of liberty and property.

State Constitutions

Based on the Tenth Amendment to the U.S. Constitution, powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively. Because education is not mentioned in the Tenth Amendment, it is left to states to control. Therefore, state constitutions represent the basic source of law for individual states and generally require legislative bodies to perform various functions, including establishing systems of public education. They prescribe funding and operational schemes for public schools. State constitutions also restrict the powers that legislative bodies may exercise.

State constitutions often address the same subject matter found in the U.S. Constitution, such as due process, individual rights and freedoms, and separation of church and state. State

constitutions may exceed coverage granted by the U.S. Constitution but may not fail to meet the basic requirements of the Constitution or contradict it in any manner. Thus, a state statute may be in direct conflict with both federal and state constitutions or may violate one and be in compliance with the other. In all cases, federal and state constitutions prevail.

Statutes

Statutes represent acts of the legislative branch of government. The word *statute* is derived from the Latin term *statutum*, meaning “it is decided.” Statutes are the most abundant source of law affecting public schools. School district policy, rules, and regulations generally are based on statutory law. Because education is considered a state function by virtue of the Tenth Amendment, courts tend to support the view that state legislatures should exercise power over public schools. It is only when statutes conflict with the U.S. Constitution, federal law, or state constitutions that a challenge is brought to the courts. In short, statutes are always subject to review by the judicial branch of government to determine their constitutionality. Statutes represent the most effective means of developing new law or changing old laws.

State legislators grant local school boards the authority to adopt and enforce reasonable rules and regulations necessary for the operation and management of schools. When challenged, school officials must be able to demonstrate that a legitimate state interest is met by enforcing a particular rule or regulation, especially in cases where individual freedoms are restricted.

Court or Case Law

Case law is generally reflected in judge-made or common law, as distinguished from statutory law. **Common law** consists of the **judgments**, opinions, and decisions of courts adopting and enforcing preceding usages and customs. Frequently, case law relies on past court decisions, which are called *precedents*. This practice is derived from the rule of law known as *stare decisis*, a Latin term meaning “let the decision stand.” This doctrine requires courts to observe legal precedents established in previous cases in the same jurisdictions in making future decisions involving the same or similar subject matter and factual circumstances. Although courts generally rely on precedent, they are not absolutely bound by it in rendering a decision. Factual circumstances may be sufficiently different to warrant a different decision, even when the subject matter is similar. Moreover, the rationale used in reaching the decision may not be viewed as applicable to the particular case under review. Federal courts, in their rulings, have contributed to a significant body of case law, which affects the development of educational policies governing the administration and operation of public schools.

Case law is sometimes viewed as unsettled law because occasionally courts render conflicting rulings within their jurisdictions. Thus, a ruling by a federal, district, or appellate court only affects educational policymakers in that particular jurisdiction. Consequently, what is actually practiced, accepted, and enforced varies by time and place regardless of precedent. For example, if a Florida court sets a precedent, schools in Connecticut are not bound by the decision because they are not located in the same jurisdiction. The U.S. Supreme Court is the single court whose decisions affect the organization and administration of public schools across the nation. Even so, in many instances state and federal appellate decisions are not followed due, in large measure, to the fact that the Supreme Court has no ability to hear every conceivable issue relating to schools.

Researching Case Law

A case is a written decision issued by a court.¹ Federal and state courts publish their decisions in reporters. These reporters are organized chronologically. This system provides a methodology to research case law relevant to student conduct as well as permissible teacher and administrative action. The most effective means of understanding the context of a case and its application is to

read the case in its entirety. The facts and the **holding** (the court’s decision) of the case provide key information that will be helpful in understanding the genesis of the law in a particular area.

There are free legal research sites such as Lexis-Nexis, Westlaw, and FindLaw. Each of these sites provides an opportunity to conduct case research by citation, case name, and subject matter. These sites typically provide access to post-1990 court opinions with the exception of United States Supreme Court opinions, which typically are accessible to the public. Access to any case law prior to this time may require a paid membership. Access to these sites provides an opportunity to read and gain a better understanding of the law on any particular subject matter of interest.

LOCATING A CASE BY CITATION. *New Jersey v. TLO* will be used as an example in the following discussion to illustrate how to conduct case research.

A standard three-part citation indicates where to find the case:

Volume Number	Reporter	Page Number
469	US	325

Simply entering this citation into a search box will enable the researcher to easily locate any case that is being researched. Another research option is locating the case style (name of court, case number, and names of plaintiffs and defendants) or case name.

FINDING A CASE BY CASE NAME. Enter in the find by name or case name search box:

New Jersey v. TLO

Case names are organized by party names. The plaintiff is listed first and the defendant second. Entering the style or name of a case will also facilitate the location of the case desired.

LOCATING A CASE BY TOPIC. The *New Jersey v. TLO* decision centered on searches in public schools. Because this is a Supreme Court decision, a simple word search of “public school searches and United States Supreme Court” will reveal the decisions of the Supreme Court relating to public school searches.

State Agencies

State legislatures in virtually all states have created administrative agencies to execute various laws and policies governing public schools. One of these agencies typically includes state boards of education. The legislature generally prescribes the duties and scope of authority delegated to state boards. Members of each state board of education are either appointed by the governor or elected by popular vote by citizens within the state. Conflicts frequently arise with state boards of education based on the separation of the executive, legislative, and judicial branches of government. The legislature is prohibited from delegating its powers to an administrative agency.

For example, the legislature in the state of Illinois commanded the superintendent of public instruction to prepare specifications for minimum requirements to conserve the health and safety of students. The specifications developed by the superintendent of instruction were challenged by the board of education under a claim that they were unconstitutional. The board sought injunctive relief against their enforcement. The circuit court granted relief. The superintendent appealed the decision. The Supreme Court of Illinois held that the statute was a proper delegation of administrative authority to the superintendent. However, the superintendent’s specifications, which preempted the entire field of school safety and purported to strike down all local codes and ordinances relating to school safety, were invalid. Only the legislature had the power to preempt local codes and ordinances regarding school safety.

STATE BOARDS OF EDUCATION. The state board of education may exercise broad or limited powers, based on legislative authorization. Public schools generally are placed under the control

of the state board of education. In this capacity, the state board of education determines, to some degree, the direction of education in its state and also functions as a planning and evaluative body that functions immediately below the legislature. Through delegated power, the board may develop policies covering an array of legal issues such as, among others, health and safety, minimum requirements for teacher licensure, graduation requirements for students, rights of students with disabilities, and student disciplinary practices. The courts generally recognize the board's authority based on state statute to regulate student and school personnel conduct as long as its actions are not **arbitrary** or capricious.

In general, most state boards have six legal powers in common. They (1) establish certification standards for teachers and administrators, (2) establish high school graduation requirements, (3) establish state testing programs, (4) establish standards for accreditation of school districts and teacher and administrator preparation programs, (5) review and approve the budget of the state education agency, and (6) develop rules and regulations for the administration of state programs.*

State boards of education may not abrogate responsibilities delegated to them by state statutes. The courts are reluctant to impose their judgment regarding decisions that are made within the state board of education's designated authority unless there is evidence of arbitrary and capricious acts or a violation of an individual's constitutional rights. In such cases, the courts will intervene to determine whether the evidence supports constitutional violations. In reviewing the action of an administrative board, one court has held that it will go no further than to determine (1) whether the board acted within its jurisdiction, (2) whether it acted according to law, (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will rather than its judgment, and (4) whether the evidence was such that it might reasonably make the order or determination in question.²

In addition to state boards of education, each state has a state department of education, which is headed by a state superintendent or chief state school officer (CSSO). State departments are the professional arm of the CSSO. These departments consist of specialists in virtually all areas relating to education. They provide consultation and advice to local school districts, the state board, and the CSSO. State departments generally are depositories for massive amounts of research data and strategic reports collected from local school districts. Much of these data consists of reports necessary to ensure that the state is in compliance with federal and state **mandates** and to facilitate education planning at the state and local levels. Among other duties, the state department of education conducts research on school practices, develops short- and long-term plans for educational outcomes, enforces state and federal law, evaluates districts for accreditation, evaluates statewide testing programs, and monitors compliance of state-approved curriculum.

Local School Boards

Local school boards impact education policy and the administration of public schools. The school board exercises general supervision over the schools within its district. However, its broader role involves the formulation of school district policy. Consequently, it is viewed as a policy-making body. School district policy is generally based on state statute. If consistent with state and federal laws, state and federal constitutions, and court rulings, school district policies are considered to be legally enforceable.

The local school board has a responsibility to formulate a vision that defines the future it envisions for the district. Certain goals, objectives, and measurable outcomes may be included as integral components of the board's vision.

The vision of the school district is closely aligned with the district's mission. The mission generally defines the basic purpose of the district and the core values embraced by the district as

*Reprinted with permission from 2009 Education Commission of the States, "Equipping Leaders, Advancing Ideas," 700 Broadway, #1200, Denver, CO 80203-3460.

it moves toward achieving its mission. Virtually all districts have formulated standards of performance for both students and teachers that in general are closely aligned with state standards related to No Child Left Behind provisions. Certain performance measures are established to determine the extent to which specified standards are met. The board has a leading responsibility for formulating goals that contribute to student achievement and continuous improvement of all educational programs. The board typically functions as the appellate body involving faculty, staff, and students when legal issues emerge involving recommended sanctions such as suspensions, expulsions, and dismissal.

The board is responsible for the formulation of policies, rules, and regulations that provide direction for the administration and operation of schools. The board is viewed as a corporate body. Therefore, individual board members have no power beyond the power that is granted to the full board by the legislature. Consequently, individual school board members are not free to formulate policy or to act independently of the board as a whole. School board members are considered public school officers and are granted powers by the legislature that are essential to the execution of their duties and responsibilities. The board is typically advised by its attorney and strives to act within legal boundaries established by the U.S. Constitution, state constitutions, state and federal statutes, and relevant court decisions affecting the school district.

The size of school boards varies and is generally determined by state statute. The number of school board members is typically odd to prevent a pattern of tie votes. Board members are either appointed or elected. School boards generally consist of five to seven members, although some districts may have fewer than five or more than seven.

One very significant duty of the school board involves the selection of its superintendent, unless the board operates in one of the few states where the superintendent is elected by citizens within the district. The relationship between the superintendent and the school board is best described as a legislative–executive one within which the board formulates policy and the superintendent executes policy. The board delegates certain duties and responsibilities and holds the superintendent accountable for performing them. The board evaluates the effectiveness of its policies and may revise or delete existing policies or formulate new ones based on district needs.

The board also adopts an annual budget covering personnel, instruction, student services, transportation, facilities, equipment, and materials needed to meet desired educational outcomes. Professional and support personnel are employed by the board based on the superintendent’s recommendation. If the board has defensible grounds, it has the latitude to accept or reject personnel recommendations. Terms and conditions, salary schedules, and overall staffing and evaluation policies are determined by the board.

Because the board is accountable to the public, it is expected to operate in an open and transparent manner. Thus, school board meetings are viewed as open meetings, as virtually all states have enacted “sunshine laws” that allow citizens to attend open meetings and be informed of actions taken by the board. Citizens may request an opportunity to be included on the board’s agenda during a regular board meeting in order to speak on issues that are of concern to themselves or the community at large. Citizens may also access school board minutes because they are considered public records.

School boards may hold executive sessions to discuss sensitive matters such as employee discipline, **contract** issues, or attorney–board consultation. Only board members may attend these meetings. The intent of these meetings is to protect the confidentiality of sensitive information or potentially damaging information that may injure a person’s good name or reputation. Consequently, all items discussed during executive sessions are confidential and should not be divulged by board members.

School boards are expected to be accountable to the general public and specifically to their communities for what occurs in the district regarding school safety, student achievement, teaching performance, financial management, and other areas of importance. In recent years, the No Child Left Behind Act has changed the culture of schools through the enactment of initiatives aimed at an assessment of year-to-year student progress based on statewide assessment measures.

The school board has a leading responsibility for establishing high quality standards and system priorities centered on enhancing student achievement. Not only is it expected to establish high-quality performance standards, but it also has a responsibility to create an environment and climate within which excellent teaching and learning occur. Therefore, the board must ensure to the greatest degree possible that proper resources are provided to achieve desired district outcomes and that funds are administered responsibly.

SCHOOL BOARD POLICIES. School board policies represent a basic source of law for school personnel as reflected in the rules and regulations governing the total operation of schools. School board policies are legally defensible as long as they do not conflict with the federal or state constitutions, federal or state statutes, or case law. Once these legal requirements are met, the school board as the delegated policy-making body at the local level may not violate its own policies. A school board is legally required to adhere to its own policies. Failure to do so may result in legal challenges by those adversely affected by the board's actions.

THE U.S. SYSTEM OF COURTS

The judicial system consists of federal and state courts. The organization of the courts at both levels is essentially the same: trial courts, intermediate courts of appeal, and the highest court, which is the U.S. Supreme Court. State constitutions usually prescribe the powers of state courts as well as their jurisdiction. Irrespective of the level, courts are limited only to cases or legal conflicts presented to them for resolution. Courts cannot take it upon themselves to decide on the constitutionality of a statute or a policy unless a **suit** is brought challenging the legality of that particular statute or policy.

The courts usually perform three types of judicial functions when they are called on to act. They (1) settle controversies through applying basic principles of law to specific factual circumstances, (2) interpret legislative enactments, and (3) determine the constitutionality of legislative or administrative mandates. When applying principles of law to specific situations, the courts may find that principles of law are vague or ambiguous. In such cases, the courts must rely on legal precedent for direction.

In interpreting statutes, the courts, through their analogies and rulings, may actually affect the definition of the legislation by assigning meaning to it. When determining the constitutionality of statutes, courts make the presumption that such statutes are constitutional. Consequently, those who challenge the legality of the statute must assume the burden of proof to demonstrate otherwise. The Supreme Court in Florida addressed this issue as follows:

We have held that legislative acts carry such a strong presumption of validity that they should be held constitutional if there is any reasonable theory to that end. . . . Moreover, unconstitutionality must appear beyond all reasonable doubt before an act is condemned. . . . If a statute can be interpreted in two different ways, one by which it will be constitutional, courts will adopt the constitutional interpretation.⁵

Federal Courts

Federal courts typically deal with cases involving federal or constitutional issues (“federal questions”) or cases in which the parties are residents of different states (“diversity of citizenship”). The federal court system includes district courts, **appellate courts**, and the Supreme Court. There are ninety-five federal district courts in the United States. At least one federal court is found in each state; larger states, such as New York and California, have as many as four. Federal courts usually hear cases between citizens of different states and cases involving **litigation** of federal statutes.

Federal appellate courts are represented by circuit courts of appeal. The thirteen federal circuit courts include eleven with geographic jurisdiction over a number of states and territories,

one for the District of Columbia, and one involving three specialized federal courts. Table 1.1 and Figure 1.1 identify the geographic areas associated with each circuit.

Many judges sit on the various courts of appeals; for example, the Sixth Circuit Court of Appeals has fourteen judges and eight “senior” judges available to sit in panels of three judges. The primary function of the appellate court is to review the proceedings of lower courts to determine whether errors of law (as opposed to facts) were committed, such as procedural irregularities, constitutional misinterpretations, or inappropriate application of rules of evidence. Panels of

TABLE 1.1 Jurisdiction of Federal Circuit Courts of Appeal

Circuit	Jurisdiction
1st	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island
2nd	Connecticut, New York, Vermont
3rd	Delaware, New Jersey, Pennsylvania, Virgin Islands
4th	Maryland, North Carolina, South Carolina, Virginia, West Virginia
5th	Louisiana, Mississippi, Texas
6th	Kentucky, Ohio, Michigan, Tennessee
7th	Illinois, Indiana, Wisconsin
8th	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
9th	Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington
10th	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming
11th	Alabama, Florida, Georgia
DC	Washington, DC
Federal	Washington, DC (specialized courts)

Source: Administrative Office of the U.S. Courts. (n.d.). *Court Locator*. USCourts.gov. Retrieved September 14, 2010, from <http://www.uscourts.gov/courtlinks>

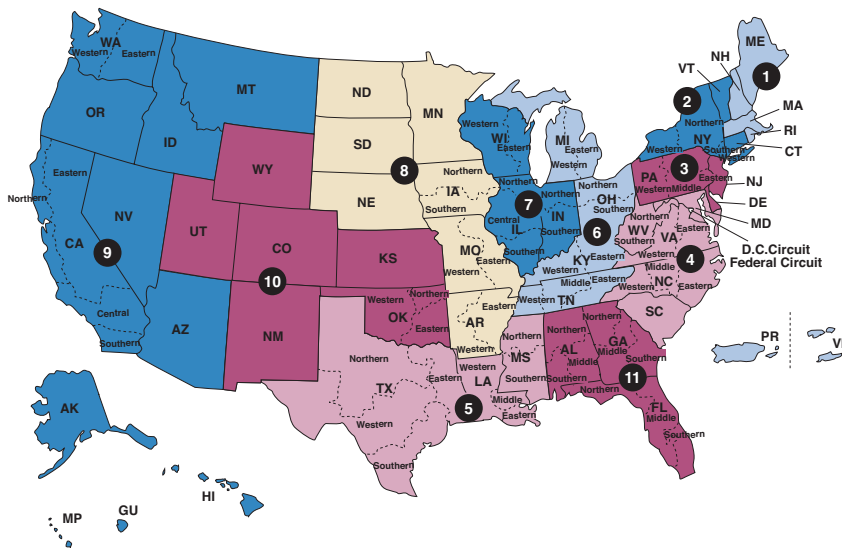


FIGURE 1.1 U.S. Courts: The Federal Judiciary

SOURCE: Administrative Office of the U.S. Courts. (n.d.). *Court Locator*. USCourts.gov. Retrieved September 14, 2010, from <http://www.uscourts.gov/courtlinks>

judges for appellate courts hear oral arguments from the appellant and the appellee, examine written arguments, vote, and render a ruling. The appellate court may also, based on its finding, **remand** the case to be retried by the lower court.

State Courts

State courts are the part of each state’s judicial system with the responsibility of hearing cases involving issues related to state constitutional law, state statutes, and common law. Many education cases are heard in state courts because they do not involve a federal question. The structure of state courts is similar to those found in the federal courts: courts of general jurisdiction, courts of special jurisdiction, courts of limited jurisdiction, and appellate courts. The names of these courts vary among the fifty states, but all states have at least three to four tiers of courts.

State statutes generally prescribe the types of cases that must be heard by the various courts within a state. Discretionary jurisdiction involves cases in which a party files a **petition** to the state supreme court seeking redress. It is then left to the court to use its discretion (or **discretionary power**) in deciding to accept or reject the case. It is important to understand that state courts play a vital role in addressing many issues involving the administration of public schools.

COURTS OF GENERAL JURISDICTION. Courts of general jurisdiction are often referred to as district or circuit courts. Their jurisdiction covers most cases except those held for special courts. In many instances, decisions of these courts may be appealed to intermediate appellate courts or even to the state supreme court. Areas adjudicated by these courts include civil, criminal, traffic, and juvenile issues.

COURTS OF SPECIAL JURISDICTION. Courts of special jurisdiction hear legal disputes on special matters. They are generally referred to as trial courts with *limited* jurisdiction and may be called municipal, justice of the peace, probate, small claims, or traffic court.

INTERMEDIATE APPELLATE COURTS. Intermediate appellate courts have emerged over the past three decades to hear **appeals** from trial courts or certain state agencies. Their primary role involves reviewing proceedings from trial courts to determine whether substantive or procedural errors occurred in applying the law. In a sense, their duties are similar to those of the highest court within the state; however, the primary difference between the two courts is discretion: The intermediate court has less discretion in accepting cases than does the highest or state supreme court. Many, but not all, of the cases heard by the intermediate courts are mandatory.

APPELLATE COURTS. Appellate courts represent the highest courts within the state. They are considered courts of last resort. In forty-four states, these are referred to as the state supreme courts. These courts have some discretion in accepting cases, but they must hear mandatory cases based on appeal and decide on the merits of each.

See Figure 1.2, which depicts the progression of a case through the U.S. court system.

THE TRIAL PROCESS. There are five essential stages to a trial. These stages are as follows:

Pleadings stage involves a **complaint** filed by the plaintiff and an answer to the complaint by the defendant. The defendant may also file a **motion** rather than an answer requesting that the court dismiss the case, or may require the plaintiff to further clarify the intent of the case.

Pre-trial stage is designed to seek resolution of issues that can be resolved prior to the trial. Issues are identified that are in dispute and must be resolved at trial versus issues that are not in dispute.