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# Viewpoint

## Teachers and the Law: Application Essentials, General Considerations, and Specific Examples

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**Abstract:** Teachers contribute to the success of all students, in part, by understanding and being responsive to the legal context of teaching. Simply stated, a teacher's success is increasingly dependent on a sound awareness and prudent application of education law. Although several excellent resources are available for informing the preservice and in-service teacher about school law, a broader context in which teachers must apply their understanding of education law is also necessary. In this article, the authors recommend resources and illustrate specific suggestions for action based on sample situations. The resources and suggestions support enhanced teacher effectiveness in promoting the learning of all students and ultimately strengthening the character, integrity, and professionalism of the teacher.

**Keywords:** education law, effectiveness, professionalism, teachers

As a professional, a teacher must promote the success of all students, partly by understanding and being responsive to the legal context of teaching (i.e., teachers' and students' rights balanced by the scales of justice). The legal context that influences teaching is invariably complex, differing in details by location. Yet, in any educational setting, a teacher's success is increasingly dependent on a sound awareness and prudent application of education law.

Attention to the legal context of teaching has been important for professional educators in the United States since the early 1800s; however, the prevalence of acronyms and labels such as NCLB, IDEA, EEOA, and Title IX in articles, books, speeches, and other presentations for teachers is evidence that the legal context has never been more complex than it is today. There is good reason to believe that the call to prepare teachers well in school law in the *Journal of Teacher Education* twenty-two years ago (Dunklee and Shoop 1986) is as justifiable today as it was then.

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Several excellent books are available for the preservice and in-service teacher regarding school law (for example, Alexander and Alexander 2005; La Morte 2008; McCarthy, Cambron-McCabe, and Thomas 2004; Schimmel, Fischer, and Stellman 2008). In educator preparation courses that include topics on school law, we have found these books to be especially valuable in helping future teachers understand points of law relevant to their professional practice. Nevertheless, we have also found the need to support our students in developing a broad perspective regarding the application of law that goes well beyond, for example, understanding of the relevant elements of the U.S. Constitution, applicable legislation, and governmental codes and policies. This article presents a perspective on the broader context in which teachers must apply their understanding of education law and specific suggestions for using that perspective in making decisions and in taking actions regarding relevant education. We also present sample situations in which those suggestions can be applied.

### Classroom Considerations for Teachers

Occasionally, classroom practices are perceived as restricting the personal freedoms of individuals. In these cases, the teacher must carefully consider the extent to which student freedoms have collided with "efforts to maintain an appropriate school environment" (McCarthy, Cambron-McCabe, and Thomas 2004, 97). If the practices under consideration advance legitimate purposes and are aligned with the school's vision or mission, the teacher should immediately and in the scope of teaching duty do what professional or legal responsibility defines. If an explanation of action is necessary for students or other school stakeholders, the teacher should present the rationale in a dialogue format, focusing on vision or mission alignment and using nontechnical terms. In doing so, transparency will infuse the dialogue, minimizing confusion and conflict. Not relying on legal jargon also reduces the right or wrong and legal or illegal impact of the questionable practice.

When a teacher understands the legal context of the content taught and the supporting methodology, a teaching-learning framework is ensured that advances educational objectives and is responsive to legal challenges. In other words, a teacher should be prepared to demonstrate an understanding and appreciation for education's legal context.

In the following sections, we introduce two classroom-related scenarios illustrating situations that are influenced by a teacher's application of law. We worded the scenarios in the second person as if used for instructional purposes in a preservice teacher preparation course. Author comments are in the third person.

#### Scenario 1

In speech classes, *persuasive* is one type of speech that all students are required to give. The topic individual students often choose is a current political candidate. Perhaps due to the increasingly negative content and tone of political advertisements in your community and state, you have noticed that some of the recent candidate-focused speeches bordered on defamation and prompted loud conversation that you had trouble controlling. As the only speech teacher in your school, you have concluded that it is your responsibility to decide whether you should write guidelines prohibiting certain content in classroom speeches and what key elements should be in those guidelines if you choose to create them. You know that you should clear any guidelines draft with the school principal.

#### Comment 1

Creating a set of guidelines prohibiting certain content in class speeches could be justified. However, a stronger and more positive impact would probably result from a teacher-issued verbal statement to each class at this point in the semester and at the beginning of each subsequent semester. The teacher could also post a carefully written statement in the classroom as a gentle reminder for all. The statement should begin with a reference to the importance of the expression of ideas in this society and to the constitutional protection of freedom of expression. The statement should continue by pointing out (in simple terms) that even the U.S. Constitution does not protect obscenity, fighting words, or defamation, and that schools have a right to prohibit (or punish) expression that has the potential to lead to a disruption of the educational process. Following the teacher's verbal statement, each class could engage in a brief discussion of the importance of freedom of expression, as well as the importance of the prohibition of language the Constitution does not protect and of in-school prohibition of broader speech categories.

#### Scenario 2

In your calculus class, you have a bright male student with assertive parents who are determined that he attend a prestigious, selective university. Despite his privileged background, the young man has just been suspended from school for three weeks for incidents of disrespectful outbursts toward teachers, including you. You are glad he will be out of your class for fifteen days. You are pleased that, by missing three weeks of school, he will not have your help in preparing for the next test and will almost certainly do poorly on it. If neither he nor his parents request homework assignments during his suspension, you are confident he will get a low test grade, which you feel would be deserved additional punishment for his behavior.

*Comment 2*

Because courts have ruled that grades can be reduced for classes missed during school suspension, the teacher in this situation could defend a decision to take no action if neither the student nor his parents request homework assignments during his suspension. Nevertheless, if the teacher does not offer to provide assignments and the student does poorly on the test, he or his parents could later complain that the low test score was a result of not having been allowed to do the homework. Rather than risk having to defend lack of action on legalistic and probably unpersuasive grounds, the teacher should move beyond a desire to see the student further punished for his disrespectful behavior. Unless school policy specifically prohibits this action, the teacher should inform both the student and his parents of the homework assignment details.

**School and District Considerations for Teachers**

Generally, laws require a teacher to perform with reasonable prudence, and when teacher actions fall below a standard of care, the teacher is liable for resulting injuries (Fischer, Schimmel, and Stellman 2003). This implies that a teacher assumes a degree of tort liability as a condition of professional practice. Consequently, a teacher should be knowledgeable about potential liability under applicable laws, ensuring that the school district offers appropriate protection and should consider procuring adequate supplemental liability insurance coverage (McCarthy, Cambron-McCabe, and Thomas 2004). School districts share a similar degree of tort liability, requiring similar standards of student care from administrators and school boards. In cases in which a teacher believes a potential liability exists, the teacher should not attempt to address the situation alone. Instead, the teacher should inform an appropriate administrator immediately and provide relevant information pertaining to the situation. When possible, the teacher should use terms in written or spoken communications that will ensure that the administrator understands the legal importance of the potential liability. An immediate response from the administrator is not always possible. In these cases, prudent administrators will likely exercise due deliberation to consider past practices, current laws or other enforceable provisions, and the counsel of peers and legal experts. A teacher can greatly inform school administrators' efforts by keeping written notes of events, actions, and statements relevant to the situation. The teacher should take care when creating written notes, understanding that they may be included as evidence in a legal proceeding or may be shared with others to resolve the potential liability.

The school district, not an individual teacher, assumes the greatest overall liability. For example,

equal opportunity laws that emanate from the Equal Protection Clause of the Fourteenth Amendment subject school districts, not individuals, to liability (Valente and Valente 2005). Other examples of school district liability include federal statutes such as the Individuals with Disabilities Education Act of 1990, the Rehabilitation Act of 1973, and the Americans with Disabilities Act; however, a teacher is the fundamental means by which a school district performs its legally mandated functions and, as such, assumes liability in the teaching and learning process.

In the following sections, we introduce two school- and district-related scenarios illustrating situations influenced by teachers' application of law. The scenarios are worded in the second person as if used for instructional purposes in a preservice teacher preparation course. Author comments are in the third person.

*Scenario 1*

Having been a sixth-grade social studies teacher in a middle school for several years, you are accustomed to some female students being larger and stronger than most of their male classmates; often girls point this out to smaller boys in intimidating ways. Recently, you have become concerned because three small sixth-grade boys who are friends have complained to you that they are often cornered, individually or as a group, in the hallways by five large female classmates and have been pinched, poked, and taunted. The boys have reported that the girls challenge them to prove they are men. The boys have said several times that they now dread coming to school due to the girls' behavior. When you mention the circumstances in a sixth-grade team meeting, your colleagues comment that the girls are good, responsible students and that the incidents reported are part of what helps boys become men.

*Comment 1*

A strong argument can be made that this situation is an instance of hostile-environment harassment. Even if the teacher is uncertain of the five girls' behavior status, the administration should be informed of it because the school could be found liable if a harassment claim is made. Although the teacher might feel a need to address the problem independently, the taunting is reportedly occurring outside the teacher's classroom and in locations where other teachers cannot observe the behavior. Moreover, because the school assumes legal responsibility in this situation, the administration should be allowed to take the lead in deciding how to address the problem. Yet, the teacher should be direct in letting the administration know that the behavior might be hostile-environment harassment. Additionally, the teacher could volunteer to participate in the school's response to the situation.

*Scenario 2*

You teach science in a small high school that does not have any English as a second language classes because all the students are native English speakers or understand and use the language well. However, on the first day of your chemistry class in August, you learn that a new sophomore student—a boy who has recently moved from Egypt—knows little English. He has a stepbrother who uses and comprehends English perfectly because he was born and grew up in the United States, but he also learned Arabic reasonably well because his Egyptian-born mother wanted him to know that country's language. Perhaps because of the parents' wishes, the stepbrother of the new student is also in your chemistry class.

*Comment 2*

When an inability to speak and understand the English language excludes students from effective participation in educational programming, the district must take steps to resolve the language deficiency and to offer instructional programs to these students. Although the teacher could reasonably assume that the school administration is aware of the new student's English-language deficiency, the teacher should describe to the appropriate administrator the educational deficiencies observed. This ensures that the school is taking appropriate action to assist the student and provides valuable information in deciding next steps. Beyond reporting to the administration, the teacher should begin thinking of ways to support the student's learning of English. Furthermore, the English-speaking stepbrother could act as a resource after conferring with the stepbrother and parents.

**Reflective Considerations for Teachers**

A reflective teacher most often acts reasonably and in the scope of teaching duties when responding to situations to which provisions of law might be relevant. As a teacher reflects on such situations in depth, they should be viewed from multiple perspectives (i.e., students, parents, administrators, and other stakeholders) and through the professional lens of a moral compass (i.e., a teacher's personal set of values).

Occasionally, acting reasonably and in the scope of teaching responsibility will conflict with the beliefs, values, or assumptions of school and community stakeholders; sometimes a teacher may find the need to defend or explain certain professional acts in the face of resistance from one or more individuals. Our system of education affords school stakeholders opportunities for this kind of expression, and resistance to a teacher's perspective is not uncommon in the normal discourse of teaching and learning. A teacher's professionalism is generally strengthened when there is a willingness to fulfill the teaching responsibilities, provide due rationale for actions, and invite dialogue among others to express their perspectives.

As with most types of conflict, broad-based support from diverse individuals or groups greatly strengthens the teacher's position. Meaningful support takes time to generate, and the teacher should seek it in advance of conflicting perspectives. In schools with healthy cultures characterized by a well-defined value structure, a teacher will find strong support from teaching colleagues and administrators. Healthy schools are often defined as having a strong sense of purpose, strong group loyalty, low competition, high trust, and high motivation, and as being goal oriented and socially interactive. In healthy cultures, parents have a high awareness of teaching and learning activities and support teachers. Overall, communication and support are two-way and free-flowing in healthy schools. A teacher employed in a school with an unhealthy climate and culture will need to remain vigilant of trust, support, and communication issues, exercising caution when conflict arises.

**Conclusion**

The quality of our education system is dependent on teacher efforts to promote the success of all students, partly by understanding and being responsive to the legal context of education. For this reason, a teacher's success requires a sound awareness and prudent application of education law. Pedagogy informed by law is essential because broad legal latitude is afforded the teacher, with many legal privileges being inferred and inherent rather than promulgated.

Maintaining an appropriate classroom environment informed by law is facilitated by focusing on democratic outcomes, understanding the personal values influencing teacher decisions and actions, investing in relationships with school and community stakeholders, and retaining educational law currency. Accounting for all of these considerations can enhance teacher effectiveness by promoting the learning of all students and strengthening the character, integrity, and professionalism of the teacher.

**Further Reading**

In addition to the legal references already cited, we recommend two additional sources for further reading. Both sources are excellent for teachers who encounter classroom, school, or district challenges and directly address topics covered in the four preceding scenarios (i.e., speech, student behavior, harassment, and education-related services). The first, *School Law and the Public Schools: A Practical Guide for Educational Leaders* by Nathan L. Essex (2008), dedicates appropriate attention to both historical and current legal issues of practical relevance. Unique topics include school finance, bullying, the No Child Left Behind Act, and the Patriot Act. Essex's straightforward writing style explains key concepts and issues in a manner that teachers can readily apply to their professional practice.



The second, *School Law for K-12 Educators: Concepts and Cases* by Frank D. Aquila (2008), was developed with the classroom teacher in mind and makes a direct application. Aquila's easy-to-understand format concentrates on core K-12 concepts with discussion questions provided to encourage practitioner reflection. This book is an excellent resource for topics such as teachers' rights and concerns, employment contracts, teacher dismissal and discrimination, and tort liability.

We also encourage the use of Web sites to locate relevant legal information. The following are helpful sites with free information and legal-issues blog links for educational professionals: <http://www.nsba.org/cosa/>, <http://www.findlaw.com>, <http://www.law.com>, and <http://www.law.cornell.edu>.

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