

TABLE OF CONTENTS

PREFACE TO THE FIFTH EDITION.....	V
ACKNOWLEDGMENTS.....	IX
TABLE OF CASES.....	XXIX
Chapter I. Introduction: Context for Examining Education-Related Disputes.....	1
A. Sources, Interdisciplinary Features, and Unique Characteristics of Education Law in the United States.....	2
B. The Challenge of Effecting Change in an Education Setting.....	4
C. The Right to an Education.....	6
Problem 1: The Fundamental Right to an Education.....	10
Chapter II. Campus Safety and the Criminal Justice System.....	11
A. Liability for Injuries at the K–12 Level.....	11
Problem 2: Green v. Suburbia Sch. Dist.	11
1. State Negligence Law Principles.....	13
a. Extent of the Duty to Supervise	14
Glaser v. Emporia Unified Sch. Dist. No. 253	14
Notes.....	19
Problem 3: The Marbury Middle School Lawsuits	21
b. Supervision During Extracurricular Activities	22
Cerny v. Cedar Bluffs Junior/Senior Pub. Sch.	22
Notes.....	26
c. School Shootings.....	29
Problem 4: The Tragic Events at Columbine High School.....	29
From Columbine High School Complaint	30
Notes.....	34
d. Issues Relating to Race and Ethnicity	37
Ties That Bind, Forces That Divide: Berkeley High School and the Challenge of Integration.....	38
Notes.....	42
2. The “Right to Safe Schools” Under State Law.....	42
3. Federal Gun-Free Requirements in Elementary & Secondary Schools.....	43
Notes.....	44
B. K–12 Due Process Considerations Related to Campus Safety and Discipline	45
Goss v. Lopez	45
Notes	51
C. Liability for Injuries at the College & University Level.....	52
1. Higher Education Negligence-Related Controversies Generally	53
Problem 5: Perot v. Univ. of Eldorado at Emerald City.....	53

	Peterson v. San Francisco Cmty. Coll. Dist.	53
	Notes.....	59
	Problem 6: The Tragic Events at Virginia Tech	63
	<i>From the Report of the Virginia Tech Review Panel, Released</i> <i>August 30, 2007</i>	64
	Notes.....	68
2.	Negligence and Intercollegiate Athletics	71
	Problem 7: The Dunsmuir University Litigation	71
	Kavanagh v. Trustees of Boston Univ.....	72
	Notes.....	76
	Orzech v. Fairleigh Dickinson Univ.	78
	Notes.....	83
3.	Due Process Considerations in Postsecondary Disciplinary Situations	84
	Doe v. Univ. of Cincinnati.....	84
	Notes.....	85
D.	The Criminal Justice System and Public Education Generally	86
	J.D.B. v. North Carolina	86
	Notes	91
E.	Conceptualizing the Parameters of the “School-to-Prison Pipeline”	94
	Problem 8: Defining the “School-to-Prison Pipeline”	94
	Antoine v. Winner School District 59-2	96
	Notes	97
	D.S. v. New York City Dept. of Educ.	98
	Notes	103
	Kenny v. Wilson.....	104
	Notes	109
	Chapter III. Student Freedom of Expression	111
A.	Basic First Amendment Principles Applicable in All Settings	112
	Highlights of U.S. First Amendment Law: Basic Principles and Major Exceptions	112
B.	“Freedom of Expression” at the K–12 Level: The <i>Tinker</i> Rule and Campus Safety.....	121
	Problem 9: The Coalition to Resist Political and Social Indoctrination	121
	<i>Tinker v. Des Moines Indep. Cmty. Sch. Dist.</i>	122
	Clarifying the Parameters of the <i>Tinker</i> Rule.....	128
C.	The Evolution and Refinement of K–12 “Freedom of Expression” Rules.....	130
1.	The <i>Fraser</i> Decision: Identifying Society’s Interest in “Teaching the Boundaries of Socially Appropriate Behavior”	131
	<i>Bethel Sch. Dist. No. 403 v. Fraser</i>	131
2.	<i>Hazelwood v. Kuhlmeier</i> : Limiting Expressive Activities That the Public “Might Reasonably Perceive to Bear the Imprimatur of the School”.....	136
	<i>Hazelwood School Dist. v. Kuhlmeier</i>	136

	Notes.....	140
3.	<i>Morse v. Frederick</i> : Reassessing the Applicability of <i>Tinker</i> and Its Progeny	141
	Problem 10: Jamie and His Friends—The Sequel	141
	<i>Morse v. Frederick</i>	143
	Notes.....	149
4.	The “T-Shirt” Cases: Addressing Inflammatory Slogans and Images on Student Clothing	149
	a. The <i>Boroff</i> Case: Restricting Ostensibly Anti-Religious Expression	150
	b. <i>Chambers, Harper, and Nuxoll</i> : Restricting Ostensibly Anti-Gay Expression	151
	Notes.....	153
	c. The <i>Dariano</i> “Cinco de Mayo” Case.....	155
	<i>Dariano v. Morgan Hill Unified School District</i>	155
	Problem 11: T-Shirts in New Tuolumne	161
D.	Conceptualizing the Parameters of the Right to Be “Out”	162
	<i>Fricke v. Lynch</i>	164
	<i>Boyd County High Sch. Gay Straight Alliance v. Board of Ed.</i>	168
	Notes	171
	<i>Henkle v. Gregory</i>	172
	Note	175
	Problem 12: Further Variations on the Events at Southern Valley High	175
E.	Higher Education “Freedom of Expression” Controversies Generally.....	175
	Problem 13: The <i>Alistaire & Georgina Jones</i> Cases	175
	<i>Healy v. James</i>	177
	Notes	181
	<i>Rosenberger v. Rector & Visitors of Univ. of Va.</i>	181
F.	Hate-Related Speech Controversies at the Higher Education Level... ..	186
	Problem 14: Expanding the Legal Definition of Obscenity Beyond the Miller Test.....	186
	Rights in Conflict: The First Amendment’s Third Century.....	187
	Problem 15: Valid Exercise of First Amendment Rights—or Harassment?	190
	Notes	191
Chapter IV. Combating Threatening Behavior, Peer Harassment, and Peer Mistreatment.....		193
A.	Threatening Activity Generally.....	194
	Problem 16: Zero Tolerance for Threats	194
	1. Addressing Threats Under Negligence Law	195
	<i>Tarasoff v. Regents of Univ. of Cal.</i>	195
	Notes.....	198
	2. Relevant Statutory Prohibitions Addressing Threats Under Federal & State Law	199

	California Penal Code § 422.6.....	199
	Federal Ban on “Bomb-Making Instructions”	200
3.	Prosecuting Threatening Activity Under Criminal Law	201
	Commonwealth v. Milo M., A Juvenile	201
	Notes.....	207
4.	Construing the “True Threat” Doctrine Under First Amendment Law	208
B.	Liability for Peer Harassment and Mistreatment	209
1.	Peer-to-Peer Sexual Harassment	209
	Problem 17: Maxwell v. Nirvana Unified School District	209
	Problem 18: Student Teaching at Garden Falls High	211
	Hostile Environment Sexual Harassment Law	213
	Davis v. Monroe Cnty. Bd. of Ed.	214
	Notes.....	221
2.	Harassment of Students with Disabilities	222
	Lance v. Lewisville Indep. Sch. Dist.	222
	Note	229
3.	Mistreatment of Lesbian, Gay, Bisexual, & Transgender (LGBT) Students	229
	Nabozny v. Podlesny	230
	Flores v. Morgan Hill Unified Sch. Dist.....	236
	Notes.....	241
	Investigation of the Tehachapi Unified School District by the Office for Civil Rights, U.S. Department of Education	244
	Notes.....	248
	Problem 19: Nabozny, Flores, and Walsh as Hypotheticals	249
C.	Confronting the Complexities of the K–12 “Bullying” Problem, Online and Offline	250
1.	Defining & Identifying Bullying	250
2.	Legislative Options and Prospective School District Policies.....	252
	Problem 20: Prohibiting Bullying, Harassment and Intimidation in the K–12 Schools	253
3.	First Amendment Considerations	254
	Problem 21: First Amendment Considerations in Prohibiting Bullying, Harassment and Intimidation at the K–12 Level	256
4.	Confronting Cyberbullying	256
	Problem 22: Expanding Legislation Prohibiting Bullying, Harassment and Intimidation to Include “Cyberbullying”	258
D.	Student Accountability for Expression Outside the School Setting	258
	Wisniewski v. Bd. of Educ. of the Weedsport Cent. Sch. Dist.	262
	Notes	264
	Layshock v. Hermitage Sch. Dist.	266
	Notes	271
	Bell v. Itawamba County School Board	272
	Notes	289
	Problem 23: The Justin Marwell Case.....	290

Huntsville AB 256	292
Keefe v. Adams	293
Note	298
Chapter V. Privacy Law in Education.....	299
Problem 24: The Definition and Value of Privacy	300
A. Search and Seizure, Drug Testing, and Related Fourth Amendment Concerns.....	301
1. The Doctrine of <i>In Loco Parentis</i>	301
2. K–12 Search & Seizure Case Law Generally: The Continuing Vitality of <i>New Jersey v. T.L.O.</i>	302
Problem 25: The Suburbia Lawsuits (Continued)	302
New Jersey v. T.L.O.	303
Notes.....	310
Problem 26: Fourth Amendment Issues in the La Cienega Unified School District	311
Safford Unified Sch. Dist. #1 v. Redding	312
Notes.....	317
Problem 27: Virtual Strip Searches in the Not-Too-Distant Future	318
State v. Granville.....	319
Notes.....	322
3. Drug Testing of Students	325
Problem 28: Drug Testing and Nirvana Macro Systems	325
Board of Educ. of Indep. Sch. Dist. No. 92 v. Earls	326
Notes.....	332
Hill v. National Collegiate Athletic Association	333
Notes.....	340
B. Student Records and Surveys.....	341
1. The Family Educational Rights and Privacy Act (FERPA)	341
From Elec. Privacy Info. Ctr. (2019)	341
Notes.....	342
2. Determining the Parameters of FERPA in the Federal Courts	346
Owasso Indep. Sch. Dist. No. I–011 v. Falvo	346
Note	349
3. Conducting Surveys of Students	350
C.N. v. Ridgewood Bd. of Educ.	350
Notes.....	356
Problem 29: Driver’s Licenses for the Information Superhighway	358
C. The Prospective Applicability of the Right to Anonymity	359
Justice for All v. Faulkner	359
Note	364

Chapter VI. The Right to Equal Educational Opportunity	365
A. Introduction	365
B. The Possibilities and Limits of Achieving Equity in Education.....	369
C. Racial Equity in Education.....	372
1. The Evolution of Basic Fourteenth Amendment Doctrine	372
Brown v. Bd. of Educ.	372
Notes.....	375
2. Equitable Access and Affirmative Action	375
Problem 30: Meglino v. Regents of Atlantis State Teachers	
College	377
Grutter v. Bollinger	379
Notes.....	387
Fisher v. University of Texas at Austin (Fisher II).....	390
Notes.....	401
The California Civil Rights Initiative (Proposition 209) (1996) ...	405
Note	406
Problem 31: The New Mendocino Professional Development	
Program	407
3. Sorting out the Parameters of K–12 Desegregation Law in the	
Aftermath of <i>Seattle-Louisville</i>	408
Problem 32: The Vista Creek School District-University	
Partnership	411
Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1	412
Notes.....	425
D. The Rights of Undocumented Students	429
Plyler v. Doe.....	429
League of United Latin Am. Citizens v. Wilson	434
Notes	437
Regents of the University of California v. United States Department	
of Homeland Security	439
Notes	445
E. Equitable Access and Barriers to Courses, Teachers and	
Opportunities.....	447
Dear Colleague Letter on Resource Comparability and Equitable	
Access to School Resources	448
Note	450
1. Within-School Segregation, Tracking, & Homogeneous Ability	
Grouping	450
Hobson v. Hansen	450
Closing the Achievement Gap by Detracking	456
Notes.....	459
Problem 33: Tracking & Ability Grouping	460
2. Grade Retention and Denial of Diplomas	461
3. Equitable Access to High-Quality Teachers	463
4. School Discipline.....	465
Dear Colleague Letter on the Nondiscriminatory Administration	
of School Discipline.....	465

5.	Equal Educational Opportunity in School Sports	467
	Steffes v. Cal. Interscholastic Fed'n	467
	Note	470
	Washington v. Ind. High Sch. Athletic Ass'n, Inc.	470
	Problem 34: Cooper v. Clarion Unified School District (CUSD)....	474
6.	Desegregation in Higher Education	475
	United States v. Fordice.....	475
	Notes.....	478
F.	Gender Equity in Education	480
1.	Title IX Issues in School Sports.....	480
	Neal v. Bd. of Trustees of the Cal. State Univs.	480
2.	Gender Equity in the Education Process	486
a.	Separating Students on the Basis of Gender	486
	Problem 35: Admissions and Gender	486
	United States v. Virginia	487
b.	Differential Treatment in K–12 Settings.....	492
	Gender Equity in the Classroom	492
	Notes.....	495
	Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities	496
3.	Legal and Policy Perspectives on Transgender Issues.....	498
	Whitaker v. Kenosha Unified School District No. 1 Board of Education	501
	Notes.....	510
	Chapter VII. Educational Quality and the Law	513
A.	Introduction	513
B.	Defining and Identifying Quality Education at the K–12 Level.....	517
1.	Educational Malpractice Litigation	517
	Peter W. v. San Francisco Unified Sch. Dist.	518
	Notes.....	520
	Report 18: The Annual Report of the San Francisco Consent Decree Monitoring Team.....	521
2.	Federal Court Efforts to Define Educational Quality in a Desegregation Context.....	523
	Pitts v. Freeman	523
	Freeman v. Pitts	524
3.	Conceptualizing Educational Quality in a School Finance Context.....	525
	San Antonio Indep. Sch. Dist. v. Rodriguez.....	525
	Notes.....	531
	Educational Adequacy: A Theory and Its Remedies	532
	Education Articles in State Constitutions	534
	Rose v. Council for Better Educ., Inc.	536
	Notes.....	542

	Beyond Dollars: The Promises and Pitfalls of the Next Generation of Educational Rights Litigation.....	545
	Notes.....	550
4.	Construing Educational Quality Under an Individual State’s Fundamental Right to an Education.....	551
	T. K. Butt v. California	551
	Notes.....	557
	Vergara v. State of California.....	559
	Notes.....	565
	Problem 36: Omnibus Class Action Lawsuit	566
	Problem 37: Educational Quality Issues in the State of Ocean Wave	567
C.	Increasing Educational Quality in Postsecondary Education.....	568
1.	Statutory Developments: Postsecondary Education	570
	Select Portions of the Higher Education Act, as Amended by the Higher Education Opportunity Act	571
	Notes.....	575
2.	Caselaw Impacting Postsecondary Education Quality at the Federal Level	578
	Professional Massage Training Center, Inc. v. Accreditation Alliance of Career Schools and Colleges	578
	Accrediting Council for Independent Colleges and Schools v. DeVos.....	581
	Note	587
	Association of Private Sector Colleges and Universities v. Duncan	587
	Notes.....	595
Chapter VIII. K–12 School Accountability: The Every Student Succeeds Act		
	Succeeds Act	599
A.	Introduction: NCLB and Its Aftermath	599
B.	The New School Accountability Framework Under ESSA.....	602
1.	School Accountability Requirements Generally	602
2.	Identifying Schools for Improvement.....	604
3.	Measuring Student Achievement and School Performance	606
4.	Academic Standards.....	609
5.	Teacher Quality	610
6.	Students with Disabilities	611
7.	English Learners	613
8.	Other Notable ESSA Provisions	614
	Abandoning the Federal Role in Education: The Every Student Succeeds Act.....	617
	Notes.....	621
	Problem 38: Devising a New Federal Law to Provide for Public Schooling in the Nation of Arcadia.....	622

C.	The Continued Prominence of Standardized Testing Under ESSA.....	622
	Debra P. v. Turlington	625
	Problem 39: School Sports, Testing, and Related Academic Issues.....	628
Chapter IX. The Burgeoning Charter School Movement and Its		
	Implications	631
A.	The Birth and Growth of Charter Schools.....	631
B.	Public, Private or Both?	637
	Having It Both Ways: How Charter Schools Try to Obtain Funding of Public Schools and the Autonomy of Private Schools	638
	Notes	640
	Hope Academy Broadway Campus v. White Hat Mgt., LLC	641
	Notes	647
C.	For-Profit, Non-Profit, or Both?.....	647
	North Carolina Charter Schools' (Non-?) Compliance with State and Federal Nonprofit Law	648
	Notes	654
D.	Constitutional Challenges to the Creation of Charter Systems.....	655
	League of Women Voters of Washington v. State	656
	Notes	659
	El Centro de la Raza, et al. v. State	661
	Notes	665
E.	Non-Renewal and Revocation of Charters.....	666
	Charter School Accountability: Legal Considerations Concerning Nonrenewal and Revocation Procedures	666
F.	Student Access and Enrollment in Charter Schools.....	672
	Disabled Students' Rights of Access to Charter Schools Under the IDEA, Section 504 and the ADA.....	673
	Notes	678
	Problem 40: Undue Burdens and Fundamental Alterations at High Altitude 6–12 Charter School	680
	Notes	681
G.	Other Litigation Trends.....	683
	1. Charter School Caps.....	683
	2. Funding of Online Schools	686
Chapter X. The Rights of K–12 Students with Particular Needs:		
	English Learners & Students with Disabilities.....	687
A.	Bilingual Education and Other Programs for English Learners	688
	Problem 41: The Community Language Academy	690
	1. Basic Federal Doctrine	691
	Lau v. Nichols	691
	Notes.....	695
	Horne v. Flores	696
	Notes.....	702
	English Learners: Challenging Bias, Seeking Justice	704

2.	California Proposition 58	709
	California Education Code, Title 1, Division 1, Part 1, Chapter 3.....	710
	Problem 42: The New Mendocino Education Code Litigation	712
B.	Special Education and Other Programs for K–12 Students with Disabilities	713
1.	Federal Special Education Law Generally	715
	Problem 43: Johnson v. Sutter Springs Unified School District ...	715
2.	“Appropriateness” of Special Education: An Increasing Focus on Educational Quality	717
	Board of Education v. Rowley	717
	Notes.....	728
	MR. I. v. Me. Sch. Admin. Dist. No. 55	729
	Notes.....	735
	Andrew F. v. Douglas County School District	736
	Note	741
3.	Within-School Segregation Issues in Special Education	741
a.	Disputes Regarding Inclusion, Mainstreaming, and the Least Restrictive Environment Generally	741
	Sacramento City Unified Sch. Dist. v. Rachel H.	741
	Note	747
b.	Disproportionate Representation of Minority Students in Separate Special Education Classrooms	748
	Larry P. v. Riles	748
4.	Standardized Testing and K–12 Students with Disabilities	749
	Larry P. v. Riles	749
	Notes.....	756
 Chapter XI. Disability Rights in Postsecondary Education		
	Settings.....	759
A.	Introduction	759
B.	Disability Rights at Colleges and Universities Generally	762
1.	Admissions Issues	763
	Southeastern Cmty. Coll. v. Davis	763
	Pushkin v. Regents of the Univ. of Colo.....	769
	Problem 44: Postsecondary Applicants with Disabilities	776
2.	Physical Access/Campus Housing	777
3.	Access to Technology	778
4.	Accommodations in Coursework, Academic Standards, and Graduation Requirements	779
5.	The Growing Prevalence of Mental and Emotional Disabilities ...	780
C.	Access to Postsecondary Sports Programs.....	782
	Knapp v. Northwestern Univ.	784
	Notes	788
D.	Timed Testing and Access to Professions	788
	Breimhorst v. Educ. Testing Serv.	788
	Notes	792

1.	Legislation and Litigation Resulting in an End to the Flagging of LSAT Scores by the Law School Admission Council (LSAC)	794
	Enyart v. Nat'l Conference of Bar Examiners, Inc.	795
	Notes.....	802
	Problem 45: Timed Testing and Assistive Technology.....	802
Chapter XII. Religion and Public Education: Determining the Shifting Contours of Establishment Clause Jurisprudence 805		
A.	Introduction	805
	Problem 46: United Parents of Newman County v. NCUSD	808
B.	The Evolving Inquiry into Purpose & Effects.....	809
	Engel v. Vitale	809
	Notes	814
	Wallace v. Jaffree	814
	Notes	818
	Agostini v. Felton	819
C.	The Endorsement Inquiry.....	821
	Doe v. Duncanville Indep. Sch. Dist.....	823
	Problem 47: The Charter School Collaborative Holiday Program	828
	Borden v. Sch. Dist. of the Township of East Brunswick	829
D.	The Coercion Inquiry	834
	Lee v. Weisman	835
	Notes	840
	Problem 48: The Dunsmuir University Litigation, Part II	841
E.	Applying the Neutrality Principle: Public Funding for Private Religious Education	841
	Problem 49: The Eldorado Teacher Education Institute	842
	Zobrest v. Catalina Foothills Sch. Dist.	843
	Zelman v. Simmons-Harris.....	846
	Notes	859
	Bush v. Holmes.....	862
	Notes	865
Chapter XIII. Morality, Values, and Educational Policy 867		
A.	The Right to Alternative Models of Education	868
	Wisconsin v. Yoder	868
	Notes	875
	Jonathan L. v. Superior Court.....	876
	Note	877
B.	Patriotism, Religion, and Freedom of Expression: The Flag Salute Controversies	878
	W.V. State Bd. of Educ. v. Barnette.....	878
	Elk Grove Unified Sch. Dist. v. Newdow	882
	Note	888
C.	Disputed Access to Campus Forums and Facilities	888
	1. Access to Forums	888
	Rosenberger v. Rector & Visitors of Univ. of Va.	888

	Christian Legal Soc’y Chapter of the Univ. of Calif., Hastings Coll. of the Law v. Martinez.....	892
	Keeton v. Anderson-Wiley.....	899
	Note	904
	Problem 50: The West Valley Student Collective v. Moss Grove University.....	904
2.	Access to Campus Facilities.....	905
	Good News Club v. Milford Cent. Sch.	905
	Notes.....	911
	Gilles v. Blanchard	912
D.	The Parameters of the Right to Receive Information & Ideas	915
	Problem 51: Montoya v. Gold Coast Unified School District.....	915
	Problem 52: The Columbia Education Initiatives	917
1.	The Right to Receive Information	918
	Board of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico	918
	González v. Douglas	926
	Notes.....	933
	Edwards v. Aguillard	934
	Notes.....	938
2.	The Right Not to Receive Information	943
	Mozert v. Hawkins Cnty. Bd. of Educ.	943
	Parker v. Hurley	953
	Notes.....	962
	Problem 53: The Changing Nature of the Family and Its Impact on the Curriculum	963
E.	Sex Education	964
	Problem 54: The Riverview Lawsuits	964
	Curriculum-Related Controversies in the Area of Sex Education	965
	The California Healthy Youth Act (Revised CA Sex Education Statutes).....	966
	Problem 55: Cleaning up the Inconsistencies in Current Age Requirements.....	970
	Chapter XIV. The Rights of Educators.....	973
A.	Perspectives on Labor Relations in Public Education	973
1.	Collective Bargaining and the Education Process	973
	Notes.....	980
2.	<i>Janus v. AFSCME Council 31</i> : An Expansive Application of First Amendment Law	981
	Janus v. American Federation of State, County, and Municipal Employees, Council 31.....	981
	Notes.....	988
B.	The Right to Acquire & Retain Tenure.....	988
	Perry v. Sindermann	990
C.	Disputes Regarding the Dismissal Process Generally	994
	Problem 56: Teacher Dismissal at the K–12 Level	994

Morrison v. State Bd. of Educ.....	996
D. First Amendment Rights of Educators	1002
1. U.S. Supreme Court Doctrine Generally	1003
Pickering v. Board of Educ. of Township High Sch. Dist. 205.....	1003
2. “Academic Freedom” (or Lack Thereof) at the K–12 Level.....	1007
Weingarten v. Board of Education of the City School District of	
the City of New York	1012
Notes.....	1016
3. “Academic Freedom” at the Higher Education Level.....	1019
Urofsky v. Gilmore	1019
Problem 57: Disciplinary Sanctions at the Higher Education	
Level	1029
E. Employment Discrimination	1030
1. Race/Ethnicity.....	1031
2. Gender	1032
3. LGBT Status	1035
4. Religion	1038
5. Age	1040
6. Disability.....	1043
INDEX.....	1049