PRACTICAL EDUCATION LAW
FOR THE
TWENTY-FIRST CENTURY
PRACTICAL EDUCATION LAW
FOR THE
TWENTY-FIRST CENTURY
SECOND EDITION

Victoria J. Dodd

CAROLINA ACADEMIC PRESS
Durham, North Carolina
CONTENTS

Chapter 1 · Introduction to American Education Law 1
  § 1:01. The Nature of American Education Law 3
  § 1:02. Primary Sources of Education Law and Research Tools 4
  § 1:03. Basic Legal Research Tools 5
  § 1:04. Traditional Bases of Education 6
  § 1:05. Brief History of Elementary and Secondary Public Education in the United States 7
  § 1:06. Compulsory Education 9
  § 1:07. The Role of Deference 11
  § 1:08. Development of National and State Educational Standards 12
  § 1:09. Teacher and Student Competency Testing 14
  § 1:10. Comparison of American Public Education with the Educational Systems of Other Industrialized Nations 16
  § 1:11. The Evolving Role of American Public Education 18

Chapter 2 · The Organization and Operation of American Public Education 21
  § 2:01. Overall State Organization of Public Education 23
  § 2:02. Powers and Duties of State Boards of Education 24
      In General 24
      Powers of State Commissioner of Education 27
      State Control over Curriculum 30
      State Control over Local School Boards 32
      Review of State Board Decisions 34
  § 2:03. Powers of County School Boards 35
  § 2:04. Creation, Change, and Dissolution of School Districts 37
      In General 37
      Change of Boundaries 38
      Merger of School Districts 40
      Annexation and Detachment 40
      Closing Schools, Property Transfers 42
§ 2:05. Powers and Duties of Local School Boards 43
   Selection and Removal of Members 43
   Public Bidding Laws 45
   Control over Curriculum 47
   Control over Personnel 48
   Powers of Local Superintendent of Schools 50
§ 2:06. Contracts 52
   Contracts with Personnel 52
   Contracts with Third Parties 54
§ 2:07. Acquisition and Sale of Real Property 57
   Purchase and Sale Issues 57
   Condemnation Issues 58
§ 2:08. Insurance Issues 59
§ 2:09. Open Meeting Laws 61
   Typical Statutory Provisions 61
   Definition of “Meeting” 62
   Requirement of Notice 63
   Exemptions from Open Meetings Laws 64
   Ratification to Cure Non-Compliance with Open Meeting Law 65
§ 2:10. School Board Records Issues and Rules 65
   Minutes 65
   Quorum Rules 66
   Other Records Issues 66
   Conflict of Interest Rules 67
§ 2:11. State Take-Overs of Local School Districts 67
§ 2:12. Development of State and Local Education Standards 69

Chapter 3 · School Finance 71
§ 3:01. Overview of School Financing 73
§ 3:02. Role of the School District Budget 75
§ 3:03. Establishing the Tax Levy 78
§ 3:04. Issues in the Assessment and Collection of Taxes 81
§ 3:05. Challenges to the Overall Tax Levy Process 85
§ 3:06. Valuation Issues and Appraisal Methods 89
§ 3:07. Property Tax Delinquency and Foreclosure 94
§ 3:08. Federal Constitutional Challenges to Local Property Tax Model 96
§ 3:09. State Constitutional Challenges to Local Property Tax Model 97
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 3:10</td>
<td>Models of School Funding</td>
<td>98</td>
</tr>
<tr>
<td>§ 3:11</td>
<td>Alternative Funding Schemes</td>
<td>99</td>
</tr>
<tr>
<td>§ 3:12</td>
<td>Procedures for Issuing Bonds</td>
<td>100</td>
</tr>
<tr>
<td>§ 3:13</td>
<td>School Bond Elections</td>
<td>103</td>
</tr>
<tr>
<td>§ 3:14</td>
<td>Bond Purposes</td>
<td>105</td>
</tr>
<tr>
<td>§ 3:15</td>
<td>Constraints on School District Indebtedness</td>
<td>107</td>
</tr>
<tr>
<td>§ 3:16</td>
<td>Limitations on Bonds</td>
<td>108</td>
</tr>
<tr>
<td>§ 3:17</td>
<td>Bonds and Consolidation of Districts</td>
<td>111</td>
</tr>
<tr>
<td>§ 3:18</td>
<td>Warrants and Notes</td>
<td>112</td>
</tr>
<tr>
<td>§ 3:19</td>
<td>Selected Salary and Fringe Benefits Issues</td>
<td>114</td>
</tr>
<tr>
<td>§ 3:20</td>
<td>Financial Exigencies</td>
<td>119</td>
</tr>
<tr>
<td>§ 4:01</td>
<td>No Federal Constitutional Fundamental Right to an Education Exists: The Rodriguez Case</td>
<td>125</td>
</tr>
<tr>
<td>§ 4:02</td>
<td>Post-Rodriguez Supreme Court Cases: Minimal Federal Constitutional Interests in Education</td>
<td>127</td>
</tr>
<tr>
<td>§ 4:03</td>
<td>Early State-Based Rights to an Education: The Serrano Case and Others</td>
<td>128</td>
</tr>
<tr>
<td>§ 4:04</td>
<td>Modern Post-Serrano Legal Challenges Under State Equal Protection Theories</td>
<td>130</td>
</tr>
<tr>
<td>§ 4:05</td>
<td>Successful Challenges Using State-Based Equal Protection Theories</td>
<td>132</td>
</tr>
<tr>
<td>§ 4:06</td>
<td>Unsuccessful Challenges Using State-Based Equal Protection Theories</td>
<td>134</td>
</tr>
<tr>
<td>§ 4:07</td>
<td>State-Based Rights to an Education Under State Constitutional Education Articles</td>
<td>136</td>
</tr>
<tr>
<td>§ 4:08</td>
<td>State Education Articles — In General</td>
<td>137</td>
</tr>
<tr>
<td>§ 4:09</td>
<td>Successful Challenges Using State Education Articles</td>
<td>139</td>
</tr>
<tr>
<td>§ 4:10</td>
<td>Unsuccessful Challenges Using State Education Articles</td>
<td>141</td>
</tr>
<tr>
<td>§ 4:11</td>
<td>Impact of Successful Cases on Funding and Other Issues</td>
<td>143</td>
</tr>
<tr>
<td>§ 4:12</td>
<td>The Problem of On-Going Litigation</td>
<td>145</td>
</tr>
<tr>
<td>§ 4:13</td>
<td>State Legislative Responses</td>
<td>146</td>
</tr>
<tr>
<td>§ 4:14</td>
<td>The Future of State-Based Litigation</td>
<td>147</td>
</tr>
<tr>
<td>§ 5:01</td>
<td>The Supreme Court and Residency Requirements</td>
<td>153</td>
</tr>
</tbody>
</table>
CONTENTS

§ 5:02. Basic State Residency Requirements 155
§ 5:03. Proving Residency 158
§ 5:04. Residency Issues in Divorced Families 160
§ 5:05. Residency and Guardianship 161
§ 5:06. Residency of Children in Group Homes or Institutions 163
§ 5:07. Homeless Children and Residency Issues 164
§ 5:08. The Handicapped Child and Residency Issues 166
§ 5:09. Residency Issues in Special Factual Situations 168
§ 5:10. Various Tuition Issues and Residency 171
§ 5:11. General Guidelines Regarding Student Fees 172
§ 5:12. Textbook Fees 173
§ 5:13. Fees for Courses and Activities 174
§ 5:14. Transportation Expenses 175
§ 5:15. Miscellaneous Fees and Expenses 176

Chapter 6 · Home Schooling, School Choice, Charter Schools, and Other Alternative Schools 179
§ 6:01. Home Schooling — In General 181
§ 6:02. State Regulation of Home Schooling — In General 183
§ 6:03. Curriculum and Credentialling 186
§ 6:04. Reporting and Procedural Requirements 189
§ 6:05. Free Exercise Challenges 190
§ 6:06. Vagueness Challenges 192
§ 6:07. Home Education and Handicapped Children 193
§ 6:08. Divorce and Custody Issues 194
§ 6:09. Other Federal Court Issues and Home Schooling 195
§ 6:10. School Choice — In General 196
§ 6:11. Existing Public School Choice Plans 197
§ 6:12. Establishment Clause Challenges to Voucher Programs 201
§ 6:13. Equal Protection Challenges to Voucher Programs 203
§ 6:15. Privatization of Schools 207

Chapter 7 · Search and Seizure and Crime on Campus 211
§ 7:01. The Basic Standard for Student Searches — T.L.O. 213
§ 7:02. Searches of the Person — In General 214
§ 7:03. Strip Searches 217
§ 7:04. Locker Searches 219
§ 7:05. Searches of Bookbags 221
§ 7:06. Searches of Automobiles 222
§ 7:07. When Is a Search Not a Search? 224
§ 7:08. Canine-Assisted Searches 226
§ 7:09. Metal Detectors in the School Environment 227
§ 7:10. Police-Conducted Searches 228
§ 7:11. The Exclusionary Rule and Student Searches 230
§ 7:12. Miranda Warnings 232
§ 7:13. Drug Testing 233
§ 7:14. Weapons Legislation 236
§ 7:15. Duty to Maintain a Safe Campus 238

Chapter 8 · Torts and the Student-School Relationship 243
§ 8:01. Sovereign Immunity 245
In General 245
Insurance Exception 246
Premises Liability Exception 248
§ 8:02. Governmental and Discretionary or Ministerial Functions 249
§ 8:03. The Doctrine of In Loco Parentis 251
§ 8:04. Civil Actions under § 1983 254
§ 8:05. Corporal Punishment 257
§ 8:06. Student-Inflicted Injury 260
§ 8:07. Injuries by Non-Student Third Parties 264
§ 8:08. Other Student Injuries 267
Non-Disciplinary Faculty-Inflicted Injury 267
Faculty Duty to Supervise Students 269
Student Mishaps Off-Campus or at Home 272
Student Suicide 273
Teacher Sexual Abuse and Sexual Harassment 276
§ 8:09. Educational Malpractice 277
§ 8:10. Other Professional Liability Concerns 280
Slander and Libel 280
Student Confidentiality Issues 281
Buckley Amendment 282
Other Counseling Issues 283
§ 8:11. Overview of Selected Student Health Issues 284
Child Abuse Reporting Statutes 284
Immunization 285
Acquired Immunity Deficiency Syndrome 286
§ 8:12. Sexual Education and Condom Distribution 288
Chapter 9 · Athletics
§ 9:01. Athletics and Constitutional Rights — Introduction 293
§ 9:02. Athletic Rights and Transferring Students 294
§ 9:03. Student Suspensions from Athletics and the Availability of Due Process Rights 296
§ 9:04. Other Athletic Rules and Student Rights 300
§ 9:05. Student Fees and Athletics 303
§ 9:06. School Liability Issues in Athletics — In General 304
§ 9:07. Liability for Student Injuries on School Teams 306
§ 9:08. Liability for Student Injuries During Physical Education Class 309
§ 9:09. Student Assumption of the Risk 312
§ 9:10. Validity of Student Waivers Concerning Athletic Injuries 315
§ 9:11. Gender and Athletics — In General 316
§ 9:12. Equal Protection Concerns 318
§ 9:13. Title IX and Team Formation 319
§ 9:14. Title IX and Other Athletic Claims 321
§ 9:15. National Collegiate Athletic Association (NCAA) and Regulation of High Schools — In General 323
§ 9:16. NCAA and Recruitment of Student Athletes 325
§ 9:17. NCAA and Eligibility Standards 327

Chapter 10 · Labor Relations
§ 10:01. State Collective Bargaining Laws 333
Similarities with National Labor Relations Act 333
Typical State Statutes 335
States Prohibiting Collective Bargaining 336
§ 10:02. Scope of Collective Bargaining 337
In General 337
Mandatory Subjects 339
Duty to Bargain in Good Faith 341
§ 10:03. Typical Bargainable Issues: “Wages, Hours, and Terms and Conditions of Employment” 342
Salary and Benefits 342
Length of School Day and Calendar Issues 345
Class Size 346
Additional Duties during the School Day and Extra-Curricular Activities 347
CONTENTS

Other Issues 348
  Merit Pay 348
  Teacher Evaluations 349
  Smoking Policies 351
§ 10:04. Selecting Bargaining Representatives 351
  Elections and Exclusive Representation 351
  Union Fees, Dues and Assessments 354
§ 10:05. Construction of Labor Contracts 357
§ 10:06. Employee Grievances and Arbitration 358
  In General 358
  Role of Arbitrator 360
  Review of Arbitrator’s Decision 361
§ 10:08. Legality of Teacher Strikes 365
  Typical State Statutes 365
  Injunctions and Punishment of Striking Teachers 366
§ 10:09. Teacher Transfers, Terminations, and Reductions in Force 367

Table of Cases 371

Index 443