EDUCATION LAW:
A Problem-Based Approach
THIRD EDITION
LexisNexis Law School Publishing
Advisory Board

Paul Caron
Professor of Law
Pepperdine University School of Law

Bridgette Carr
Clinical Professor of Law
University of Michigan Law School

Steven I. Friedland
Professor of Law and Senior Scholar
Elon University School of Law

Carole Goldberg
Jonathan D. Varat Distinguished Professor of Law
UCLA School of Law

Oliver Goodenough
Professor of Law
Vermont Law School

John Sprankling
Distinguished Professor of Law
McGeorge School of Law
Dedication

To my mother, Sandra M. Johnson, and the memory of my father, Thomas F. Johnson
— SFJ
To Maggie and Lily and those who love them — SER
Acknowledgements

Professor Johnson would like to thank Sarah E. Redfield for taking on this project. I would also like to thank, Interim Dean Larry David, Dean of Faculty Andrew Tallmer, and Executive Director Greg Brandes all of Concord Law School of Kaplan University for their support of my work, and my family for their love, support and understanding of the time commitment involved in writing this book.

Professor Redfield, of course, thanks Professor Johnson, whose idea this was and without whom it would never have reached reality. She also thanks the University of New Hampshire School of Law for its support of this work and her students for all they have taught her about education, teaching, and writing.

We both would like to thank everyone at LexisNexis for their assistance, particularly Keith Moore for his editorial assistance and guidance through the process.
# Table of Contents

## Chapter 1  FOUNDATIONAL PRINCIPLES  

§ 1.01  INTRODUCTION  

- Problem 1: Education at Risk and Bedrock Cases from the Supreme Court  
  - Brown v. Board of Education (Brown I)  
  - Brown v. Board of Education (Brown II)  
  - San Antonio Independent School District v. Rodriguez  
  - Plyler v. Doe  
  - Post Problem Discussion  

§ 1.02  STATE & FEDERAL INTERACTION: THE SUPREMACY AND SPENDING CLAUSES  

- Problem 2: Homeless Students  
  - Federal Law 42 U.S.C. § 11432  
  - Hypothetical State Law § 493:12  
  - Lampkin v. District of Columbia  
  - Post Problem Discussion  

§ 1.03  FEDERAL LAW: SOURCES & GOVERNANCE  

- Activity 1: Federal Scavenger Hunt  

§ 1.04  STATE LAW: SOURCES & GOVERNANCE  

- Activity 2: State Scavenger Hunt  

§ 1.05  LOCAL LAW: SOURCES & GOVERNANCE  

- Activity 3: Local Scavenger Hunt  

§ 1.06  BRINGING THE PIECES TOGETHER  

- Problem 3: The Boy Scouts Trail Through Sources of Law  
  - New Jersey Anti-Discrimination Statute  
  - Boy Scouts of America v. Dale  
  - Boy Scouts of America v. Till  
  - 20 U.S.C. § 7905 Equal Access to Public School Facilities  
  - 34 C.F.R. § 108.3 et seq.  
  - Post Problem Discussion  

## Chapter 2  SCHOOL FUNDING  

§ 2.01  INTRODUCTION  

§ 2.02  SOURCES OF FUNDING  

§ 2.03  SCHOOL FUNDING LITIGATION — BACKGROUND  

§ 2.04  NEW HAMPSHIRE’S SCHOOL FUNDING LITIGATION  

  A. Introduction  

vii
Table of Contents

B. Constitutional Obligations ................................................. 75
   Activity 1: Find Your State Constitutional Provisions and Court
   Decisions ................................................................. 77
C. Constitutionality of the Education Funding System .............. 77
   Problem 1: Education Funding Systems and Defining Adequacy .... 77
   Claremont School District v. Governor (Claremont II) ............. 78
   Post Problem Discussion .............................................. 84
D. Complying With Constitutional Obligations ....................... 85
   Problem 2: State Education Funding — The ABC Plan ............. 85
   Opinion of the Justices (School Financing) ......................... 86
   Claremont School District v. Governor (Claremont IV) .......... 89
   Post Problem Discussion .............................................. 90
E. State Funding For All? .................................................... 91
   Problem 3: Targeted Aid .............................................. 91
   Opinion of the Justices (Reformed Public School Financing
   System) ................................................................. 91
   Post Problem Discussion .............................................. 94
§ 2.05 STANDARDS OF ADEQUACY AND ACCOUNTABILITY ....... 95
   Problem 4: State Accountability Obligations ....................... 95
   Claremont School District v. Governor (Claremont VII) ....... 95
   Post Problem Discussion .............................................. 104
   Activity 2: Accountability in Your State ......................... 105
§ 2.06 BACK TO THE BEGINNING: BASIC DEFINITIONS AND NEW
   PARTIES ................................................................. 105
   Problem 5: Defining Adequacy ...................................... 106
   Londonderry School District SAU #12 v. State of New Hampshire .. 106
   Post Problem Discussion .............................................. 114
   Activity 3: Defining Adequacy in Your State .................... 114
§ 2.07 THE COST OF AN ADEQUATE EDUCATION .................. 115
   Activity 4: Determining the Cost of Adequacy in Your State .... 115
§ 2.08 REMEDIES ............................................................ 116
   Activity 5: Remedies in School Funding Cases in Your State .... 117

Chapter 3 EMPLOYMENT

§ 3.01 INTRODUCTION ...................................................... 119
§ 3.02 LICENSURE/CERTIFICATION REQUIREMENTS ............... 120
   Activity 1: Find Your State’s HQT & Licensing Requirements .... 121
   Problem 1: Revoking Teacher Certification for Out of School
   Conduct ................................................................. 123
   Hypothetical State Licensing Statute: EDL § 32970 ............... 123
   Winters v. Arizona Board of Education .......................... 124
Chapter 4 INSTRUCTION & CURRICULAR ISSUES

§ 4.01 INTRODUCTION ............................................................ 187

§ 4.02 THE CURRICULUM IN STATUTE ........................................ 188

A. State Law ........................................................................ 188

Core Curriculum Framework; Purpose; Curriculum, N.M. Stat.
Ann. § 22-13-1.5 .................................................................... 188
Chapter 22. Public Schools Article 23 ................................. 189
Activity 1: Find Your State Curriculum Requirements .......... 191

B. Federal Law ....................................................................... 191

§ 4.03 THE CURRICULUM IN REAL LIFE ................................. 191
## Table of Contents

### A. Legislative & Judicial Influences

- Legislative & Judicial Influences ........................................... 191
- Problem 1: The State Legislature Meets the Curriculum ............. 192
- The Toolbox Revisited — Paths to Degree Completion From High School Through College .................................................. 192
- The Education Trust, School Comparisons .............................. 194
- State A-G Requirements ...................................................... 199
- Post Problem Discussion .................................................... 200

### B. English as a Second Language

- English as a Second Language ............................................. 200
- Problem 2: El Plan De Estudios En La Vida Real ..................... 202
- *Lau v. Nichols* ................................................................. 202
- *Horne v. Flores* ............................................................. 205
- Post Problem Discussion .................................................... 217

---

### § 4.04 CURRICULUM IN CONSTITUTIONAL CONTEXT

- Problem 3: Banning *Bastard Out of Carolina* ....................... 220
- *Bastard Out of Carolina* By Dorothy Allison ....................... 221
- *Board of Education of Island Trees Union Free School District No. 26 v. Pico* ..................................................... 221
- *Virgil v. School Board* .................................................... 227
- *Monteiro v. Tempe Union High School District* ................. 232
- Post Problem Discussion .................................................... 238
- Problem 4: Academic Freedom ............................................ 239
- *Keyishian v. Board of Regents* ......................................... 240
- *Boring v. Buncombe County Board of Education* ................ 242
- *Cockrel v. Shelby County School District* ......................... 247
- Post Problem Discussion .................................................... 255

### Chapter 5 ATTENDANCE, ASSIGNMENT & PLACEMENT

---

### § 5.01 INTRODUCTION

- Activity 1: Find Your State’s Compulsory Attendance Law ...... 257
- Activity 1: Find Your State’s Compulsory Attendance Law ...... 258

### § 5.02 COMPULSORY ATTENDANCE

- Compulsory Attendance .................................................... 259
- Problem 1: Amish Exceptions to Compulsory Attendance ........ 259
- Hypothetical Compulsory Attendance Law With Amish Exceptions 260
- *Wisconsin v. Yoder* ....................................................... 261
- *Fellowship Baptist Church v. Benton* ................................. 265
- Post Problem Discussion .................................................... 268

### § 5.03 CONDITIONS OF ADMISSION, PLACEMENT, AND EXIT

- Activity 2: Find The Admission and Exit Conditions in Your State 269

### § 5.04 HOMESCHOOLING

- Activity 3: Find Your State’s Homeschool Requirements .......... 271

### § 5.05 RESIDENCY

- Activity 3: Find Your State’s Homeschool Requirements .......... 272
## Table of Contents

Problem 2: Residency Requirements ............................................. 273  
Hypothetical State Residency Statute ........................................ 273  
*Martinez v. Bynum* ............................................................... 274  
Post Problem Discussion ..................................................... 277  

§ 5.06 RACE AND GENDER IN PUBLIC SCHOOL ASSIGNMENT AND ATTENDANCE ................................................................. 277  
Problem 4: The Majestic Equality of the Law Goes to School ........ 282  
*Mendez v. Westminster* ....................................................... 283  
*Grutter v. Bollinger* ............................................................. 287  
*Parents Involved in Community Schools v. School District No. 1* ...... 311  
Post Problem Discussion ..................................................... 331  

Chapter 6 LIABILITY  

§ 6.01 INTRODUCTION ................................................................. 339  
§ 6.02 TORTS — NEGLIGENCE ....................................................... 340  
A. Student Injuries ................................................................. 341  
   Problem 1: Space Monkey .................................................. 341  
   *Partin v. Vernon Parish School Board* .................................. 342  
   *Rollins v. Concordia Parish School Board* .......................... 344  
   Post Problem Discussion ................................................... 347  
B. Injuries by Other Students .................................................... 348  
   Problem 2: Kara and the Bullies ......................................... 348  
   *Busby v. Ticonderoga Central School District* ........................ 349  
   *Frazer v. St. Tammany Parish School Board* ........................ 350  
   Post Problem Discussion ................................................... 353  
§ 6.03 INTENTIONAL TORTS ....................................................... 353  
   Problem 3: “Get Me My Paddle” ......................................... 353  
   Mountain Ridge Corporal Punishment Policy .......................... 354  
   *Maddox v. Boutwell* ....................................................... 355  
   *Hinson v. Holt* .............................................................. 357  
   Post Problem Discussion ................................................... 360  
§ 6.04 DEFENSES ................................................................. 360  
   Activity 1: Find Your State Defenses and Immunities ............... 362  
§ 6.05 STATE STATUTORY LIABILITY .......................................... 362  
   Activity 2: Find Your State Anti-Bullying Statute ................. 364  
§ 6.06 FEDERAL STATUTORY LIABILITY ........................................ 364  
A. Section 1983 Claims .......................................................... 364  
   Problem 4: Kara’s Claims Under Federal Law ........................ 365  
   *Doe v. Covington County School District* .......................... 366  
   *Nabozny v. Podlesny* ..................................................... 385  
   Post Problem Discussion ................................................... 393  

T able of Contents
## Table of Contents

**B. Title IX Liability** .................................................. 395
   Problem 5: Kara’s Claims Under Federal Law — Part 2 ............. 396
   Gebser v. Lago Vista Independent School District .................. 396
   Davis v. Monroe County Board of Education ....................... 403
   Vance v. Spencer County Public School District ................... 408
   Rost v. Steamboat Springs RE-2 School District ................... 413
   Estate of Brown v. Ogletree ........................................ 417
   Post Problem Discussion .............................................. 425

§ 6.07 **ONLINE LIABILITY** ............................................. 426
   Activity 3: Protecting Students Online ............................. 427

§ 6.08 **BRINGING THE PIECES TOGETHER** ........................ 428
   Problem 6: Controlling Classroom Behavior ....................... 428
   Post Problem Discussion .............................................. 429

### Chapter 7  PRIVACY RIGHTS & RIGHT TO KNOW ............... 431

§ 7.01 **INTRODUCTION** ............................................... 431

§ 7.02 **CONSTITUTIONAL PRIVACY RIGHTS** ....................... 432
   Problem 1: Student Surveys ........................................... 432
   Rhoades v. Penn-Harris-Madison School Corporation ............... 433
   Post Problem Discussion .............................................. 448

§ 7.03 **PRIVACY RIGHTS UNDER FEDERAL STATUTES &
   REGULATIONS** ....................................................... 449
   Problem 2: Ferpa’s Confidentiality Requirements .................. 449
   20 U.S.C. § 1232g Family Educational and Privacy Rights ....... 450
   Owasso Independent School District No. I-011 v. Falvo ........... 464
   Gonzaga University v. Doe ........................................... 468
   Post Problem Discussion .............................................. 473
   Problem 3: Directory Information ................................... 474
   Post Problem Discussion .............................................. 475

§ 7.04 **ONLINE PRIVACY** .............................................. 475
   Activity 1: Online Privacy Issues ................................... 476

§ 7.05 **OPEN MEETING REQUIREMENTS** ............................ 477
   Problem 4: E-Mail and Right to Know Laws ....................... 478
   Hypothetical State Right to Know Law ............................. 479
   Lambert v. McPherson ................................................. 483
   Post Problem Discussion .............................................. 487

### Chapter 8  STUDENT DISCIPLINE

§ 8.01 **INTRODUCTION** ............................................... 489

§ 8.02 **THE STANDARDS FOR DISCIPLINE AND THE ROLE OF
   COURTS** ............................................................. 490
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 8.03</td>
<td>SUBSTANTIVE &amp; PROCEDURAL REQUIREMENTS</td>
<td>503</td>
</tr>
<tr>
<td>§ 8.04</td>
<td>CORPORAL PUNISHMENT</td>
<td>518</td>
</tr>
<tr>
<td>§ 8.05</td>
<td>ACADEMIC DISCIPLINE</td>
<td>530</td>
</tr>
<tr>
<td>§ 8.06</td>
<td>DISCIPLINE FOR OFF-CAMPUS CONDUCT</td>
<td>539</td>
</tr>
<tr>
<td>§ 8.07</td>
<td>DRUGS, GUNS, AND ZERO TOLERANCE POLICIES</td>
<td>550</td>
</tr>
</tbody>
</table>
Table of Contents

<table>
<thead>
<tr>
<th>Chapter 9</th>
<th>STUDENT EXPRESSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 9.01 INTRODUCTION</td>
<td>565</td>
</tr>
<tr>
<td>§ 9.02 THE CLASSIC CASES — A TRILOGY PLUS ONE SETS THE STANDARD</td>
<td>565</td>
</tr>
<tr>
<td>Problem 1: Applying Free Speech Standards</td>
<td>566</td>
</tr>
<tr>
<td><em>Tinker v. Des Moines</em></td>
<td>567</td>
</tr>
<tr>
<td><em>Bethel School District v. Fraser</em></td>
<td>571</td>
</tr>
<tr>
<td><em>Hazelwood School District v. Kuhlmeier</em></td>
<td>575</td>
</tr>
<tr>
<td><em>Morse v. Frederick</em></td>
<td>579</td>
</tr>
<tr>
<td>Post Problem Discussion</td>
<td>585</td>
</tr>
<tr>
<td>§ 9.03 DRESS CODES AND STUDENT EXPRESSION</td>
<td>586</td>
</tr>
<tr>
<td>Problem 2: T-Shirts With a Message</td>
<td>587</td>
</tr>
<tr>
<td><em>Boroff v. Van Wert City Board of Education</em></td>
<td>588</td>
</tr>
<tr>
<td><em>Guiles v. Marineau</em></td>
<td>591</td>
</tr>
<tr>
<td><em>B.H., K.M. v. Easton Area School District</em></td>
<td>595</td>
</tr>
<tr>
<td>Post Problem Discussion</td>
<td>604</td>
</tr>
<tr>
<td>Activity 1: State Constitutional Provisions and Local Dress Codes</td>
<td>604</td>
</tr>
<tr>
<td>§ 9.04 ELECTRONIC SPEECH</td>
<td>605</td>
</tr>
<tr>
<td>Problem 3: Making Fun of Your Teacher Online</td>
<td>607</td>
</tr>
<tr>
<td><em>J.S. v. Blue Mountain School District</em></td>
<td>607</td>
</tr>
<tr>
<td><em>Kowalski v. Berkeley County Sch.</em></td>
<td>625</td>
</tr>
<tr>
<td>Post Problem Discussion</td>
<td>634</td>
</tr>
<tr>
<td>§ 9.05 TRUE THREATS</td>
<td>635</td>
</tr>
<tr>
<td>Problem 4: Convincing The Supreme Court to Resolve True Threat Issues in Schools</td>
<td>636</td>
</tr>
<tr>
<td><em>Ponce v. Socorro Independent School District</em></td>
<td>636</td>
</tr>
<tr>
<td><em>Lavine v. Blaine School District</em></td>
<td>641</td>
</tr>
<tr>
<td><em>Doe v. Pulaski County Special School District</em></td>
<td>649</td>
</tr>
<tr>
<td><em>Bell v. Itawamba School Board</em></td>
<td>655</td>
</tr>
<tr>
<td>Post Problem Discussion</td>
<td>666</td>
</tr>
</tbody>
</table>

Chapter 10 | SEARCH, SEIZURE AND INTERROGATION |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 10.01 INTRODUCTION</td>
<td>669</td>
</tr>
<tr>
<td>§ 10.02 APPLYING T.L.O.</td>
<td>670</td>
</tr>
<tr>
<td>Problem 1: &quot;420&quot; — &quot;YBYS&quot;</td>
<td>670</td>
</tr>
<tr>
<td><em>New Jersey v. T.L.O.</em></td>
<td>671</td>
</tr>
</tbody>
</table>
Table of Contents

B. Vouchers .......................................................... 751
   Problem 2: Vouchers in Your State .......................... 752
   Zelman v. Simmons-Harris ............................... 753
   Locke v. Davey ............................................. 757
   Post Problem Discussion ................................. 759
C. Public School Benefits and Free Exercise Rights ........... 760
   Problem 3: Public School Benefits and Free Exercise ...... 761
   Employment Division Department of Human Resources of
   Oregon v. Smith ............................................. 762
   Church of Lukumi Babalu Aye, Inc. v. Hialeah .............. 766
   Gary S. v. Manchester School District ...................... 768
   Post Problem Discussion ................................. 771

§ 11.03 CATEGORY TWO: RELIGIOUS ACTIVITIES AT PUBLIC SCHOOLS
   OR SCHOOL-SPONSORED EVENTS ............................. 771
A. School Prayer .................................................. 771
   Problem 4: Student Initiated Prayer at the Senior Prom ...... 772
   Lee v. Weisman ............................................. 773
   Santa Fe Independent School District v. Doe .................. 778
   Post Problem Discussion ..................................... 782
B. Pledge of Allegiance and Religious Activities ............... 782
   Activity 1: Pledge of Allegiance and Religious Activities in Your
   State .......................................................... 783
C. Teaching Religion in Schools — Evolution vs. Creationism ..... 784
   Problem 5: Teaching Alternatives to Evolution ............... 784
   Epperson v. Arkansas. ........................................ 785
   Edwards v. Aguillard ......................................... 790
   Kitzmiller v. Dover Area School District ...................... 792
   Post Problem Discussion ..................................... 798

§ 11.04 CATEGORY THREE: USING PUBLIC SCHOOL FACILITIES ........ 798
   Problem 6: Religious Student Groups at Public Schools ...... 799
   Equal Access Act ............................................. 800
   Board of Education of Westside Community Schools v. Mergens ... 802
   Good News Club v. Milford Central School ................. 806
   Post Problem Discussion ..................................... 808

Chapter 12 SPECIAL EDUCATION

§ 12.01 INTRODUCTION ........................................... 811
   A. Background .............................................. 811
   B. Key Concepts in the IDEA ............................... 813

§ 12.02 THE SPECIAL EDUCATION PROCESS ..................... 815
   A. Overview ............................................. 815
Table of Contents

B. Eligibility for Services ........................................ 815
   Problem 1: Eligibility Under the IDEA .......................... 815
   34 C.F.R. § 300.8 Child with a Disability ...................... 816
   § 300.306 Determination of eligibility .......................... 817
   § 300.309 Determining the existence of a specific learning
disability ............................................................. 818
   Corchado v. Board of Education Rochester City School District ... 819
   Hood v. Encinitas Union School District .......................... 825
   Post Problem Discussion .......................................... 829
   Activity 1: Find Your State Requirements ....................... 830

§ 12.03 FAPE ....................................................... 831
   Problem 2: Is This Fape? ......................................... 832
   Board of Education of Hendrick Hudson Central School District
   v. Rowley .......................................................... 833
   D.S. v. Bayonne Board of Education ............................. 838
   J.L. v. Mercer Island School District ............................ 845
   34 C.F.R. § 300.322 Parent Participation ........................ 853
   Post Problem Discussion .......................................... 853

§ 12.04 PLACEMENT ............................................... 856
   Problem 3: Unilateral Placements ............................... 857
   34 C.F.R. § 300.148 Placement of children by parents
   when FAPE is at issue .............................................. 859
   Forest Grove Sch. Dist. v. T.A. .................................. 861
   Post Problem Discussion .......................................... 868

§ 12.05 ADDRESSING STUDENT BEHAVIOR ....................... 868
   Problem 4: Disciplining Special Education Students .......... 870
   20 U.S.C. § 1415(k) .............................................. 871
   Shelton v. Maya Angelou Public Charter School ................. 873
   Fitzgerald v. Fairfax County School Board ...................... 877
   Post Problem Discussion .......................................... 882

§ 12.06 ATTORNEY’S FEES AND COSTS .......................... 885
   Activity 2: Recovering Fees ...................................... 885

Chapter 13    NO CHILD LEFT BEHIND

§ 13.01 INTRODUCTION .......................................... 887
   A. The Act ...................................................... 887
   20 U.S.C. § 6301 Statement of Purpose ........................ 888
   B. Flexibility and Waivers ....................................... 889

§ 13.02 ACCOUNTABILITY & SANCTIONS ......................... 890
   A. Accountability Requirements ................................. 890
   B. NCLB Sanctions ................................................ 893
# Table of Contents

- Problem 1: Schools in Need of Improvement ........................................ 894
- NCLB Regulations ........................................................................... 895
- Post Problem Discussion ............................................................... 904
- § 13.03 STUDENTS WITH DISABILITIES ........................................ 904
  - Problem 2: NCLB and Students With Disabilities ......................... 905
  - Post Problem Discussion ........................................................... 905
- § 13.04 HIGHLY QUALIFIED TEACHERS ........................................ 906
  - Problem 3: State Compliance With HQT Requirements ............... 907
  - Post Problem Discussion ........................................................... 908
- § 13.05 NCLB GOING FORWARD .................................................. 908
  - Problem 4: Evaluating NCLB & Other Educational Initiatives ...... 909
  - Federal Spending Chart ............................................................. 910

GLOSSARY ......................................................................................... 911

TABLE OF CASES ............................................................................ TC-1

INDEX .............................................................................................. I-1