CHAPTER 1. INTRODUCTION

§ 1:1 About this book

CHAPTER 2. FREEDOM OF EXPRESSION

I. FREEDOM OF EXPRESSION—GENERALLY

- § 2:1 General principles
- § 2:2 What is expression?

II. RESTRICTIONS ON THE FREEDOM OF EXPRESSION

§ 2:3	Viewpoint-based restrictions
§ 2:4	—Schools may restrict student support of illegal activity at school-sponsored events
§ 2:5	—Schools may not restrict student expression because of its viewpoint, absent likelihood of disruption or interference with school activities
§ 2:6	—Schools may impose dress and hygiene codes only insofar as they relate to a valid educational purpose
§ 2:7	—Schools have wide latitude to restrict
Ü	expression by staff acting in their official capacity
§ 2:8	Content-based restrictions
§ 2:9	—Schools may restrict obscenity and child pornography
§ 2:10	—Schools may restrict speech that creates imminent danger or lawlessness
§ 2:11	—Schools may restrict true threats
§ 2:12	—Schools may restrict harassment
§ 2:13	—Schools may restrict defamation
§ 2:14	—Schools may restrict copyright infringement
§ 2:15	Time, place, and manner restrictions
§ 2:16	Forum analysis
§ 2:17	Forum analysis in the age of technology

- § 2:18 Compelled expression
- § 2:19 Censorship
- § 2:20 First Amendment retaliation
- § 2:21 Regulating off-campus speech on campus
- § 2:22 Examples
- § 2:23 Restrictions on student expression worksheet

CHAPTER 3. ESTABLISHMENT AND FREE EXERCISE OF RELIGION

I. ESTABLISHMENT AND FREE EXERCISE OF RELIGION—GENERALLY

- § 3:1 Religion and schooling in historical context
- § 3:2 What is establishment?
- § 3:3 —A public school may not endorse religion over irreligion, or one religion over another
- § 3:4 —A public school's actions may not have the primary purpose or effect of advancing or inhibiting religion or result in excessive entanglement with religion
- § 3:5 —A public school may not coerce participation in religious activities
- § 3:6 What is free exercise?
- § 3:7 —Generally applicable school policies that do not target any religious group or practice may incidentally restrict free exercise
- § 3:8 —Restrictions on free exercise that are not religiously neutral or generally applicable are generally unconstitutional

II. RECURRENT ISSUES REGARDING RELIGION AND PUBLIC SCHOOLS

- § 3:9 Religious holidays in public schools
- § 3:10 —Schools may observe but not celebrate religious holidays
- § 3:11 —Schools may restrict student celebration of holidays in school by way of religiously neutral, generally applicable rules
- § 3:12 —Schools have wide latitude to restrict employees' celebration of religious holidays
- § 3:13 —Schools must reasonably accommodate student absences for religious holidays

8 9.14	Cahaala marralaga an naligiana halidara
§ 3:14	—Schools may close on religious holidays
§ 3:15	School prayer
§ 3:16	—Kennedy v. Bremerton
§ 3:17	—Public schools must permit students to pray independently
§ 3:18	—Public schools may, but are not required to excuse students from class to pray or conduct religious activities at school
§ 3:19	Public schools must permit students to distribute religious literature only to the extent that students are permitted to distribute any other kind of literature
§ 3:20	Religious objections to school curriculum and other requirements
§ 3:21	Religious attire
§ 3:22	Examples
CHA	PTER 4. DUE PROCESS
§ 4:1	Due process—General principles
§ 4:2	Procedural due process
§ 4:3	Substantive due process
§ 4:4	Property rights of employees
§ 4:5	—Tenured employees may not be terminated without due process of law
§ 4:6	Property rights of students—Students may not be deprived of education without due process of law
§ 4:7	—Schools may ban and confiscate contraband without due process of law
§ 4:8	Searches and seizures
§ 4:9	—Schools have wide latitude to search and seize students and their belongings
§ 4:10	—Strip searches of students
§ 4:11	Punishment/discipline—Corporal punishment
§ 4:12	—Physical restraint
§ 4:13	Public school liability for violations of student's substantive due process rights by a third party

CHAPTER 5. DISCRIMINATION

§ 5:1 General principles

§ 4:15 Examples

 $\S 4:14$ Due process checklist

I. DISCRIMINATION BASED ON SEX

- § 5:2 Public schools must deliver equal services to boys and girls
- § 5:3 School districts may offer single-sex schools, classes, and extra-curricular activities
- § 5:4 Schools may offer single-sex physical education classes and athletic activities

II. DISCRIMINATION BASED ON RACE, COLOR, AND NATIONAL ORIGIN

- § 5:5 Schools may not discriminate on the basis of race, color, or national origin with regard to students
- § 5:6 Schools may not segregate students on the basis of race, color, or national origin
- § 5:7 School district boundaries must be race-neutral and purposely segregated districts must be desegregated
- § 5:8 Hostile environment discrimination
- § 5:9 Retaliation

III. DISCRIMINATION BASED ON RELIGION

- § 5:10 Schools may not discriminate on the basis of religion
- § 5:11 Schools may not discriminate on the basis of religion with regard to employment, but have wide latitude to restrict employees' religious expression

IV. DISCRIMINATION BASED ON DISABILITY

§ 5:12 Schools may not discriminate on the basis of disability

V. DISCRIMINATION BASED ON OTHER FACTORS

- § 5:13 Public schools may not discriminate on the basis of age with regard to employment
- § 5:14 Public schools may not deny education to illegal immigrants
- § 5:15 Public schools may not deny education to homeless children
- § 5:16 In some cases, public schools may not

discriminate on the basis of sexual orientation or gender identity

§ 5:17 Examples

CHAPTER 6. SAFETY AND LIABILITY

- § 6:1 General principles
- § 6:2 Premises liability
- § 6:3 Mandatory reporting of suspected abuse or neglect
- § 6:4 Medication
- § 6:5 Bullying
- § 6:6 Student-on-student violence
- § 6:7 Physical assault by employee
- § 6:8 Liability for athletic injuries
- § 6:9 —Head injuries
- § 6:10 Teacher liability protection act
- § 6:11 Qualified immunity
- § 6:12 Harassment
- § 6:13 School safety/disaster planning/threats
- § 6:14 —Specific resources for emergency planning
- § 6:15 Checklist: how should we respond?
- § 6:16 Examples

CHAPTER 7. SPECIAL EDUCATION

- § 7:1 IDEA generally
- § 7:2 —The school must conduct an initial evaluation within 60 days of receiving parental consent
- § 7:3 Individualized education program
- § 7:4 The IEP cycle
- § 7:5 Disabled children must be educated alongside non-disabled children as much as possible
- § 7:6 Procedural safeguards
- § 7:7 Parental involvement
- § 7:8 Stay-put provision
- § 7:9 Discipline of disabled students
- § 7:10 —Removal for more than 10 days requires a "manifestation determination"
- § 7:11 Cameras in the classroom
- § 7:12 Quiz yourself on special education law: how much do you know about IDEA?
- § 7:13 Examples

CHAPTER 8. EMPLOYMENT ISSUES

I. LIMITATIONS ON EMPLOYEE SPEECH

- § 8:1 Generally
- § 8:2 Association/privacy rights
- § 8:3 —Schools have wide latitude to prescribe the manner in which teachers evaluate students and assign grades

II. DRUG TESTING

§ 8:4 Public schools may require that teachers, and possibly other school employees, submit to drug testing

III. DISCRIMINATION

- § 8:5 Schools may not discriminate on the basis of sex with regard to employment
- § 8:6 Schools may not discriminate on the basis of race, color, or national origin with regard to employment
- § 8:7 Schools may not discriminate on the basis of religion with regard to employment, but have wide latitude to restrict employees' religious expression
- § 8:8 Schools may not discriminate on the basis of disability
- § 8:9 Public schools may not discriminate on the basis of age with regard to employment

IV. OTHER EMPLOYMENT PRACTICES

- § 8:10 Teachers are exempt from hour and wage restrictions of the Fair Labor Standards Act
- § 8:11 Termination
- § 8:12 Examples

CHAPTER 9. STUDENT-ON-STUDENT SEXUAL HARASSMENT

- § 9:1 Peer-on-peer harassment generally
- § 9:2 Student-on-student sexual harassment
- § 9:3 —Legal developments
- § 9:4 —A tale of two cases

- § 9:5 —In Fitzgerald, Title IX, Section 1983 both address discrimination
- § 9:6 Student-on-student sexual harassment: How should school districts respond to possible liability?
- § 9:7 Examples

CHAPTER 10. MANDATORY VACCINATION AND PUBLIC SCHOOL

- § 10:1 Mandatory vaccination—Generally
- § 10:2 —Effect of mandate laws on public schools
- § 10:3 —Legal aspect of argument against mandatory vaccination
- § 10:4 —Benefits of vaccination
- § 10:5 —Argument against mandatory vaccination on safety grounds
- § 10:6 —Relevance

CHAPTER 11. FERPA AND RIGHTS TO EDUCATIONAL RECORDS

- § 11:1 FERPA—Generally
- § 11:2 —"Eligible Students"
- § 11:3 —Notification
- § 11:4 —Violation Exceptions
- § 11:5 —Enforceability under the law
- § 11:6 Examples

CHAPTER 12. STUDENT ACHIEVEMENT

- § 12:1 Student achievement
- § 12:2 —The seminal case of its kind
- § 12:3 Examples

CHAPTER 13. STATE LAW ISSUES

- § 13:1 Sovereign immunity
- § 13:2 Tort liability
- § 13:3 —Who is responsible when kids are on the bus?
- § 13:4 Negligence—Failure to supervise
- § 13:5 —Failure to warn
- § 13:6 —District liability for negligent hiring, retention, and supervision of employees
- § 13:7 —Respondent superior

 $\S 13:8$ Emergency response $\S 13:9$ — Emergency Response Checklist $\S 13:10$ Examples

CHAPTER 14. MISCELLANEOUS LEGAL CONSIDERATIONS

§ 14:1	Equal access
§ 14:2	Privatization and choice
§ 14:3	Charter schools
§ 14:4	Public school relationship with homeschooled students
§ 14:5	Bilingual education
§ 14:6	Segregation, desegregation and "resegregation"
§ 14:7	Racial disparity
§ 14:8	Every Student Succeeds Act (ESSA)
§ 14:9	Common Core state standards initiative
§ 14:10	Closure of the united states department of education