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A Legal Lens

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The legal issues facing American schools, colleges, and universities, both public and private, are enormous in scope, depth, variety, and import, and continue to evolve and present new challenges. A major concern faced by education professionals is running apace with court cases, as well as regulatory and statutory interpretations and decisions that emerge at an incredible rate. Undergirding professional practice with a framework for legal implications has never been more important, nor has knowing when to seek additional guidance from legal representation.

Legal questions confronting K-12 schools and higher education institutions may resemble each other closely, such as in contractual disputes with vendors. As in the case of free speech concerns, however, issues emanating from the two sectors may be treated differently, because courts have found that schools can regulate student speech more readily because it involves younger students.

As Stuart Biegel (2009) noted:

Unless a controversy is specifically covered by statute, the relevant legal principles are typically the same at both the K-12 and higher education levels. Yet these principles are often applied in very different ways depending on the setting and the age of the students. Often the question arises as to precedential value of a given case decision at a grade level other than one addressed. Sometimes, for example, the courts have recognized the applicability of major K-12 decisions to higher education disputes, and sometimes higher education cases have been deemed directly applicable at the K-12 level. Other times, however, the courts distinguish cases based on which grade level was initially

addressed, on the grounds that the settings are very different. Patterns are often difficult to discern in this regard (p. 2).

Some recent examples illustrate the variety of issues challenging our educational institutions: A very closely-followed California decision held that teacher tenure standards violated state constitutional standards compelling an equitable education for students (Sawchuk, 2014); the University of Connecticut recently settled a lawsuit for \$1.3 million brought by students who alleged that the university mishandled their sexual harassment claims (Vendituoli, 2014); the United States Equal Employment Opportunity Commission has sued an Illinois community college for alleged age discrimination, arguing that it refused to hire an adjunct English professor because of her age (DeSantis, 2014); in Pennsylvania, a federal judge ruled that a high school teacher's degrading comments concerning students on her personal blog did not fall under the umbrella of the First Amendment's free speech protections (Walsh, 2014a); and the list continues ad infinitum...

It is important to note that legal issues extend far beyond faculty, administrators, and students to institutional and district or system liability across a tremendous spectrum of disputes involving, for example, negligence claims, property disputes, intellectual property claims, and breach of contract, to name just a few. Federal and state laws and regulations are also drivers of educational policy, practice, and national debate, as controversies involving undocumented immigrant access to public higher education and guns on campuses grip colleges and universities. Likewise, technology has presented many grey areas, and some states have moved to stem the tide of cyber-bullying and electronic abuse in the K-12 schools through legislation---though not always successfully. For example, in July 2014, the highest court in New York struck down a county law that criminalized cyber-bullying, finding it overbroad in the types of speech it restricted (Walsh, 2014b).

Questions about about legal and policy challenges: For example, when is a student considered "on campus" for speech purposes as a result of the proliferation of mobile technologies? What is the role of charter schools and voucher programs? Is public education equitably financed? When will we see another test of affirmative action in the wake of recent United States Supreme Court decisions in *Schuette v. Coalition to Defend Affirmative Action* (2014), which upheld a statewide referendum banning the use of affirmative action in admissions, and *Fisher v. University of Texas* (2013), a much anticipated decision that supported the importance of diversity, but left much to be desired in terms of guidance for policy and practice? What challenges face No Child Left Behind and the Common Core Curriculum?

The breadth and depth of litigation facing educational institutions is enormous and growing daily. One of our chief responsibilities as education professionals is to maintain a current understanding of the state of legal and regulatory issues facing schools, colleges, and universities, which is a daunting task given the range of issues and the speed of change in the law. Such an understanding is critical to sound decision-making and to seeking further assistance when complex problems arise.

This can be accomplished in many ways: For example, reading reports from reputable publications can provide daily perspectives. Busy professionals may wonder how they might find the time, but the reality that attaches is that they truly do not have time not to, especially to inform important discussions with school district or institutional counsel as they may arise. Also, the role of regular professional development cannot be understated, which need not be costly given the impact of technology through the delivery of webinars and other platforms that make important information available at a more reasonable cost.

The evolution of the legal issues faced by educational institutions is rapid and broad, and has tremendous implications for professional practice in concert with the many additional challenges education professionals face---and this will only continue as the issues become more complex and society more litigious. Developing and maintaining a firm grounding in education law is important, not only to insulate institutions and employees from liability, but also to ensure that decisions are informed and appropriate. Informed decision-making benefits students, administrators, and faculty, as well as our schools, colleges, and universities as we move forward into an increasingly complex, technologically-connected, globalized society.

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