Decisions That Have Shaped U.S. Education

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Education in the United States would be very different without these landmark decisions by the Supreme Court.

Of the thousands of published court decisions concerning elementary and secondary education in the United States, which ones have had the greatest impact on the practices of K–12 education and on subsequent court cases in education law? School-law experts, like movie critics or sports commentators, are bound to differ in their choices of the most significant cases. Examining Supreme Court decisions during the past six decades (Zirkel, 1998; Zirkel, Goldberg, & Richardson, 2001), however, reveals important rulings that deal with equality in education, freedom of expression, discipline and school safety, and the complex relationship between religion and government in U.S. education.

EQUALITY IN EDUCATION

Several significant cases that have reached the U.S. Supreme Court deal with providing children with equal education. The right to an education in the United States derives from state—not federal—law, but the Fourteenth Amendment to the U.S. Constitution guarantees all citizens equal protection under both state and federal law; this guarantee of equal protection includes prohibiting discrimination in U.S. public schools. The U.S. Congress has reinforced and implemented this guarantee with civil rights statutes.

Desegregation

Brown v. Board of Education (1954)

In perhaps the best-known U.S. Supreme Court decision in the past century, the *Brown* Court struck down, after more than 50 years, the "separate but equal" doctrine of *Plessy v. Ferguson* (1896). Citing the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, the decision made clear that laws that upheld segregation were unconstitutional and ruled that separate schools deprive minority children of equal educational opportunities, even if the physical facilities and other factors are equivalent. A long line of more than 30 subsequent Supreme Court decisions have dealt with the implications of the *Brown* ruling. Today, the clear unconstitutionality of segregation by law or policy reminds us of the significant impact of the *Brown* decision, but the intractability of de facto segregation also reveals the Court's limited influence in bringing about social and school reform.

Per-Pupil Expenditure

San Antonio Independent School District v. Rodriguez (1973)

Many states finance public schools in significant part through local property taxes, a funding strategy that often results in a notable disparity in the per-pupil expenditures among school districts. The Supreme Court's *Rodriguez* decision allowed the states a more relaxed standard for justifying their funding

"Decisions That Have Shaped U.S. Education" by Perry Zirkel in *Educational Leadership*, December 2001/January 2002, pp. 6-12. Reprinted with permission of the author.

policies and held that the Fourteenth Amendment's equal protection clause permits any kind of school finance system, as long as it provides a minimum education for every student. The result has been a testing of the issue of per-pupil expenditure in state courts, which often rule against the funding policies established by state legislatures.

Students with Limited English Proficiency

Lau v. Nichols (1974)

Ducking the Fourteenth Amendment equal protection clause, the *Lau* Court relied on the much narrower grounds of the regulations and guidelines issued under Title VI of the Civil Rights Act of 1964, which prohibits federally funded programs from discriminating on the basis of race or national origin. The *Lau* Court held that Title VI required school districts to take affirmative steps to rectify the language deficiency of students with limited English proficiency. Carefully avoiding dictating a particular methodology, the Court left the remedy to the local level, where teaching English as a second language is often favored over a bilingual curriculum.

Special Education

Board of Education v. Rowley (1982)

The parents of a student with a hearing disability, attending a regular elementary class in a public school, requested a sign language interpreter in all her academic classes. The *Rowley* Court ruled that the Individuals with Disabilities Education Act's statutory entitlement to a "free and appropriate public education" for all students, including those with disabilities, means that school authorities must comply with the act's procedural requirements, which include developing individualized education programs for students with disabilities. They must also ensure that these individualized education programs are reasonably designed to provide educational benefit. In this case, the Supreme Court concluded that the district had complied with the act's procedural requirements and that the student's individualized education program provided educational benefit, even though the district did not provide a sign language interpreter.

Accommodating Disabilities

School Board v. Arline (1987)

The *Arline* case considered whether an employee with a serious contagious disease—in this case, tuberculosis—is covered by Section 504 of the Rehabilitation Act of 1973, which prohibits federally funded organizations, including school districts, from discriminating against any individual on the basis of a disability. The answer of the *Arline* Court essentially was "it depends"—requiring information about the disability and decisions about whether the employer could reasonably accommodate the employee. Subsequent court decisions made clear that this individualized approach applies to employees and students with AIDS and that, in most cases, accommodation rather than segregation or exclusion is the reason-able—and therefore required—approach. Accommodation on behalf of students and employees with disabilities is an important feature of U.S. schools today.

FREEDOM OF EXPRESSION

Freedom of speech is guaranteed in the First Amendment to the U.S. Constitution, but the expression covered by that freedom takes different forms.

Saluting the Flag

West Virginia State Board of Education v. Barnette (1943)

The *Barnette* Court held that public school officials may not force students to salute the flag. The students in this case were Jehovah's Witnesses, but the Court invoked the freedom of expression guaranteed in the First Amendment, as suggested in the Court's famous dictum that "[i]f there be any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion" (at 639). Subsequent lower court decisions extended the boundaries of *Barnette* to include teachers.

Student Speech

Tinker v. Des Moines Independent Community School District (1969)

John Tinker, Christopher Eckhardt, and John's sister Mary Beth challenged the school suspensions that they had received for wearing armbands to school in protest of the Vietnam War. The court ruled that teachers and students do not "shed their constitutional rights…at the schoolhouse gate" but that such constitutional rights should be "applied in light of the special characteristics of the school environment" (at 506). Subsequent lower court rulings have cited these two parts of this complex decision, with opposite results. In the 1970s and 1980s, courts leaned toward protecting student speech; since the late 1980s, they have emphasized the need to ensure school order. Courts continue to cite *Tinker* as meaning that school officials may not censure or censor student speech unless it causes a substantial disruption of school operations. *Tinker* continues to play a significant role in student speech cases today. For example, three recent lower court cases concerning student Internet communications applied *Tinker's* test of substantial disruption to determine whether students could be dis-

ciplined for home-based Web sites or e-mail that used vulgarities or threats about school personnel.

Censorship

Hazelwood School District v. Kuhlmeier (1988)
Students in a high school journalism class had produced an issue of the school newspaper from which the principal, prior to publication, deleted two pages that included articles on divorced parents and teenage pregnancy. The *Hazelwood* Court decided in the principal's favor, ruling that, for school-sponsored activities involving student expression, public school officials may exercise content-based control as long as their actions are related to legitimate education purposes. In subsequent cases dealing with First Amendment protections of expression, from student dress to students' threats, lower courts have looked to the pole stars of *Tinker* and *Hazelwood* for guidance, with the distinct majority of the decisions favoring school authorities.

Teachers' Speech

Mt. Healthy City School District v. Doyle (1977)
A teacher with a record of tactless behavior claimed that the school district did not renew his contract because he had provided information for a disc jockey's public criticism of the principal's student dress code. The *Mt. Healthy* decision spelled out a three-step freedom of expression clause to public employees, including public school teachers. First, the employee must prove that the expression concerns a public, not intramural, issue and that the right to speak outweighs the employer's responsibility to provide effective public services. Second, the employee must show that the expression was a substantial factor in the adverse action being challenged. Third, the employer must prove that it would have taken the adverse action regardless of the employee's protected expression.

Subsequent lower court decisions have largely favored districts' actions. The message of *Mt. Healthy* is that public school employees have First Amendment freedom of expression but they should think thrice before engaging in such expression in the face of possible adverse action, such as nonrenewal or termination. Some teachers have sought more extensive protections of expressions through collective bargaining agreements or local policies.

School Libraries

Board of Education, Island Trees Union Free School District No. 26 v. Pico (1982)
A local school board had directed the high school and junior high school libraries to remove books that the school board characterized as "anti-American, anti-Christian, anti-Semitic, and just plain filthy" (at 857). The Supreme Court ruled that school boards may not remove books from school libraries simply because they dislike the books' ideas; their reasons must reflect rational grounds, such as educational suitability, rather than political orthodoxy. Recent lower court decisions have reinforced the boundary between the review policies of school libraries and the discretionary powers of school boards in choosing school curriculums.

STUDENT DISCIPLINE AND SCHOOL SAFETY

At what point does concern for school safety interfere with students' and teachers' rights under the U.S. Constitution? The Supreme Court has tried to answer this question in several important cases.

Student Suspensions and Expulsions

Goss v. Lopez (1975)
The Supreme Court held that for suspensions of up to 10 school days, school officials must provide at least oral notice of the charges and, if the student protests, an explanation of the evidence and an opportunity for the student to tell his or her side of the story. Citing the Fourteenth Amendment's guarantee that every citizen receive the due process of law, the Court also warned that longer suspensions may require more formal procedures in terms of notice and a hearing. Twenty-five years of lower court case ruling have elaborated these procedural protections for a wide range of situations, from short-term suspensions in interscholastic athletics to lengthy expulsions from school. In recent years, rulings have favored public school officials, particularly in the wake of the student violence at Columbine High School in Littleton, Colorado, in 1999.

Corporal Punishment

Ingraham v. Wright (1977)
The *Ingraham* Court concluded that the Eighth Amendment's guarantee against cruel and unusual punishment applies to the prison, not school, context and that if the corporal punishment is excessive and violates the Fourteenth Amendment's guarantee of due process, a student can bring a civil suit or even criminal prosecution for assault and battery. Subsequent legal cases have shown that civil suits and criminal prosecutions for assault and battery are difficult to win and that administrative action in terms of teacher discipline—including discharge—and state statutes outlining strict guidelines for such student discipline provide effective remedies.

Searches of Students

New Jersey v. T.L.O. (1985)
When a vice principal searched a female student's pocketbook after a teacher reported that the student had been smoking in a school lavatory, the purse yielded not only a pack of cigarettes but also evidence of drug dealing. Although the *T.L.O.* decision established that students are protected by the Fourth Amendment's clause against unwarranted searches and seizure of property, the ruling also held that public school authorities need only have *reasonable suspicion* (rather than the higher standard of *probable cause*) to initiate such searches, depending on the objectives of the search, the age and gender of the student, and the nature of the infraction. Lower courts have applied the *T.L.O.* test to a variety of student searches, with mixed results for invasive strip searches and outcomes overwhelmingly in favor of school authorities for noninvasive searches.

Random Drug Tests

Vernonia School District 47J v. Acton (1995)
The *Vernonia* Court ruled that a school district policy that mandated random drug testing of students who participated in school athletic programs was constitutional. Weighing the students' interest in privacy against the school's interest in a safe environment, the Court concluded that urinalysis of public school student athletes meets the reasonableness requirement for student searches under the Fourth Amendment, noting the student athletes' reduced expectation of privacy because of preseason physicals, communal undress, and other rules for interscholastic athletics. More recently, citing *Vernonia*, lower court decisions have usually concluded that random or mass drug testing of students participating in extracurricular activities is unconstitutional.

Sexual Harassment

Franklin v. Gwinnett County Public Schools (1992)
In the *Franklin* case, a female student sued the school district, claiming that her teacher had sexually harassed her. The *Franklin* Court concluded that Title IX of the Education Amendments of 1972, which prohibits federally funded programs from discriminating on the basis of gender, implicitly authorizes a suit by the victim for money damages. Because gender discrimination includes sexual harassment, the Court allowed the student's suit for damages to proceed to trial, providing the foundation for *Gebser* and *Davis*.

Gebser v. Lago Vista Independent School District (1998)
Davis v. Monroe County Road of Education (1999)
In *Gebser*, the Court held that the district may be liable for employee-to-student sexual harassment only when an official has the authority to institute corrective measures, has notice of the harassment, and deliberately takes no action against the employee's misconduct. In *Davis*, the Court applied the same standard to peer sexual harassment that deprives the victim of access to the school's opportunities. *Gebser* and *Davis* have channeled rather than stemmed the tide of harassment litigation in the schools.

Disruptive Students in Special Education

Honig v. Doe (1988)
The question in *Honig* was whether the school could expel for more than 10 days two students who were classified as emotionally disturbed and who engaged in various safety-related offenses that were a manifestation of their disability. The U.S. Department of Education interprets an exclusion for more than 10 consecutive days as a change in the student's placement in special education, but according to the Individuals with Disabilities Education Act (IDEA), special education students can be removed from their placement only through an agreement between the school and the student's parents or by a preliminary injunction from a court that finds the student substantially likely to injure self or others. In the turbulent wake of *Honig*, the lower courts have been stingy in granting preliminary injunctions. Although the 1997 amendments to the IDEA clarified what constitutes removal and offered schools some other options for dealing with disruptive behavior, the hands-off approach to the offenses committed by special education students runs counter to the current climate of zero tolerance of rule infractions in U.S. public schools. The current controversy in Congress concerning the perceived double standard for the zero tolerance offenses of special education students illustrates that school officials need to keep close track of post-*Honig* developments.

THE ROLE OF RELIGION IN U.S. EDUCATION

The First Amendment guarantees citizens the free exercise of religion and prohibits the government from establishing a religion. These two First Amendment clauses—the "free exercise" and "establishment" clauses—sometimes come into conflict in school settings.

Government Aid to Religious Schools

Lemon v. Kurtzman (1971)
The *Lemon* decision ruled that government salary supplements for teachers of secular subjects in parochial schools violate the First Amendment's establishment clause. More important, the *Lemon* Court explained a three-part test for determining whether a challenged policy or activity vio-

lates the First Amendment establishment clause. For the policy or activity to pass muster, its purpose must be secular, its primary effect must neither advance nor inhibit religion, and its implementation must not excessively entangle government with religion. Today, the uncertain status and unpredictable results of tests of the *Lemon* decision serve as a reminder of the Supreme Court's ambivalence about the role of religion in public schools.

Prayer at School Events

Lee v. Weisman (1992)

Following a practice of rotating among different religious faiths, a principal invited a rabbi to offer the invocation and benediction at a middle school graduation ceremony and gave the rabbi a generally well-regarded resource pamphlet containing guidelines for keeping such prayers nonsectarian. The Court concluded that the principal exercised undue control of religious practice by his choice of a member of the clergy and his provision of guidelines for the prayers and did so in a situation that was not voluntary, noting that although attendance at the graduation ceremony was nominally voluntary, it was effectively required. The Court held that clergy-led invocations and benedictions at public school graduations violate the First Amendment's clause prohibiting the establishment of religion. Subsequent lower court cases have focused on student-initiated and student-conducted prayer ceremonies at graduations and other school events. In its recent decision in *Santa Fe Independent School District v. Doe* (2000), the Court ruled that student-initiated and student-conducted prayers at football games also violate the First Amendment's establishment clause, but the ruling only partially resolved these ongoing controversies. School officials need to proceed with utmost caution in this murky area.

ISSUES FOR THE NEW CENTURY

Although the amount of education litigation has leveled off in the past 15 years, the hottest topics in the courts today include student expression, in light of *Tinker* and *Hazelwood*; issues related to the role of religion in schools, as illustrated by *Lemon* and *Lee*; sexual and other such harassment, as guided by *Gebser* and *Davis*; student safety cases, ranging widely from *Vernonia* to *Honig*; and—countering the trend toward favoring school officials—special education cases in the long wake of *Rowley*. The Supreme Court's decisions will continue to shape education in the new century.

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