

TABLE OF CONTENTS

CHAPTER 1

School Governance

§ 1.01	Introduction	1-2
§ 1.02	State Education Agencies	1-4
§ 1.03	State Finance Litigation	1-7
	[1] State Financing Plans Sustained, Struck Down.	1-11
§ 1.04	School Boards	1-15
	[1] Generally	1-15
	[2] School District Boundary Changes	1-15
	[a] Annexation/Detachment.	1-16
	[b] Consolidation/Dissolution	1-17
§ 1.05	Local School Boards: Members, Meetings and Authority	1-18
	[1] School District Board Members	1-18
	[2] Powers of Local School Boards	1-20
	[3] School Board Meetings	1-22
§ 1.06	Special Schools	1-27
	[1] Charter Schools	1-27
	[2] Alternative Schools	1-34
§ 1.07	School District Financial Affairs and Procurement of Contracts.	1-37
§ 1.08	School District Employment Affairs	1-40.1
	[1] Certificated Employees	1-40.1
	[2] Support Staff.	1-41
	[3] Reduction-in-Force.	1-42
§ 1.09	School District Facilities.	1-43
§ 1.10	School District Transportation and Reimbursement	1-47
	[1] Special Education Students	1-47
	[2] Gifted Students.	1-48

	[3] Nonresident Students	1-49
	[4] Private/Faith-based Students	1-49
§ 1.11	Tort Liability	1-51
§ 1.12	School Construction	1-54

CHAPTER 2

Employees

§ 2.01	Introduction	2-2
§ 2.02	Federal Nondiscrimination Statutes	2-4
	[1] Stating a Claim for Federal Statutory Violations	2-7
	[2] Costs and Attorney Fees	2-15
§ 2.03	Protected Nondiscrimination Categories	2-17
	[1] Sexual Orientation	2-17
	[2] Race	2-20
	[3] National Origin	2-28
	[4] Gender	2-32
	[5] Age	2-41
	[6] Religion	2-48
	[a] Secular Employers	2-49
	[b] Religious Employers: The Ministerial Exemption	2-53
	[7] Disability	2-58
§ 2.04	Substantive Constitutional Rights	2-71
	[1] Speech	2-71
	[2] Association	2-90.1
	[3] Religion	2-90.4
	[4] Privacy	2-90.7
	[a] Generally	2-90.7
	[b] Drug Testing	2-90.9
	[c] Employee Records	2-90.12
	[5] Substantive Due Process	2-90.15
§ 2.05	Procedural Due Process	2-90.18
	[1] Liberty and Property Interests	2-90.18
	[a] Property Interests	2-91
	[b] Liberty Interests	2-93
	[2] Rights Involving Notice	2-96
	[3] Rights Involving a Hearing	2-100
§ 2.06	Employee Dismissal and Discipline	2-106
	[1] Generally	2-106
	[2] Insubordination	2-111
	[3] Unprofessional Conduct, Unfitness, Willful Neglect of Duty	2-114

TABLE OF CONTENTS

ix

	[a] Improper Sexual Conduct Between Employees and Students	2-114
	[b] Irregularities Involving School District Funds or Property	2-115
	[c] Employee Use of Vulgar, Profane, or Sexually Suggestive Materials.	2-115
	[d] Unprofessional Conduct	2-117
	[4] Immorality.	2-119
	[5] Incompetence	2-121
	[6] Residency	2-123
§ 2.07	Reduction-in-Force	2-125
	[1] Necessity for Reduction-in-Force	2-126
	[2] Selection of Employees	2-129
	[3] Call-Back Rights	2-131
§ 2.08	Employment Disputes Under Contracts and State Statutes	2-133
	[1] State Limitations on Employment	2-133
	[2] Elements of Employment Contracts	2-135
	[3] Retirement Benefits	2-138
	[4] Workers' Compensation Benefits	2-143
	[5] Unemployment Compensation Benefits	2-147
	[6] State Whistleblower Statutes	2-150
	[7] Liquidated Damages in Employment Contracts.	2-151
	[8] Military Service Credit.	2-154
§ 2.09	State Law and Employee Tenure.	2-155
	[1] Tenure Status	2-156
	[2] Tenure by Default or Acquiescence	2-158
§ 2.10	State Law and Employee Certification/Licensure	2-162
	[1] Certification Standards.	2-163
	[2] Decertification, Revocation, or Suspension	2-166
§ 2.11	Outlook	2-170

CHAPTER 3

Collective Bargaining

§ 3.01	Introduction	3-2
§ 3.02	Bargaining Units	3-5
	[1] Formation of Bargaining Units	3-5
	[2] Exclusivity of Bargaining Units	3-7
	[3] Union Rights.	3-8

EDUCATION LAW

	[a] Generally	3-8
	[b] Supreme Court Cases on Fair Shares	3-9
§ 3.03	Scope of Bargaining	3-12
	[1] Overview	3-12
	[2] Specific Topics	3-13
	[a] Hiring and Staffing	3-13
	[b] Renewal and Tenure	3-14
	[c] Reduction in Force	3-15
	[d] Employee Evaluation	3-15
	[e] Financial Benefits	3-16
	[f] Work Load	3-18
	[g] School Calendar and Length of School Day	3-18
	[h] Class Size	3-19
	[i] Other Issues	3-19
§ 3.04	Resolution of Negotiation Disputes	3-22
	[1] Mediation	3-22
	[2] Fact-Finding	3-22
	[3] Arbitration	3-22
	[4] Termination of Bargaining	3-25
	[5] Strikes	3-25
	[6] Picketing and Other Speech Issues	3-27
§ 3.05	Approval of the Contract	3-29
§ 3.06	Administration of Collective Bargaining Contracts	3-30
§ 3.07	Private and Federal Schools	3-32
	[1] Private Schools	3-32
	[2] Federal Schools	3-33
§ 3.08	Conclusion	3-34

CHAPTER 4

Student Rights

§ 4.01	The Right to Education	4-4
	[1] Source of the Right to Public Education	4-4
	[2] The Right to Attend Public or Non-public Schools	4-5
	[a] State Aid to Non-public Schools	4-6
	[3] The Right to Attend Schools Without Regard to Race	4-8
	[4] The Right to Language Assistance	4-11
	[5] No Right to Attend Neighborhood School	4-11

TABLE OF CONTENTS

§ 4.02	The Right to Learn and Achieve in Education.	4-13
[1]	No Right to Grade Promotion or to be Taught Correctly	4-13
[2]	Due Process Right to Be Taught Material Tested on Exit Exams	4-14
[3]	Students with Disabilities and the Right to “Some Benefit”	4-14.1
§ 4.03	The Right to Access Curriculum and Information	4-15
[1]	The Right to Quality Curriculum	4-15
[2]	The Right to Receive Information.	4-17
§ 4.04	The Right to Safety.	4-19
[1]	No Constitutional Right to Protection.	4-19
[2]	Statutory Right to Safe Schools	4-20
[3]	Title IX Protection Against Sexual Harassment	4-21
[a]	The Right to Be Free from Teacher Sexual Harassment	4-21
[b]	The Right to Be Free from Peer Sexual Harassment	4-23
[c]	Updates in Title IX Regulations on Sexual Harassment	4-24
[4]	Bullying: The Right to Be Free from Peer Harassment	4-24.2
[a]	Definition of Bullying.	4-24.3
[b]	Statistics	4-24.4
[c]	Students with Disabilities	4-24.6
[d]	Litigation	4-24.7
[5]	Child Abuse Reporting and Protection	4-24.10
§ 4.05	Rights Associated with Extracurricular Activities	4-24.13
[1]	No Constitutional Right to Participate in Sports and Other Extracurricular Activities.	4-24.13
[2]	No Right to Participate in Commencement	4-26
[3]	The Right to Equal Opportunity in Athletics on the Basis of Gender	4-26
[4]	Rights Associated with Contact Sports	4-27
[5]	The Right to Non-Discrimination on the Basis of Pregnancy	4-28
[6]	The Right to Accommodation in Athletics on the Basis of Disability	4-29

	[7] The Right to Participate in Noncurriculum-Related Student Groups	4-30
	[8] The Right to Effective Counseling and Guidance	4-31
§ 4.06	The Right to Fair Discipline	4-32
	[1] The Right to Notice of Prohibited Conduct	4-32
	[2] Procedural Due Process Rights for Suspensions of Ten Days or Less	4-33
	[3] Procedural Due Process Rights in Long-Term Suspensions and Expulsions	4-35
	[4] Rights Associated with Alternative Education	4-37
	[a] The Right to Alternative Education in Lieu of Expulsion	4-37
	[b] Transfers to Alternative Schools Do Not Constitute Deprivations of Constitutional Rights	4-38
	[5] The Right to Substantive Due Process	4-39
	[a] The Right to be Free from Unjustified Discipline and “Zero Tolerance”	4-39
	[b] The Right to be Free from Excessive Physical Discipline	4-40
§ 4.07	The Right to Free Speech and Expression	4-43
	[1] The Right to Engage in Political, Non-Disruptive Speech	4-43
	[2] No Right to Urge Illegal Drug Use	4-44
	[3] No Right to Wear a Certain Style of Apparel or Avoid School Uniforms	4-46
	[4] The Right to Select Hair Style	4-47
	[5] The Right to Body Pierce and Cross-Dress	4-48
	[6] No Right to Engage in Vulgar or Lewd Speech	4-49
	[7] The Right to Control Content in School Newspapers and Yearbooks	4-50
	[8] The Right to Distribute Underground Newspapers and Engage in Other Forms of Off-Campus Speech	4-50.1
	[9] No Right to Engage in Threatening Speech	4-50.2
	[10] The Right to be Free from Retaliation	4-50.3
§ 4.08	The Right to Free Exercise of Religion	4-51

TABLE OF CONTENTS

xiii

	[1] The Right to Pray and Engage in On-Campus Religious Worship	4-52
	[2] The Right to Waivers in the Curriculum	4-53
	[3] The Right to Proselytize and Distribute Religious Literature in School	4-54
	[4] The Right to Include Religious Beliefs in Classroom Assignments	4-55
	[5] Right to Wear Religious Garb and Accommodation in Extracurricular Activities	4-56
§ 4.09	The Right to Privacy	4-58
	[1] Student Rights to Confidentiality of School Records	4-58
	[2] The Right to be Exempted from Certain Surveys and Evaluations	4-58
	[3] The Right to be Free from Unreasonable Search and Seizure	4-59
	[a] The Right to Individualized Suspicion	4-60
	[b] The Right to be Free from Excessively Intrusive Searches	4-61
	[4] The Right to Privacy in Other School Contexts	4-62
§ 4.10	Student Rights Under the Fifth Amendment	4-64
	[1] No Right to <i>Miranda</i> Warnings in Disciplinary Interrogations	4-64
	[2] No Right to Have Parents Present During School Interrogation	4-64

CHAPTER 5

Special Education and Services for Students with Disabilities

§ 5.01	Introduction	5-2
§ 5.02	Entitlement to Special Education	5-4
§ 5.03	Procedural Due Process	5-10
	[1] Child Find	5-10
	[2] Evaluation of Students with Disabilities	5-10
	[3] Procedural Rights of Parents and Guardians	5-14

EDUCATION LAW

	[4] Requirements for Developing Individualized Education Programs	5-16
	[5] Procedures for Changing a Student's Placement	5-19
§ 5.04	Appropriate Placement	5-24
	[1] Definition of Appropriate Education	5-24
	[2] Least Restrictive Environment Provisions	5-29
	[3] Private and Residential School Placements	5-32
	[4] Extended School Year Programs	5-33
§ 5.05	Related Services	5-35
§ 5.06	Discipline	5-39
§ 5.07	Resolution of Disputes Between Parents and School Districts	5-40.4
	[1] Mediation and Resolution Sessions	5-40.4
	[2] Administrative Due Process Hearings	5-40.4
	[3] Judicial Actions	5-44
	[4] Statutes of Limitations	5-46
	[5] State Immunity	5-46.1
§ 5.08	Remedies for Failure to Provide Services	5-47
	[1] Compensatory and Punitive Damages	5-47
	[2] Reimbursement of Private School Tuition and Costs of Other Services	5-48
	[3] Compensatory Educational Services	5-48.3
	[4] Reimbursement of Attorney Fees and Costs	5-48.5
	[5] Section 1983	5-48.9
§ 5.09	Anti-Discrimination Laws	5-49
	[1] Section 504 of the Rehabilitation Act	5-50
	[a] Students	5-51
	[b] Parents	5-54
	[2] Americans with Disabilities Act	5-55

CHAPTER 6

Tort Principles in Education

§ 6.01	Introduction	6-2
§ 6.02	Intentional Torts	6-3
	[1] Assault and Battery Generally	6-5
	[2] Assault	6-5
	[3] Battery	6-8
	[4] Corporal Punishment	6-10
	[5] Sexual Assault	6-13
	[6] False Imprisonment	6-15

TABLE OF CONTENTS

xv

	[7] Invasion of Privacy	6-18
	[8] Defamation Generally	6-18
	[9] Libel	6-19
	[10] Slander	6-23
	[11] Intentional Infliction of Emotional Distress	6-25
	[12] Trespass to Chattels	6-32
§ 6.03	Negligence	6-39
	[1] Duty of Care	6-41
	[2] Attractive Nuisance	6-59
	[3] Failure to Supervise or Negligent Supervision	6-62
	[4] Proximate Cause, Causation	6-67
	[5] State-Created Danger Claims	6-72
	[6] State-Created Danger Doctrine	6-72.2
§ 6.04	Defenses, Privileges, and Immunities	6-72.12
	[1] Immunity	6-72.12
	[2] Governmental vs. Proprietary Function	6-92
	[3] Holding Minors and/or Their Parents Liable for Tortious Conduct	6-94
	[4] Statutes of Limitations	6-95
	[5] Contributory/Comparative Negligence	6-97
	[6] Assumption of Risk	6-98
§ 6.05	Constitutional Torts	6-98.6
§ 6.06	Conclusion	6-108

CHAPTER 7

Sports Law

§ 7.01	Introduction	7-2
§ 7.02	Students	7-6
	[1] State Athletic Association Membership and Rules	7-6
	[a] Non-public Schools' Membership in State Athletic Associations	7-10
	[2] Player Eligibility Rules	7-12
	[3] Recruiting Issues	7-18
	[4] Home-Schooled Students	7-20
	[5] Punishing Rule Violations	7-22
	[a] Association Rules	7-22
	[b] School Rules	7-23
	[c] Team Rules	7-25
	[6] Search and Seizure	7-27

EDUCATION LAW

[a]	Search and Seizure Other than Drug Testing	7-27
[b]	Drug Testing	7-28
[7]	Discrimination	7-30
[a]	Disability	7-30
[b]	Gender	7-36
[8]	Torts	7-43
[a]	Intentional Torts	7-44
[i]	Assault and Battery	7-44
[ii]	Unlawful Restraint	7-47
[iii]	Defamation	7-47
[b]	Negligence in Athletic Events	7-50
[i]	Participants	7-50
[ii]	Spectators	7-60
[c]	Governmental Immunity and Tort Claims	7-62
§ 7.03	Employees	7-66
[1]	Employment Contract Disputes	7-66
[a]	Coaches	7-66
[b]	Physical Education Teachers	7-70
[2]	Collective Bargaining Agreements	7-71
[a]	Bargaining Unit Membership	7-71
[b]	Hiring/Termination Decisions	7-72
[3]	Discrimination	7-73
[a]	Gender	7-75
[b]	Disability	7-78
[c]	Age	7-80
[4]	Constitutional Claims	7-80
[a]	Due Process	7-81
[b]	Free Speech	7-82
[c]	Freedom of Religion	7-84
[5]	Other Issues	7-84
[a]	Whistleblower Statutes	7-84
[b]	Use of School Property	7-85
[c]	Workers Compensation	7-85
§ 7.04	Outlook	7-87

CHAPTER 8

Public School Finance

§ 8.01	An Historical Review	8-3
§ 8.02	Federal Role in Public School Finance	8-6
[1]	Federal Funds “Impact Aid” in Support of Public Education	8-9

TABLE OF CONTENTS

xvii

§ 8.03	State Role in School Finance	8-11
§ 8.04	Local Boards of Education and Finance	8-17
§ 8.05	School Funds	8-18
	[1] In General	8-18
	[2] Characteristics, Creation, and Sources of Public School Revenue	8-19
	[3] Types and Characteristics of Taxes	8-21
	[a] Proportional	8-21
	[b] Regressive	8-22
	[c] Progressive	8-22
	[d] Yield	8-22
	[4] School Taxes	8-23
	[a] In General	8-23
	[b] Federal and State Income Tax	8-23
	[c] Personal Income Tax	8-24
	[d] Sales Tax	8-24
	[e] Real Property Tax	8-25
	[f] Lotteries	8-27
	[g] User Fees	8-27
§ 8.06	Administration of School Finances	8-28
	[1] Constitutional and Statutory Provisions	8-28
	[2] Submission of Question to Popular Vote	8-29
	[3] Collection and Enforcement of School Taxes	8-29
	[4] Deposits, Investments, Administration, Apportionment and Disposition of School Funds	8-30
	[5] Budgetary Procedures and Appropriations	8-31
	[6] Bonds	8-34
§ 8.07	Apportionment	8-40
	[1] Illegal Apportionment or Disposition	8-41
	[2] Personal Liability for Taxes	8-42
	[3] Abatement/Exemption	8-43
	[4] Sale of Land	8-43
	[5] Assessments and Special Taxes for Particular Purposes	8-44
	[6] Taxpayers' Suits and Other Remedies; Claims Against District	8-44
	[7] Warrants, Orders, and Certificates of Indebtedness	8-45
	[8] Public Schools in Conflict with Private Business	8-45
	[9] Reduction in School Funds	8-46
§ 8.08	State Funding Methods	8-47
	[1] In General	8-47

	[2] Foundation	8-47
	[3] Flat Grant	8-47
	[4] Power Equalization.....	8-47
	[5] Percentage Equalization	8-48
	[6] Guaranteed Tax Base.....	8-49
	[7] Weighted Students	8-49
§ 8.09	Regional/County Service Centers.....	8-50
§ 8.10	School District Property and Facilities	8-51
	[1] Construction	8-51
	[2] Use of Facilities	8-52
	[3] Leasing	8-52
§ 8.11	Insurance	8-55
§ 8.12	School Activities Funds and Interscholastic Activities	8-56
§ 8.13	School Based Management.....	8-57
§ 8.14	Twenty-First Century School Finance	8-59
	[1] In General.....	8-59
	[2] The Future of Education Finance Litigation	8-60

Appendices

APPENDIX A:	Individuals with Disabilities Education Act	A-1
APPENDIX B:	Compulsory Attendance Statutes	B-1
APPENDIX C:	Collective Bargaining Statutes	C-1
APPENDIX D:	Statutory Grounds for Dismissal of Teachers.....	D-1
APPENDIX E:	Reduction in Force Statutes	E-1
APPENDIX F:	Criminal Background Check Statutes For Public School Teachers	F-1
APPENDIX G:	Teacher Certification/Licensure Statutes.....	G-1
APPENDIX H:	Whistleblower Statutes for Public School Teachers.....	H-1
APPENDIX I:	[Reserved]	
APPENDIX J:	Anti-Bullying Laws and Policies	J-1
APPENDIX K:	Unemployment Compensation Statutes... ..	K-1
APPENDIX L:	Workers' Compensation Statutes	L-1
APPENDIX M:	Child Protection Statutes.....	M-1
INDEX	I-1