

Education Law Association

2006 52ND ANNUAL CONFERENCE

"Accountability and Equal Opportunity on the Line"

October 12-14, 2006

Paradise Island, Bahamas

ATLANTIS

PARADISE ISLAND, BAHAMAS



Education Law Association
300 College Park - 0528
Dayton, OH 45469
phone: (937) 229-3589
fax: (937) 229-3845
email: ela@educationlaw.org
web: <http://www.educationlaw.org>



The premier source of information on education law . . .

2006 ELA Annual Conference Schedule

Wednesday, October 11th

12:00 pm - 5:00 pm	BOD Meeting (Royal Boardroom)
2:00 pm - 6:00 pm	Registration (Coral Foyer)
6:00 pm - 7:00 pm	Welcome Reception (Ripples)

Thursday, October 12th

Morning	Breakfast on own
8:00 am - 5:00 pm	Registration (Coral Foyer)
8:30 am - 11:00 am	Preconference Sessions I, II (Coral Ballrooms – B,C)
11:00 am - 12:00 pm	Lunch on own
12:00 pm - 2:30 pm	Preconference Sessions III, IV (Coral Ballrooms – B,C)
5:00 pm - 6:15 pm	Keynote Address (Coral Ballroom – A)
6:30 pm - 8:00 pm	ELA Family Luau (<i>no additional cost for paid registrants; see registration form for additional guest tickets.</i>) (Dig Deck)

Friday, October 13th

7:00 am - 12:30 pm	Registration (Coral Foyer)
8:00 am - 9:30 am	Business Breakfast (<i>no additional cost for paid registrants; see registration form for additional guest tickets.</i>) (Grand Ballroom – A,B,C)
9:40 am - 10:30 am	Topic Session A
10:40 am - 11:30 am	Topic Session B
11:40 am - 12:30 pm	Topic Session C
12:40 pm - 2:00 pm	Role-Alike Luncheon (<i>no additional cost for paid registrants; see registration form for additional guest tickets.</i>) (Grand Ballroom – A,B,C)

Saturday, October 14th

Morning	Breakfast on own
7:00 am - 2:00 pm	Registration (Coral Foyer)
8:00 am - 9:15 am	2nd General Session: Supreme Court Update (Coral Ballroom – A,B)
9:25 am - 10:15 am	Topic Session D
10:25 am - 11:15 am	Topic Session E
11:25 am - 12:15 pm	Topic Session F
12:25 pm - 1:15 pm	Topic Session G
1:25pm - 2:00 pm	New Attendee Discussion (Coral Ballroom – A)
2:00 pm - 4:00 pm	Board of Director Meeting (Minos & Neptune)

Table of Contents

2006 ELA Annual Conference Schedule	2
Table of Contents	3
Themes	4
General Sessions	9
Welcome Reception	9
Preconference Seminars	10-11
ELA Family Luau	11
First General Session: Keynote Address	12
Business Breakfast	13
Role-Alike Luncheon	22
Second General Session: Supreme Court Update	23
New Member/Attendee Discussion	36
Closing Session	36
2006 ELA Officers	38
2006 Committee Chairs	39
Special Meetings	39
ELA Past Presidents	40
Outstanding Dissertation Award	41
ELA Executive Directors	41
M.A. McGhehey Award	42
School Law Reporters	43
2006 Exhibitors / Sponsors	50

ELA Publications

An updated 2006 Publications catalog is now available.

ELA books and monographs, including *The Yearbook of Education Law 2006*, will be on display during the conference at the ELA registration desk. Stop by during registration hours to place your order. Receive free shipping on your purchase when you pay for your order at the conference.



Themes

■ *Academic Freedom*

G7 The Effects of the Control of Policy-Making Boards on Religious-Affiliated Colleges: A Contrast of the Experiences of Two Baptist Institutions

■ *Administrative Law*

B6 Changing the Student Code of Silence: School Structure and the Law

■ *Affirmative Action*

F3 The Incongruities of *Grutter*

F3 Is Access to Higher Education Shrinking?

■ *Constitutional Law*

A5 Survival of the Fittest: Evolution and Intelligent Design as Competing Ideas in the Legal and Educational Matrix

A5 Did the Judge in the *Dover* Case Go Too Far?

B6 Sex, Drugs, and Violence: The Changing Landscape of Parental Rights to Limit or Prohibit Schools from Introducing Controversial Matter to Their Children

C6 Desegregation in the 21st Century: The Legal Links between School Funding Litigation

D3 Update on School Law for Busy Administrators

D4 Rethinking the Enforcement of Rights: A Proposal for a Collaborative Approach to a Federal Right to Education

F4 Untangling the Knots of Student Speech

F5 Determining the Best Interests of the Child in Curriculum Matters

■ *Discrimination Law*

F6 *Knight v. The State of Alabama*: Winners and Losers

C3 Is it a True Color-Defined Educational Opportunity in the Race to Close the Achievement Gap?

■ *Due Process*

A1 Principal Preparation Programs – Are We Teaching the Law That They Need to Know?

E5 Sexual Minority Youth and the Culture Wars: Out of the Closet and Drafted into Battle

F2 Resolving Grievances Through Peer Mediation and Arbitration: A Ten-Year Success Story

G4 Due Process in a Crisis: Glenbrook North Hazing Incident May 4, 2003

■ *Equal Access*

- D4 The Effect of Choice on Public Education in the United States and Abroad
- D5 *Bush v. Holmes* and the Principle of Uniformity

■ *Equal Protection*

- B5 Race-Conscious Curricular Responses to NCLB
- C3 Is it a True Color-Defined Educational Opportunity in the Race to Close the Achievement Gap?
- E6 Assessment Policies for English Language Learner Students
- E6 *Briggs v. Elliott*: The Struggle for Equal Opportunity in South Carolina
- F1 Legal aspects on HIV/Aids in South-African Schools
- F2 The Path Towards Accountability and Away from Equality
- G1 The Evolution of Desegregation: Interest in Maintaining Racial Identity in Schools - A Case Study

■ *First Amendment*

- A4 The Conversation Continues: Establishment Clause Update
- B4 The Tightrope of Religion in the Schools: Walking A Thin Line
- B4 The Establishment Clause: An Update from the Courts 2006
- B8 Cyberbullying: The Conflict between Student First Amendment Rights and Teacher-Student Privacy Rights
- D6 Chilling Effects on Academic Freedom in the Age of the War on Terror
- D6 Legislative Re-Engineering of Professors' Rights: The Conflicts Between Professors and the State, Universities, and Students
- E4 The First Amendment and College Student Newspapers
- F4 Creating Accountability by Regulating the Speech or Conduct of the Renegade Board Member or Superintendent
- G4 Discipline of Students for Off-Campus Misconduct
- G6 Student Internet Speech and Public School Regulation

■ *Fourth Amendment*

- B7 Search and Seizure in Public Schools: 2006 Update of Fourth Amendment Cases
- E1 An Analysis of Random Drug-Testing of Students: Policies and Patterns of Practice in Virginia Public Schools

■ *IDEA*

- B3 Orton-Gillingham Methodology: The Case Law under the IDEA
- E3 IDEA Final Regulations: Accountable to Whom?

■ *Labor Law*

- C2 Workplace Security of the Early Childhood Educator in South Africa, with Special Reference to Physical and Psychological Issues

- *Legal Overview*
 - A2 A Legal Overview for K-12 Administrators
 - A3 The Courts, College Students, and Administrators: A Review of the Recent Past
- *No Child Left Behind*
 - B5 Cultural Wars and the No Child Left Behind Act at Five
 - C1 School Reform, No Child Left Behind and Globalization
 - D7 No Child Left Behind and Education for Homeless Children and Youth: A Look at the *McKinney-Vento Homeless Education Assistance Improvements Act*
 - F7 Accountability and Access: An Inherent Tension in SES Programs
- *Responsible School Practices*
 - F1 Legal Issues and Responsible Practices in School Health Services
- *School Discipline*
 - A6 A Preliminary Assessment of Zero Tolerance Weapons Policies in Public Schools: Political Rhetoric or Practical Reality?
- *School Finance*
 - C6 Race-Conscious Funding Strategies and School Finance Litigation
 - D2 School Funding Litigation: Scanning the Event Horizon
 - G1 Diminished Scrutiny of School Desegregation and Financial Windfalls for Local Communities
- *School Reform*
 - B1 Vouchers: The Florida State Ruling on the Unconstitutionality of Vouchers—Comparison and Implications
 - D7 Compulsory Education and Home Schooling: Compatible or Conflicting Concepts
 - F5 No College Student Left Behind: Federal and State Initiatives to Improve College Readiness by Reforming the High School Curriculum
- *Sexual Harassment*
 - A6 Every School a Safe School Free of Sexual Predators: Is This a Pipe Dream?
 - G2 Peer Sexual Harassment in Elementary Schools: Judicial Messages for Schools
 - G2 How to Avoid Sexual Exploitation in Schools: Setting the Boundaries
- *Social Justice*
 - D5 All Over but the Crying: Post-*Zelman* Voucher Litigation Favors Voucher Opponents

- *Special Education Law*
 - C7 Advocacy, Accountability, and Inclusion for Students with Problem Behaviors
 - C8 Special Education Due Process under IDEA 2004: Appropriate Reform or Chilling Complexities?
 - C8 Response to Intervention (RTI): Legal Issues for Secondary Schools
 - D1 Are There Benefits from Special Education Mediation?
 - E7 Burden of Proof Under IDEA—A Positive Movement: A Review of *Schaeffer v. Weast*
 - G3 Adequate Yearly Progress and NCLB: How are Students with Disabilities Coping in the Era of Accountability and How Have the Courts Reacted?
 - G3 Meaningful Benefit as a Measure of FAPE: How Do the Courts Decide Whether a FAPE Was Provided?

- *Student Discipline*
 - G4 Off-Campus Discipline—How Far to Extend the Reach?

- *Student Records/Privacy*
 - A7 Common Law Privacy in School and University Settings

- *Teaching School Law*
 - A1 Applying Adult Learning Methods to Education Law Classes
 - G5 How to Enhance Your School Law Course: “Tech for Non-Techies”
 - G5 Interesting Assignments for your School Law Class
 - G5 Teaching Education Law in an Era of Accountability: Is It Still Relevant?

- *Technology Legal Issues*
 - C5 Employee and Student Misconduct Issues Related to Technology
 - C5 Legal Aspects of Cyberbullying: Guidelines for Educators
 - G6 Schools in a Rapidly Advancing Technological Age: Is the Law Keeping Pace?

- *Tort Law*
 - C4 I Never Thought of That: Legal Issues Arising from Volunteers and Independent Contractors in Public Schools Context
 - C4 The Legal Topography of Education: The Employees Versus the School Board

2007

2007 ELA Annual Conference

Catamaran Resort | San Diego | California

Nov. 14-17, 2007

CATAMARAN
RESORT HOTEL

Spa

Welcome to an experience that awakens the senses, relaxes the body and soothes the soul. Think paradise, and exotic tropical pleasures come to mind. Explore hidden gardens of over 1,000 types of eclectic plants and flowers, exotic birds, 100 varieties of palm trees, and 30 types of hibiscus. Surround yourself with striking sunsets, the splendor of secluded sandy beaches, and the sights and sounds of nature all in one place.

With fresh ocean breezes and exotic ambience, the Catamaran Resort is an invigorating and creative setting for any group. All fourteen of our Function Rooms are complemented by scenic views, balconies, patios and most of all —our unforgettable bayfront.

The Catamaran's 315 rooms and suites are spacious and tastefully appointed with their own balcony or patio. Mission Bay, the world's largest aquatic park, is at your doorstep and the enticing waves of the Pacific Ocean are just 100 yards away. The Catamaran tower commands a view from the shores of La Jolla to Old Mexico with spectacular views of Mission Bay and the San Diego skyline. Sea World, the world-famous San Diego Zoo and the San Diego International Airport are just minutes away. By staying at the Catamaran Resort for pleasure or business, you'll experience San Diego, one of Southern California's most exciting cities, in all its fascinating and colorful detail. Every nuance of the city is ready and waiting to be revealed in extraordinary ways.

- catamaranresort.com



General Sessions

First General Session: **Keynote Address**.....



Thursday, October 12, 2006

5:00 - 6:15 p.m.

⊕ location: Coral Ballroom – A

Raymond G. Kuntz

Kuntz, Spagnuolo, Scapoli, & Schiro, P.C.

Second General Session: **Supreme Court Update**.....



Saturday, October 14, 2006

8:00 - 9:15 a.m.

⊕ location: Coral Ballroom – A

John Borkowski

Attorney, Hogan, & Hartson

Welcome

Welcome Reception

Wednesday, October 11th, 6:00 - 7:00 p.m.



Sponsored in part by:

Mr. George Jay Joseph

Jefferson Law Book Company

Publisher of the *Journal of Law and Education*

⊕ location: Ripples

Preconference Seminars

morning sessions 8:30 - 11:00 a.m.

I. Straight Talk About Gay Issues in the Schools

⊕ location: Coral Ballroom – B

The session will cover these issues:

- Suits by gay student clubs seeking recognition under the Equal Access Act
- Federal court decisions addressing the constitutional rights of gay students and faculty to equal protection under the law
- The application of Title IX to peer harassment in the schools based on sexual orientation
- Litigation by community groups and parents challenging school curricular and program decisions that promote tolerance toward gay and lesbian students
- First Amendment litigation by students who are prohibited from expressing disapproval of gay and lesbian lifestyles in school environment

This preconference session will offer practical tips for school authorities about how to avoid becoming litigants in the “culture wars” concerning the treatment of gay and lesbian issues in the schools. A comprehensive paper will be distributed to this session’s attendees that will review all litigation concerning gay and lesbian issues in the public schools.

Richard Fossey, Professor, University of North Texas, Teacher Education and Administration, Denton, TX

Robert LeBlanc, Professor, Department of Educational Leadership, University of St. Thomas, Houston, TX

Todd DeMitchell, Professor, Department of Education, University of New Hampshire, Durham, NH

II. Federalism and Its Impact on Public Education Policy

⊕ location: Coral Ballroom – C

This preconference session will explore federal and state decisions, with emphasis on U.S. Supreme Court case law, that address the changing scope of federalism and its role on national and state education policy. Presenters will discuss the impact of major federal legislation such as the No Child Left Behind Act (NCLB) and Individuals with Disability Education Act (IDEA) on what traditionally has been the state and local responsibility for education policy. In addition, the session will examine the relationship between federalism and Eleventh Amendment state sovereign immunity, which will include an analysis of the arm of the state doctrine and its potential impact on litigation involving the constitutionality of school funding formulas.

M. David Alexander, Department Chair and Professor, Educational Leadership and Policy Studies, School of Education, Virginia Tech, Blacksburg, VA

Jennifer Sughrue, Associate Professor, Department of Educational Leadership, Florida Atlantic University, Boca Raton, FL

William E. Thro, State Solicitor General, Commonwealth of Virginia, Richmond, VA

Preconference Seminars

afternoon sessions 12:00 - 2:30 p.m.

III. Harry Potter and the Curse of the First Amendment: Update on Recent Developments in Student First Amendment Rights

⊕ location: Coral Ballroom – B

Over thirty-five years ago, the Supreme Court claimed in *Tinker* that “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” Is that still true today? We will look at recent developments in both student speech and religious issues, including Intelligent Design, dress codes and uniforms, student threats and “unofficial websites,” distribution of literature, and esoteric religious issues.

Christopher Gilbert, Attorney, Bracewell & Giuliani, LLP, Houston, TX

IV. The Legal Extension of Ethics: The Potential Impact of Sarbanes-Oxley for Public Schools and Colleges and Universities

⊕ location: Coral Ballroom – C

Under the rubrics of ethics and accountability, the session will present an overview of the Sarbanes-Oxley federal legislation and resulting litigation, with examples of how school districts may be at risk for ethics violations and how school personnel may be at risk if the organization they represent violates disclosure laws.

Philip T. K. Daniel, William & Marie Flesher Professor of Educational Administration and Adjunct Professor of Law, The Ohio State University, Columbus, OH

Patrick Pauken, Associate Professor of Educational Administration and Leadership Studies, Bowling Green State University

ELA Family Luau

Thursday, October 12, 6:30 - 8:00 p.m.

Luau

⊕ location: Dig Deck



First General Session

Thursday, October 12th, 5:00 - 6:15 p.m.

Keynote Address



Thursday, October 12, 2006

5:00 - 6:15 p.m.

⊕ location: Coral Ballroom – A

Raymond G. Kuntz

Kuntz, Spagnuolo, Scapoli, & Schiro, P.C.

Raymond G. Kuntz is the senior member and founder of Kuntz, Spagnuolo, Scapoli, and Schiro, P.C., a law firm specializing in education law. Mr. Kuntz successfully represented the Hendrick Hudson School District and the New York State Commissioner of Education before the United States Supreme Court in the *Rowley* case, in which the Supreme Court, for the first time, defined what constitutes a free appropriate public education under Public Law 94-142. (Now known as the IDEA). In 2006, Mr. Kuntz represented the school district in *Arlington Central School District v. Murphy*, a seminal special education case where the Supreme Court ruled that non-attorney expert fees for services rendered to prevailing parents in an IDEA action are not “costs” recoverable under IDEA’s fee-shifting provision.

He has also represented over fifty school districts throughout the State of New York as general and litigation counsel and has participated in a number of landmark cases in school and municipal law. He has negotiated hundreds of collective bargaining agreements with school district personnel and litigated in every area of school law, including civil rights and tax certiorari. He has guided school districts through numerous construction projects, from negotiating for professional services to litigating claims for “extras.”

A graduate of Fordham College and Fordham Law School, he is a member of the National Council of School Attorneys, a former Chairman of the Municipal Law Section of the New York State Bar Association, and past President of the New York State Association of School Attorneys. He has spoken at seminars and conferences sponsored by the National School Boards Association, the New York State School Boards Association, the American and New York State Bar Associations, and other groups. He is a member of the Board of Trustees of the Harvey School in Katonah, New York, where he has served for the last seventeen years as chairman.

Business Breakfast

Friday, October 13, 8:00 - 9:30 a.m.

Breakfast ✦ location: Grand Ballroom – A,B,C

Concurrent Topic Sessions A

Friday, October 13th, 9:40 - 10:30 a.m.

❶ A1: Due Process/Teaching School Law

✦ location: Staniel Cay

Principal Preparation Programs—Are We Teaching the Law That They Need to Know?

This presentation highlights a study of the level of principal interns' school law knowledge, their analyses of school law textbooks, topics covered in school law courses, and instructional methodology.

Rebecca Schlosser, Assistant Professor of Education, Sul Ross State University, Alpine, TX

Mark Littleton, Professor of Educational Leadership/Coordinator of the Doctoral Program, Tarleton State University, Stephenville, TX

Applying Adult Learning Methods to Education Law Classes

This presentation focuses on how to teach (not just present) information specifically to adult learners in education law classes so they can retain and apply information as administrators.

Jan Cantrell, Dean, Southern Nazarene University, Bethany, OK

Presenter: *John Rumel*, Idaho Education Association, Boise, ID

❷ A2: Legal Overview

✦ location: Flamingo Cay

A Legal Overview for K-12 Administrators

Presented each of the last two years, this session discusses “hot” legal topics over the past year. The session presenters, an attorney, principal, and college professor, each offer a unique perspective. Session attendees are encouraged to ask questions and participate in the discussion.

Brian Schwartz, General Counsel, Illinois Principals Association, Springfield, IL

Brad Colwell, Department Chair, Department of Education, Southern Illinois University, Carbondale, IL

Allan Osborne, Principal, Snug Harbor Community School, Snug Harbor, MA

Presenter: *Joan Siegel*, Burlington School District, Burlington, VT

③ A3: Higher Education—Students

⊕ location: Mangrove Cay

The Courts, College Students, and Administrators: A Review of the Recent Past

This presentation will comprise a review of salient cases, adjudicated during the past several years, involving colleges and universities, their students, and administration. The presentation of the cases and their related significance to higher education will provide an opportunity for session participants to discuss and analyze issues from practitioner and educational perspectives.

Timothy Letzring, Department Chair, Leadership and Counselor Education Department, University of Mississippi, University, MS

K.B. Melear, Assistant Professor of Higher Education, University of Mississippi, University, MS

Presider: *John Dougherty*, Lindenwood University, St. Charles, MO

④ A4: First Amendment

⊕ location: Prince of Wales

The Conversation Continues: Establishment Clause Update

This interactive panel continues the lively discussion of the First Amendment's Religion Clauses, giving special attention to how the new Supreme Court justices may influence judicial interpretations.

Edwin Darden, Managing Partner, Appleseed, Washington, D.C.

Ralph D. Mawdsley, Professor of Educational Administration, Department of Counseling, Administration, Supervision, and Adult Learning, Cleveland State University, Cleveland, OH

Martha McCarthy, Chancellor's Professor, School of Education, Indiana University, Bloomington, IN

Charles J. Russo, Panzer Chair in Education, School of Education and Allied Professions, University of Dayton, Dayton, OH

David M. Schimmel, Professor, School of Education, University of Massachusetts at Amherst, Amherst, MA

Presider: *Martha Marcero*, Thrun Law Firm PC, East Lansing, MI

⑤ A5: Constitutional Law

⊕ location: Sandy Cay – A

Survival of the Fittest: Evolution and Intelligent Design as Competing Ideas in the Legal and Educational Matrix

This session will explore the issues surrounding the current battle between proponents of teaching the theory of evolution and those who favor teaching the theory of intelligent design.

Raymond Lee, Associate Professor of Education, Harding University, Searcy, AR

Did the Judge in the *Dover* Case Go Too Far?

The judge in *Kitzmiller v. Dover* issued a broad decision in ruling against a school board's disclaimer on teaching evolution. Did he go too far?

Lance Potter, doctoral student, Educational Leadership, Penn State University, Centre Hall, PA

Presider: *Kenneth Lane*, Southeastern Louisiana University, Hammond, LA

ⓐ A6: School Discipline/Sexual Harassment

⊕ location: [Sandy Cay – B](#)

A Preliminary Assessment of Zero Tolerance Weapons Policies in Public Schools: Political Rhetoric or Practical Reality?

This presentation will explore state and national patterns of compliance with the Gun Free School Act and the number, nature, and disposition of court challenges to zero tolerance policies between 1994 and 2004.

Chuck Vergon, Professor, Educational Leadership Program, Youngstown State University, Youngstown, OH

Every School a Safe School Free of Sexual Predators: Is This a Pipe Dream?

Creating a safe school free of Educator Sexual Misconduct using a unique set of strategies that raise the risk-of-apprehension level so high that employee self-preservation will serve as a strong deterrent to student molestation.

Chester Kent, Associate Executive Secretary, Tri-State Area School Study Council, University of Pittsburgh, Pittsburgh, PA

Presider: *Paul Novak*, Saginaw Valley State University, University Center, MI

ⓑ A7: Student Records/Privacy

⊕ location: [Arawak Cay](#)

Common Law Privacy in School and University Settings

An exploration of privacy claims (constitutional, statutory, and common law) involving schools, universities, education employees, and students.

Dave Dagley, Professor of Education Law, University of Alabama, Tuscaloosa, AL

Lawrence Lee Oldaker, Professor Emeritus, University of Alaska, Juneau, AK

Presider: *Carole de Casal*, The University of Colorado, Colorado Springs, CO

Concurrent Topic Sessions B

Friday, October 13th, 10:40 - 11:30 a.m.

1 B1: School Reform

⊕ location: Arawak Cay

Vouchers: The Florida State Ruling on the Unconstitutionality of Vouchers—Comparison and Implications

A study of the implications of the 2006 Florida Supreme Court decision that vouchers are “unconstitutional.” What does the case say to expand or limit other state and federal decisions?

Steve Permuth, Professor of Educational Leadership and Policy Studies, University of South Florida, Tampa, FL

Darlene Bruner, Associate Professor of Educational Leadership and Policy Studies, University of South Florida, Tampa, FL

David H. Goldenberg, Professor, University of Hartford, West Hartford, CT

Daniel L. Fisher, Berkeley Preparatory School, Tampa, FL

President: *Lenford Sutton*, University of South Florida, Sarasota, FL

2 B2: Education Litigation and Expert Testimony

⊕ location: Mangrove Cay

From the Classroom to the Courtroom: Bridging the Knowledge Gap between Educators, Attorneys, and Judges in Litigation

This session offers suggestions for identifying and bridging the “knowledge gap” to ensure that attorneys and adjudicators make litigation decisions based on sound educational policy and practice.

John LaNear, Assistant Professor, Administrative Leadership, University of Wisconsin - Milwaukee, Milwaukee, WI

Jodi Searl, Special Education Administrator/Attorney, Milwaukee Public Schools, Milwaukee, WI

David Harpool, Provost and COO of Academics, Kaplan University, Chicago, IL

President: *Bryan Blavatt*, Boone County Board of Education, Florence, KY

3 B3: IDEA

⊕ location: Flamingo Cay

Orton-Gillingham Methodology: The Case Law under the IDEA

This session will provide a compact yet comprehensive analysis of the approximately fifty publisher hearing/review officer and court decisions concerning Orton Gillingham methodology, which generically represents a host of separately named language arts programs, for students with disabilities under the IDEA.

Tessie Rose, Professor, Department of Special Education, University of Nevada–Las Vegas, Las Vegas, NV

Perry Zirkel, University Professor of Education and Law, Lehigh University, Bethlehem, PA

President: *Nelda Cambron-McCabe*, Miami University, Oxford, OH

④ B4: First Amendment

⊕ location: Coral Ballroom (Coral Tower)

The Tightrope of Religion in the Schools: Walking A Thin Line

This topic will address the challenges facing schools and teachers as they walk the line between avoiding Establishment Clause violations and protecting Free Exercise rights. Topics such as Intelligent Design theory, abstinence only, and sex education will be discussed. The presentation will suggest, as a court recently held, that teaching intelligent design is unconstitutional, but that it is part of a much bigger battleground over religion and religious expression in the schools that is nowhere near resolution. The presentation will also address issues such as school prayer, vouchers, and religious symbolism in the schools.

Frank S. Ravitch, Professor of Law, Michigan State University College of Law, East Lansing, MI

The Establishment Clause: An Update from the Courts 2006

An update from the courts on religious expression in schools; the impact of these decisions continues to define and refine the contours of the First Amendment in our public schools.

Sara Leon, Partner, Powell & Leon, LLP, Austin, TX

President: *Larae Idleman*, Bracewell & Giuliani LLP, Houston, TX

⑤ B5: No Child Left Behind/Equal Protection

⊕ location: Prince of Wales

Cultural Wars and the No Child Left Behind Act at Five

An analysis of cultural wars reflected in the controversies in implementing the No Child Left Behind Act five years after passage of the bipartisan legislation.

Jerry Siegrist, Professor and Department Head, Educational Leadership Department, Valdosta State University, Valdosta, GA

James J. Van Patten, Adjunct Professor, Florida Atlantic University, Boca Raton, FL

Race-Conscious Curricular Responses to NCLB

NCLB requires measurement of achievement and attention to identified gaps in progress. This presentation explores the legality of various race-conscious curricular responses to identified gaps.

Julie Mead, Associate Professor, University of Wisconsin-Madison, Madison, WI

Leticia Smith-Evans, Attorney, O'Melveny & Myers LLP, New York, NY

Presider: *Fred Hartmeister*, Texas Tech University, Lubbock, TX

⑥ B6: Administrative Law/Constitutional Law

⊕ location: Sandy Cay – B

Changing the Student Code of Silence: School Structure and the Law

Relation of the student code of silence (a roadblock to safety and an appropriate learning environment) to the law and the structure of schools.

Ronald Hyman, Professor, Rutgers University, Newark, NJ

Sex, Drugs, and Violence: The Changing Landscape of Parental Rights to Limit or Prohibit Schools from Introducing Controversial Matter to Their Children

This session focuses on the changing landscape of parents' rights to limit or prohibit schools from introducing controversial matter to their children.

David D'Agata, Civil Litigation Associate, Squire, Sanders & Dempsey, LLP, West Palm Beach, FL

Presider: *Richard Dickinson*, Ohio School Boards Association, Columbus, OH

⑦ B7: Fourth Amendment

⊕ location: Sandy Cay – A

Search and Seizure in Public Schools: 2006 Update of Fourth Amendment Cases

Presenters will review court decisions on student searches including the legality of increased police involvement, strip-searching gym classes, drug testing, and seizure-only cases.

Jacqueline A. Stefkovich, Professor of School Law and Department Head, Education Policy Studies, The Pennsylvania State University, University Park, PA

Lawrence Rossow, Professor of Education and Adjunct Professor of Law, University of Oklahoma, Norman, OK

Presider: *Joseph Beckham*, Florida State University, Tallahassee, FL

⑧ B8: Legal Obligations of School Leaders/First Amendment

⊕ location: Staniel Cay

Spotting the Sexual Predator in Your School

When it comes to light that a staff member has had sex with a student, the impact on the reputation of the school district and the teaching profession far outweighs any financial liability. This seminar outlines practical measures for recognizing and stopping the staff member who would have sex with students.

Jim Davies, General Counsel, Edmonton Public School Board, Edmonton, AB, Canada

Cyberbullying: The Conflict between Student First Amendment Rights and Teacher-Student Privacy Rights

A presentation addressing Cyberbullying, including implications for policy, discipline, and potential liabilities. Students' First Amendment rights may infringe on reasonable expectation of teachers' and students' privacy.

Denise Birdwell, Assistant Superintendent for Secondary Programs, Dysart Unified School District, El Mirage, AZ

Kay Hartwell Hunnicutt, Associate Professor, Division of Educational Leadership and Policy Studies, Arizona State University, Tempe, AZ

Presider: *John Freund*, King, Spry, Herman, Freund, & Faul, LLC, Bethlehem, PA

Concurrent Topic Sessions C

Friday, October 13th, 11:40 a.m. - 12:30 p.m.

① C1: No Child Left Behind

📍 location: Arawak Cay

School Reform, No Child Left Behind, and Globalization

This presentation reviews the law and achievements of the forty-year history of NCLB; the new accountability rules and their impact on closing the achievement gap; and how NCLB helps America in becoming more competitive in the new phase of economic globalization.

Frank Brown, Professor of Education and former Dean, School of Education, University of North Carolina at Chapel Hill, Chapel Hill, NC

Philip T. K. Daniel, William & Marie Flesher Professor of Educational Administration and Adjunct Professor of Law, The Ohio State University, Columbus, OH

Stephen B. Lawton, Chair, Department of Graduate Studies and Professional Development, Arizona State University, Phoenix, AZ

Richard C. Hunter, Professor of Education Administration, University of Illinois at Urbana-Champaign, Champaign, IL

Presider: *Clifford Hooker*, University of Minnesota, St. Paul, Minnesota

② C2: Labor Law

📍 location: Staniel Cay

Workplace Security of the Early Childhood Educator in South Africa, with Special Reference to Physical and Psychological Issues

Unique workplace demands rest upon the Early Childhood educator, which constitutes a form of unfair discrimination if no special assistance is offered to these educators.

J.P. Rossouw, Associate Professor in Education Law, Potchefstroom Campus, North-West University, Potchefstroom, South Africa

Jeannine Keating, Lecturer in Early Childhood Development, Education Sciences, North-West University, Potchefstroom, South Africa

Presider: *William E. Thro*, Commonwealth of Virginia, Richmond, VA

③ C3: Equal Protection

⊕ location: [Prince of Wales](#)

Is it a True Color-Defined Educational Opportunity in the Race to Close the Achievement Gap?

This session will discuss general legal principles and case developments. After summarizing desegregation principles (desegregation and the integration ideal), it examines voluntary policies and strict scrutiny (compelling interests and narrow tailoring). The session will also discuss gaps in the law and evidentiary requirements.

Paul Green, Associate Professor, Graduate School of Education, University of California, Riverside, CA

Mark A. Gooden, Assistant Professor, Departments of Educational Leadership/Urban Educational Leadership, University of Cincinnati, Cincinnati, OH

Brian Perkins, Chair, Department of Educational Leadership & Policy Studies, Southern Connecticut State University, New Haven, CT

Timothy Seigler, Associate Professor, North Carolina Central University, Durham, NC

Laura McNeal, Professor, Department of Educational Policy Studies, Georgia State University, Atlanta, GA

Presider: *Bill Boshier*, Virginia Commonwealth University, Richmond, VA

④ C4: Tort Law

⊕ location: [Mangrove Cay](#)

I Never Thought of That: Legal Issues Arising from Volunteers and Independent Contractors in Public Schools Context

This presentation will focus on a common, but overlooked, source of liability for school districts, which is the use of volunteers and independent contractors in public schools. There are a variety of sources of liability for schools in this context, including contractual obligations, tort liability, worker's compensation, FERPA privacy issues, employment discrimination, and constitutional torts, to name a few.

Randall Farmer, Attorney, Hall, Booth, Smith, & Slover PC, Athens, GA

The Legal Topography of Education: The Employees Versus the Board

This presentation focuses on a comprehensive analysis of the lawsuits against school boards in the state of Ohio from 1999 to 2005.

Caroline Roettger, Professor, Oklahoma State University, Stillwater, OK

Lloyd Roettger, Professor, Iowa State University, Ames, IA

Cody Sandifer, Graduate Research Assistant, University of Toledo, Toledo, OH

Presider: *Terry Rowles*, Arizona School Board Association, Peoria, AZ

5 C5: Technology Legal Issues

⊕ location: Flamingo Cay

Employee and Student Misconduct Issues Related to Technology

The fast pace of technological advances has complicated the legal issues involving student discipline and faculty misconduct. This session will address issues such as copyright, plagiarism, blogs, hacking, spamming, copycat websites, cybersquatting, cyberbullying, camera cellphones, video surveillance, sexual harassment, records protection, and privacy issues, as well as their impact on the educational environment.

Lynn Rossi Scott, Partner, Bracewell & Giuliani, LLP, Dallas, TX

Legal Aspects of Cyberbullying: Guidelines for Educators

This presentation will provide an introduction to cyberbullying and other related types of human-computer abuses (i.e., cyberstalking) and will discuss how these issues have become increasingly serious problems in our schools.

Kevin P. Brady, Assistant Professor, Department of Educational Leadership and Policy Studies, North Carolina State University, Raleigh, NC

Presider: *Kevin Harty*, Thrun Law Firm PC, East Lansing, MI

6 C6: School Finance/Constitutional Law

⊕ location: Sandy Cay – A

Race-Conscious Funding Strategies and School Finance Litigation

This presentation analyzes the legal issues surrounding the use of race as a factor in designing school finance formulas.

Preston Green, Associate Professor of Educational Leadership, the Pennsylvania State University, University Park, PA

Desegregation in the 21st Century: The Legal Links between School Funding Litigation

Analysis of the legal links between school desegregation, closing the achievement gap, and school funding, with equal protection as the framework for litigation and remedy.

David Pedersen, Attorney, Baird Holm LLP, Omaha, NB

Elizabeth Eynon-Kokrda, Attorney, Baird Holm LLP, Omaha, NB

Presider: *David Thompson*, Bracewell & Giuliani LLP, Houston, TX

7 C7: Special Education Law

⊕ location: Sandy Cay – B

Advocacy, Accountability, and Inclusion for Students with Problem Behaviors

This session examines IDEA 2004 and educational placement for special education students with challenging behaviors for whom accountability and equal opportunity are on the line.

Jean Crockett, Associate Professor, Department of Special Education,
University of Florida, Gainesville, FL

Mary Ann Nelson, Lecturer, Department of Special Education, University of
Florida, Gainesville, FL

Presider: *James Tate*, Education Law Consulting Service, PLC, Stillwater, OK

8 C8: Special Education Law

⊕ location: Coral Ballroom (Coral Tower)

Special Education Due Process under IDEA 2004: Appropriate Reform or Chilling Complexities?

The presentation explores the procedural requirements imposed on special education due process under IDEA 2004 and the impact of those requirements on due process hearings.

James Thomeczek, Founding Partner, Thomeczek Law Firm, St. Louis, MO

Response to Intervention (RTI): Legal Issues for Secondary Schools

This presentation will identify legal issues regarding RTI and secondary schools. The presenter will provide an RTI model for secondary schools meeting all IDEA requirements.

Kelly Arnberger, Principal, Beloit Junior/Senior High School, Beloit, KS

Presider: *Kathleen Conn*, East Lansdowne Basics Schools, East Lansdowne, PA

Role-Alike Luncheon

Friday, October 13th, 12:40 - 2:00 p.m.

⊕ location: Grand Ballroom A,B,C

attorneys

professors

The role-alike sessions will be held at lunch on Friday.

school administrators

Second General Session

Saturday, October 14th, 8:00 - 9:15 a.m.

Supreme Court Update



Saturday, October 14, 2006

8:00 - 9:15 a.m.

⊕ location: Coral Ballroom – A

John W. Borkowski

Attorney, Hogan & Hartson

John W. Borkowski practices in the area of trial and appellate litigation, with emphasis on education law issues arising under the U.S. Constitution, state constitutions, and federal statutes and regulations. He also actively advises educational institutions in a wide variety of matters.

Prior to joining Hogan & Hartson, John served as a law clerk to The Honorable Patricia M. Wald, who was then serving as chief judge of the U.S. Court of Appeals for the District of Columbia Circuit. Since joining Hogan & Hartson in 1988, John has worked primarily on litigation matters involving education law and civil rights issues. He became a partner in the firm in 1996 and currently works primarily with Hogan & Hartson's education group, both litigating and advising clients. He has worked extensively on a wide-range of school desegregation, voting rights, and reverse discrimination cases for educational institutions, as well as a variety of litigation matters for other clients. He has handled such matters before a variety of federal trial and appellate courts as arguing appeals before the Fourth, Fifth, Eighth, and Eleventh Circuits and the U.S. Supreme Court. His areas of substantive expertise include the No Child Left Behind Act, Title VI, Title VII, and Title IX compliance, the rights of English language learners, voting rights, school desegregation, the Individuals with Disabilities Education Act, school finance, affirmative action, reverse discrimination, and the design and defense of measures to promote equal access.

In addition, John has served in a variety of professional and community activities related to his practice. He also frequently writes articles and speaks at conferences concerning education law and civil rights issues for groups such as the National School Boards Association and the American Association of School Administrators.

Concurrent Topic Sessions D

Saturday, October 14th, 9:25 - 10:15 a.m.

① D1: Special Education Law

⊕ location: Sandy Cay – A

Are There Benefits from Special Education Mediation?

This presentation involves a review of the statutes and case law regarding mediation as an alternative to litigation. It also will include results of a survey of school systems as to the effectiveness of mediation in this respect and implications for school districts.

Michael Hazelkorn, Professor and Chair, Department of Special Education and Speech-Language Pathology, University of West Georgia, Carrollton, GA

Presider: *Synthia Shilling*, Anne Arundel County Public Schools, Annapolis, MD

② D2: School Finance

⊕ location: Sandy Cay – B

School Funding Litigation: Scanning the Event Horizon

This presentation provides an analysis of the current status of school funding litigation, and extrapolating on this information, discusses likely future events in school funding litigation.

R. Craig Wood, Professor, University of Florida, Gainesville, FL

Presider: *Ed Massey*, Boone County Board of Education, Florence, KY

③ D3: Constitutional Law

⊕ location: Mangrove Cay

School Law for Busy Administrators: An Update

This session updates *School Law for Busy Administrators*. Cases related to religion, speech, viewpoint discrimination, search and seizure, and sexual preference will be emphasized.

J. Patrick Mahon, Retired School Administrator, Young Harris, GA

Presider: *Leslie Stellman*, Hodes, Ulman, Pessin & Katz, P.A., Towson, MD

④ D4: Constitutional Law/Equal Access

⊕ location: Staniel Cay

Rethinking the Enforcement of Rights: A Proposal for a Collaborative Approach to a Federal Right to Education

This presentation contends that the United States should recognize a federal right to education and implement it through a collaborative and non-punitive enforcement mechanism.

Kimberly Jenkins Robinson, Assistant Professor of Law, Emory University, Atlanta, GA

The Effect of Choice on Public Education in the United States and Abroad

Choice may provide equal access to quality and accountability in public education, providing the worldwide barriers are understood and focus remains on the results.

Amy Borman, Attorney, Eastman & Smith, Ltd., Toledo, OH

Presider: *Christopher Gilbert*, Bracewell & Giuliani, LLP, Houston, TX

⑤ D5: Social Justice/Equal Access

📍 location: Arawak Cay

All Over but the Crying: Post-Zelman Voucher Litigation Favors Voucher Opponents

In *Zelman v. Simmons-Harris* (2002), the Supreme Court swept away all federal constitutional obstacles to publicly funded voucher programs that include religious schools. However, post-*Zelman* court decisions have generally favored voucher opponents.

Richard Fossey, Professor, University of North Texas, Teacher Education and Administration, Denton, TX

Bush v. Holmes and the Principle of Uniformity

The following topic addresses directly the accountability issue and equal access to a quality education in an examination of the case of *Bush v. Holmes* and the principle of uniformity in an attempt to define what is meant by a “uniform” system of free public schools.

Mary Jane Guy, Professor, Educational Leadership Department, Winona State University, Winona, MN

Presider: *Christopher Borreca*, Bracewell & Giuliani, LLP, Houston, TX

⑥ D6: First Amendment

📍 location: Flamingo Cay

Chilling Effects on Academic Freedom in the Age of the War on Terror

A survey of efforts since 2001 to limit the academic freedom of college faculty through litigation, legislation, and private actions, including recent controversies.

Luke M. Cornelius, Assistant Professor, Department of Educational Leadership & Professional Studies, University of West Georgia, Carrollton, GA

Alvin J. Schilling, post-doctoral student, Gainesville, FL

Legislative Re-Engineering of Professors’ Rights: The Conflicts between Professors and the State, Universities, and Students

This presentation examines the emergence of key state laws and policies that are altering the profession of the professoriate, but states are casting the language under the guise of benefiting other stakeholders within higher education so its eventual negative impacts on the professoriate are not as obvious.

Jeffrey C. Sun, Assistant Professor of Educational Leadership/Affiliate Professor of Law, University of North Dakota, Grand Forks, ND

Presider: *Cory Schoffer*, Alberta Teachers Association, Alberta, Canada

🕒 D7: No Child Left Behind/School Reform

⊕ location: Prince of Wales

No Child Left Behind and Education for Homeless Children and Youth: A Look at the *McKinney-Vento Homeless Education Assistance Improvements Act*

Hurricane Katrina showed no community is immune to homelessness. Overview of McKinney-Vento Homeless Education Assistance Improvements Act mandating educational rights for homeless children under NCLB.

Lynn T. Brown, Coordinator of Enrollment and Attendance Compliance, Department of Reporting and Regulatory Accountability, Montgomery County Maryland Public Schools, Germantown, MD

Compulsory Education and Home Schooling: Compatible or Conflicting Concepts

This presentation provides a history of compulsory school attendance laws, as well as current state requirements for public school attendance, cross-referenced with the laws regulating each state's home schools.

Brenda Kallio, Professor, University of North Dakota, Grand Forks, ND

Richard T. Geisel, Assistant Professor, Educational Leadership Department, Grand Valley State University, Grand Rapids, MI

Presider: *Jean Crockett*, University of Florida, Gainesville, FL

Never miss an ELA Publication again!

Join the ELA Standing Order Lists

Sign up for one or all of our Standing Order Lists and automatically receive any new publication from the ***premier source of information on education law***.^{*} ELA members receive a 35% discount on ELA publications.

Standing Order Lists exist for the following publications:

- Monograph/book Series
- *Yearbook of Education Law*

To join, contact the ELA office:
 phone: (937) 229-3589
 fax: (937) 229-3845
 email: ela@educationlaw.org
 web: <http://www.educationlaw.org>

^{*} *Certain books that have regional, rather than national, appeal will not be included on Standing Order Lists. Contact the office with questions.*

Concurrent Topic Sessions E

Saturday, October 14th, 10:25 - 11:15 a.m.

① E1: Fourth Amendment

✦ location: Sandy Cay – A

An Analysis of Random Drug-Testing of Students: Policies and Patterns of Practice in Virginia Public Schools

This an overview of the law underpinning random drug-testing programs in public schools and of the results of a study that looked at current random drug testing programs and practices in Virginia public high schools.

M. David Alexander, Department Chair and Professor, Educational Leadership and Policy Studies, School of Education, Virginia Tech, Blacksburg, VA

Mark Lineburg, High School Principal, Radford High School, Radford, VA

Jennifer Sughrue, Associate Professor, Department of Educational Leadership, Florida Atlantic University, Boca Raton, FL

Presider: *Brad Colwell*, Southern Illinois University at Carbondale, Carbondale, IL

② E2: Collaborative Work Along Educational Pipeline

✦ location: Staniel Cay

Collaborative Strategies for Addressing the Crisis of Minority Under-Representation in the Legal Profession

This panel will discuss five different models being employed by law schools to address the continuing crisis of minority under-representation in the legal profession.

Sarah E. Redfield, Professor of Law, University of the Pacific, McGeorge School of Law, Sacramento, CA

Brett Scharffs, Professor of Law, J. Reuben Clark Law School, Brigham Young University, Provo, UT

Presider: *Edwin Darden*, Appleseed, Washington, D.C.

③ E3: IDEA

✦ location: Mangrove Cay

IDEA Final Regulations: Accountable to Whom?

This session analyzes IDEA 2004 final regulations and final NCLB rules for modified assessments, their implications, and dilemmas for school districts, attorneys, parents, and higher education instructors.

Dixie S. Huefner, Professor, Department of Special Education, University of Utah, Salt Lake City, UT

Christopher Borreca, Partner, Bracewell & Giuliani, LLP, Houston, TX

Brenda B. VanGorder, Director of Preschool Services, Granite School District, Salt Lake County, Salt Lake City, UT

Presider: *Wayne Haglund*, Law Office of Wayne D. Haglund, PC, Lufkin, TX

4 E4: First Amendment

⊕ location: Sandy Cay – B

Extracurricular Activities and Liability in Higher Education: A Primer for Administrators

This presentation will review *in loco parentis*, negligence and special relationship claims, institutional tort liability for fraternal activities, recreational sports and student activities, and intercollegiate athletics.

Robert C. Cloud, Professor of Higher Education, Baylor University, Waco, TX

The First Amendment and College Student Newspapers

This presentation analyzes recent caselaw that discusses the application of *Hazelwood School District v. Kuhlmeier* to administrative editorial control of college student newspapers.

Louis Benedict, Ph.D. student and Attorney, Office of General Counsel, Bowling Green State University, Bowling Green, OH

Presider: *Audrey Bowry*, Virgin Islands Department of Education, St. Thomas, VI

5 E5: Due Process

⊕ location: Arawak Cay

Sexual Minority Youth and the Culture Wars: Out of the Closest and Drafted into Battle

This session will present recent court decisions and an analysis of new research regarding sexual minority youth in public schools.

David L. Stader, Assistant Professor, University of Texas–Arlington, Arlington, TX

Liz Meyer, Ph.D. candidate, Department of Integrated Studies, McGill University, Montreal, QC, Canada

Presider: *Lois Berlin*, Falls Church City Public Schools, Falls Church, VA

6 E6: Equal Protection

⊕ location: Prince of Wales

Assessment Policies for English Language Learner Students

Through the evolution of federal and state policies, including No Child Left Behind, it may prove to be an impossible task to hold school systems both accountable for their actions and be able to provide equal opportunities for linguistically diverse students for the outcomes of the education provided to them. This session will discuss these incongruencies through this evolution of language policies.

Carole de Casal, Associate Dean and Director of Teacher Education Programs, College of Education, The University of Colorado, Colorado Springs, CO

Patricia Mulligan, Professor, California Polytechnic State University, San Luis Obispo, CA

Briggs v. Elliott: The Struggle for Equal Opportunity in South Carolina
Briggs v. Elliott caused the NAACP to change their legal approach from challenging separate but equal facilities to challenging segregation as a violation of the Fourteenth Amendment of the U.S. Constitution. Despite this important fact, few people have ever heard of the valiant efforts of South Carolinians in *Briggs v. Elliott*.

R. Kent Murray, Associate Professor of Educational Leadership, School of Education, The Citadel, Charleston, SC

Presider: *David Dagley*, University of Alabama-Tuscaloosa, Tuscaloosa, AL

🔗 E7: Special Education Law

📍 location: Flamingo Cay

Burden of Proof Under IDEA—A Positive Movement: A Review of *Schaeffer v. Weast*

A review of *Schaeffer v. Weast* in light of IDEA and its effect in individual states. Discussion surrounding this case as a positive movement for school districts.

Christine Villani, Associate Professor, Department of Education, Southern Connecticut State University, New Haven, CT

Cynthia Mooney, Private Consultant, Field of Special Education, Washington D.C.

Leslie Stellman, Attorney, Hodes, Ulman, Pessin & Katz, P.A., Towson, MD

Presider: *John Bowen*, School Board of Manatee County, Bradenton, FL

The Yearbook of Education Law 2006

edited by Charles Russo
 \$65.00 • 324 pages • hardcover
 ISBN: 1-56534-126-0

The Yearbook of Education Law contains analyses of the previous year's federal and state court decisions that affect private and public elementary and secondary schools and higher education. The Yearbook provides summaries as well as analyses of relevant state appellate and federal trial and appellate court cases.

Order your copy today!

chapters **Chapters**

1. Employees
2. School Governance
3. Students
4. Bargaining
5. Students with Disabilities
6. Torts
7. Sports
8. Higher Education
9. Students in Higher Education
10. Federal and State Legislation

Concurrent Topic Sessions F

Saturday, October 14th, 11:25 a.m. - 12:15 p.m.

① F1: Responsible School Practices/Equal Protection

⊕ location: Sandy Cay – A

Legal Issues and Responsible Practices in School Health Services

Recommended school policies and strategies for school nurses and administrators toward responsible health service practices in schools, in consideration of legal issues facing school professionals.

Lawrence Kajs, Associate Professor/Chair of the Educational Leadership Program, University of Houston–Clear Lake, Houston, TX

Cheryl Vital, Prevention/Intervention Specialist, Galena Park Independent School District, Houston, TX

Legal Aspects on HIV/Aids in South-African Schools

HIV/AIDS prevalence has increased dramatically in South Africa. This affects learners, parents, teachers, education managers and education authorities alike. The rights to education and privacy have been confirmed in legislation and official policies. However, the legal principles and overriding social interests with regard to safety and avoidance of accountability require that the strategies be reconsidered.

Marius H. Smit, Lecturer in Education Law, North-West University, Potchefstroom Campus, Potchefstroom, South Africa

Presider: *Allan Osborne*, Snug Harbor Community School, Snug Harbor, MA

② F2: Equal Protection/Due Process

⊕ location: Staniel Cay

The Path Towards Accountability and Away from Equality

The presentation explores how the shift away from integration to achieve equality in education and towards accountability will lead to separate but unequal schools.

Robert Garda, Associate Professor, School of Law, Loyola University, New Orleans College of Law, New Orleans, LA

Resolving Grievances through Peer Mediation and Arbitration: A Ten-Year Success Story

This presentation will describe an alternative procedure for resolving employee grievances that utilizes peer mediation and arbitration and by all accounts has been very successful and cost effective.

Gary D. Brooks, Professor, Department of Educational Leadership, University of Texas at El Paso, El Paso, TX

Irma Brooks, Executive Director, Radford School, El Paso, TX

Presider: *Hulon Johnson*, Cambridge College, Cambridge, MA

③ F3: Affirmative Action

⊕ location: Sandy Cay – B

The Incongruities of *Grutter*

This paper explores the inconsistencies in logic apparent in several components of the *Grutter v. Bollinger* affirmative action decision of 2003.

Stephen J. Caldas, Professor, Educational Foundations and Leadership, University of Louisiana–Lafayette, Lafayette, LA

Is Access to Higher Education Shrinking?

The Office for Civil Rights response to the Michigan affirmative action cases will be analyzed utilizing the results of a Freedom of Information Act request.

Karen Miksch, Assistant Professor of Education and Law, University of Minnesota, Minneapolis, MN

Presider: *Daniel Schochor*, Penn State University, University Park, PA

④ F4: Constitutional Law/First Amendment

⊕ location: Mangrove Cay

Untangling the Knots of Student Speech

This session will address the extent to which public school administrators may regulate the speech of high school students, particularly with regard to speech appearing on student t-shirts.

Cindy Lavorato, Assistant Professor, Department of Leadership, Policy and Administration, University of St. Thomas, Minneapolis, MN

Creating Accountability by Regulating the Speech or Conduct of the Renegade Board Member or Superintendent

The law allows a school board to censure a renegade board member and control the superintendent's speech on behalf of the district. Find out how.

David Friedman, Attorney, Friedman Law Firm, Madison, WI

Presider: *Judith Clark*, BC School Trustees Association, Vancouver, BC, Canada

⑤ F5: School Reform/Constitutional Law

⊕ location: Arawak Cay

No College Student Left Behind: Federal and State Initiatives to Improve College Readiness by Reforming the High School Curriculum

This session will provide an overview of state and federal initiatives designed to reform the curriculum in American high schools, with the goal of increasing the opportunities for all students to participate, and succeed, in higher education.

David Doty, Assistant Commissioner & Director of Policy Studies, Utah System of Higher Education, Salt Lake City, UT

David J. Sperry, Dean, College of Education, University of Utah, Salt Lake City, UT

Determining the Best Interests of the Child in Curriculum Matters

In 1925, the Supreme Court of the United States acknowledged that “[t]he child is not the mere creature of the state” and recognized the right of parents to control and direct the upbringing and education of their children. However, recent decisions by some of the lower federal courts cast serious doubt on the continued viability of that conclusion.

William E. Thro, State Solicitor General, Commonwealth of Virginia, Richmond, VA

Presenter: *Roberta Weaver*, University of Dayton, Dayton, OH

6 F6: Discrimination Law

⊕ location: Prince of Wales

Knight v. The State of Alabama: Winners and Losers

This presentation will provide an overview of *Knight v. Alabama*, terms of the remedial decree, and the impact on Alabama’s Historically Black Colleges and Universities (HBCUs). The participants will also discuss whether there are any true beneficiaries of remedial decrees.

John Gooden, Professor, Doctoral Program of Educational Leadership, Policy, and Law, Alabama State University, Montgomery, AL

Presenter: *Maureen Singleton*, Bracewell & Giuliani LLP, Houston, TX

7 F7: No Child Left Behind

⊕ location: Flamingo Cay

Accountability and Access: An Inherent Tension in SES Programs

This presentation explores the tensions between the accountability and access provisions of the NCLB as they concern the provision of Supplemental Educational Services.

Wendy Beetlestone, Attorney, Hangle, Aronchick, Segal & Pudlin, Philadelphia, PA

Presenter: *Christopher Roellke*, Vassar College, Poughkeepsie, NY

Concurrent Topic Sessions G

Saturday, October 14th, 12:25 - 1:15 p.m.

① G1: School Finance/Equal Protection

⊕ location: Arawak Cay

Diminished Scrutiny of School Desegregation and Financial Windfalls for Local Communities

The session will highlight the excupatory action taken in these Supreme Court cases in the early 1990s and describe how each has further increased the economic disparities within local communities.

Lenford C. Sutton, Assistant Professor, Department of Educational Leadership and Policy Studies, University of South Florida, Sarasota, FL

Elizabeth K. Davenport, Associate Professor/Coordinator of the Ph.D.

Program in Educational Leadership, Florida A&M University, Tallahassee, FL

The Evolution of Desegregation: Interest in Maintaining Racial Identity in Schools - A Case Study

In recent years, economic pressures have resulted in increasing numbers of school closings and consolidations, particularly involving older, and in many cases, racially historic school buildings. This presentation will focus on a recent lawsuit involving the closing of one such school to highlight the tension that often arises between principles of integration and the desire of some communities to maintain neighborhood and historically significant schools.

Philip Fraissinet, Partner, Bracewell & Giuliani, LLP, Houston, TX

President: *Lisa McBride*, Bracewell & Giuliani, LLP, Houston, TX

② G2: Sexual Harassment

⊕ location: Staniel Cay

Peer Sexual Harassment in Elementary Schools: Judicial Messages for Schools

This presentation will examine the problem of peer sexual harassment in elementary schools, review recent court decisions, and offer advice for schools in handling such issues.

Kathleen Conn, Principal, East Lansdowne Basics School, William Penn School District, East Lansdowne, PA

How to Avoid Sexual Exploitation in Schools: Setting the Boundaries

This presentation will cover issues of sexual exploitation in schools, review recent cases, and provide a system to protect staff and students.

Edward Dragan, Founder, Education Management Consulting, LLC, Lambertville, NJ

President: *Dean Webb*, Arizona State University, Tempe, AZ

③ G3: Special Education Law

⊕ location: Sandy Cay – A

Special Education Subgroups under NCLB: Legal Issues to Consider

There appears to be a conflict between some of the provisions of the NCLB and the IDEA, which may have resulted in the higher percentage of AYP failures for schools containing special education subgroups. This presentation will examine the two laws and will analyze what the actual data says about students with disabilities and AYP requirements.

Suzanne Eckes, Assistant Professor of Educational Law, Indiana University, Bloomington, IN

Meaningful Benefit as a Measure of FAPE: How Do the Courts Decide Whether a FAPE Was Provided?

The Sixth Circuit has joined the Third Circuit in holding that an appropriate education for a student with a disability is one that provides meaningful benefit. This session will explore how the courts determine whether a school is providing a special education that affords the student with meaningful benefit and what procedural errors committed by school officials result in the substantive denial of that benefit to students with disabilities.

Susan Clark, Associate Professor, Department of Educational Foundations and Leadership, University of Akron, Akron, OH

Presider: *Susan Bon*, George Mason University, Fairfax, VA

④ G4: First Amendment/Due Process

⊕ location: Flamingo Cay

Discipline of Students for Off-Campus Misconduct

This session will focus on the legal issues relating to the discipline of students for off-campus misconduct, including recent cases involving technology use and the Internet.

Michael S. Tan, Associate Professor of Education, William Woods University, Fulton, MO

Due Process in a Crisis: Glenbrook North Hazing Incident May 4, 2003

This presentation will share the thoughts and workings of a high school administrator during an off-campus crisis. We will look at the timeline of events and the procedures taken to ensure timely due process was given to all thirty-three students during their suspensions/expulsions. Recounts of the hazing incident and the legal implications of the event will be covered.

William Eike, Assistant Principal/Dean of Students, Glenbrook North High School, Northbrook, IL

Disciplining Students for Misconduct Off-Campus

This session will cover recent cases addressing how far school administrators can and should extend school discipline off school grounds.

Marion Walsh, Attorney, New York; Editor, LRP Publications, New York, NY

William Walsh, Attorney, New York, NY

Presider: *Alan McFall*, McFall, Layman, & Jordan PC, Bangor, PA

5 G5: Teaching School Law

⊕ location: Prince of Wales

How to Enhance Your School Law Course: “Tech for Non-Techies”

How instructors can incorporate new on-line research and computer technology into their school law courses without having to be “techies.”

Michael Yates, Professor of Political Science/Paralegal Studies, Missouri Southern State University, Joplin, MO

Interesting Assignments for Your School Law Class

Do you want your School Law Class students looking forward to doing your assignments? If you do, then come on in and see why students like to do my assignments!

Robert Safransky, Adjunct Professor of School Law, Nova Southeastern University, Fort Lauderdale-Davie, FL

Teaching Education Law in an Era of Accountability: Is It Still Relevant?

This session examines the rationale for education law in an era of accountability. Accreditation standards and data on principal’s use law are examined. Accreditation and student needs are addressed.

Kermit G. Buckner, Professor, Department of Educational Leadership, East Carolina University, Greenville, NC

Presider: *M. Josh Schrank*, University of Dayton, Dayton, OH

6 G6: Technology Legal Issues/First Amendment

⊕ location: Mangrove Cay

Schools in a Rapidly Advancing Technological Age: Is the Law Keeping Pace?

This session will provide an update on how student off-campus speech issues, particularly speech via the internet, are being considered and litigated under the disruption standard. In addition, future legal issues derived from increased technology usage by students will be explored.

Jesulon Gibbs, Assistant Professor, South Carolina State University, Orangeburg, SC

Amy M. Stekettee, Associate, Baker & Daniels, LLP; Ph.D. Candidate, Educational Policy Studies, Indiana University, Bloomington, IN

Janet Rumple, Ph.D. Candidate, Educational Policy Studies, Indiana University, Bloomington, IN

Student Internet Speech and Public School Regulation

This presentation analyzes recent case law in the area of student Internet speech, and provides a practical theoretical framework for analyzing such issues.

Thomas J. Graca, Assistant Professor of Educational Leadership and Policy,
University of Texas, Arlington, TX

Presider: *Patrick Pauken*, Bowling Green State University, Bowling Green, OH

🔗 G7: Academic Freedom

⊕ location: Sandy Cay – B

The Effects of the Control of Policy-Making Boards on Religious-Affiliated Colleges: A Contrast of the Experiences of Two Baptist Institutions

This session contrasts the experiences of two private universities, both affiliated with the same religious denomination, battling for control of the university policy-making board.

J. Kevin Jenkins, Assistant Professor of Educational Leadership and Administration, Mercer University, McDonough, GA

Penny Elkins, Assistant Dean for New Program Development, Chair of Educational Leadership, and Professor of Education, Tift College of Education, Mercer University, McDonough, GA

Presider: *R. Craig Wood*, Professor, University of Florida, Gainesville, FL

New Member/Attendee Discussion

Saturday, October 14th, 1:25 - 2:00 p.m.

This group discussion will offer detailed information about the Education Law Association and will provide opportunities for new members and first-time conference attendees to interact with the ELA Board of Directors and staff. All those who are new to ELA *or* to the annual conference are encouraged to attend.

⊕ location: Coral Ballroom – A

Our Firm Proudly Supports the Education Law Association 52nd Annual Conference

With offices in Philadelphia and Harrisburg, Pennsylvania and Cherry Hill, New Jersey, Hangley Aronchick Segal & Pudlin offers a wide range of legal services including litigation, bankruptcy, business & corporate services, education law and tax and estate planning.

For more information on our firm, contact Wendy Beetlestone, Esquire at (215) 496-7033 or visit our website at www.hangley.com.

HANGLEY
ARONCHICK
SEGAL
& PUDLIN
Attorneys at Law / A Professional Corporation

One Logan Square, 27th Floor, Philadelphia, PA 19103 • 215.568.6200
20 Brace Road, Suite 201, Cherry Hill, NJ 08034 • 856.616.2100
30 North Third Street, Suite 700, Harrisburg, PA 17101 • 717.364.1030
www.hangley.com

2006 ELA Officers

executive committee

■ President

Lois F. Berlin
Superintendent
Falls Church City Public Schools
Falls Church, VA

■ Vice President

Christopher P. Borreca
Attorney
Bracewell & Giuliani, LLP
Houston, TX

■ President Elect

M. David Alexander
Virginia Tech
Dep't of Educ. Leadership / Policy
Blacksburg, VA

■ Immediate Past President

P. Tyson Bennett
Attorney
Reese & Carney, LLP
Annapolis, MD

board of directors

■ Bill Boshier

Virginia Commonwealth University
Richmond, VA

■ Christopher Gilbert

Bracewell & Giuliani, LLP
Houston, TX

■ Kathleen Conn

East Lansdowne Basics School
East Lansdowne, PA

■ Ken Lane

Southeastern Louisiana University
Hammond, LA

■ Edwin Darden

Appleseed
Washington, D.C.

■ Patrick Pauken

Bowling Green State University
Bowling Green, OH

■ Richard F. Fossey

University of North Texas
Denton, TX

■ Brian Schwartz

Illinois Principals Association
Springfield, IL

staff

- Mandy SchrankExecutive Director
- Judy Pleiman.....Bookkeeper
- Jody Thornburg..... Publications Manager

2006 Committee Chairs

- Ambassadors:
P. Tyson Bennett
- 2006 Conference Program:
Brian Schwartz
- Development:
M. David Alexander
- Dissertation Award:
Richard Fossey
- ELIP:
Allan Osborne
& Ralph Mawdsley
- McGhehey Award:
Martha McCarthy
- Membership:
M. David Alexander
- Professional Partnership:
Christopher Gilbert
- Nominations:
P. Tyson Bennett
- Publications:
Kenneth Lane
- Seminars:
Brad Colwell

Special Meetings

Board of Directors

Wednesday, October 11th

12:00 - 5:00 p.m.

⊕ location: Royal Boardroom

Saturday, October 14th

2:00 - 4:00 p.m.

⊕ location: Minos & Neptune

School Law Reporter Committee

Friday, October 13th

2:00 - 3:00 p.m.

⊕ location: Flamingo Cay

ELA Past Presidents

Titles reflect the positions held at the time of the past presidents' terms.

1955-56	<i>Madaline Kinter Remmlein</i> , Assistant Director, Research Division, National Education Association (Deceased)	1975	University of North Carolina-Chapel Hill <i>M. Chester Nolte</i> , Professor of Education, University of Denver
1957	<i>Eugene S. Lawler</i> , Professor of Education, Florida State University (Deceased)	1976	<i>Irving C. Evers</i> , Attorney at Law, Hackensack, New Jersey (Deceased)
1958-59	<i>Reynolds C. Seitz</i> , Dean, Law School, Marquette University (Deceased)	1977	<i>August W. Steinhilber</i> , Associate Executive Director, National School Boards Association
1960	<i>Edward C. Bolmeier</i> , Professor of Education, Duke University (Deceased)	1978	<i>Philip K. Piele</i> , Professor and Director, ERIC Clearinghouse of Educational Management, University of Oregon
1961	<i>Marion A. McGhehey</i> , Specialist in School Law, U.S. Office of Education (Deceased)	1979	<i>Kelly Frels</i> , Attorney at Law, Bracewell & Patterson, L.L.P. Houston, Texas
1962	<i>Walter L. Hetzel</i> , Superintendent of Schools, Ames, Iowa (Deceased)	1980	<i>Burton R. Shifman</i> , Attorney at Law, Shifman & Goodman, PC, Southfield, Michigan
1963	<i>Marlin M. Volz</i> , Dean, Law School, University of Louisville	1981	<i>Floyd G. Delon</i> , Professor of Educational Administration, University of Missouri-Columbia
1964	<i>Lloyd E. McCann</i> , Professor of Education, University of Arizona (Deceased)	1982	<i>William F. Paton</i> , Oconomowoc Public Schools, Oconomowoc, Wisconsin
1965	<i>Lee O. Garber</i> , Professor of Education, University of Pennsylvania (Deceased)	1983	<i>Ralph D. Stern</i> , Attorney at Law, Whitmore & Kay, Palo Alto, California
1966	<i>Henry E. Butler, Jr.</i> , Professor of Education, University of Rochester	1984	<i>Dale Gaddy</i> , Director of School District Management, National School Board Association, Alexandria, Virginia
1967	<i>E. Edmund Reutter, Jr.</i> , Professor of Education, Teachers College, Columbia University	1985	<i>Martha M. McCarthy</i> , Professor of Educational Administration, Indiana University-Bloomington
1968	<i>Martha L. Ware</i> , Assistant Secretary, National Education Association (Deceased)	1986	<i>John F. Lewis</i> , Attorney at Law, Squire Sanders & Dempsey, Cleveland, Ohio
1969	<i>Joseph E. Bryson</i> , Professor of Education, University of North Carolina at Greensboro	1987	<i>D. Parker Young</i> , Professor of Higher Education, Institute of Higher Education, University of Georgia-Athens
1970	<i>John Philip Linn</i> , Professor of Law, University of Denver	1988	<i>William C. Bednar, Jr.</i> , Attorney at Law, Eskew, Muir & Bednar, Austin, Texas
1971	<i>Manny S. Brown</i> , Attorney at Law, Racine, Wisconsin (Deceased)	1989	<i>Maryvn D. Jaffe</i> , Principal, Staples High School, Westport, Connecticut (Deceased)
1972	<i>Thomas A. Shannon</i> , Deputy Superintendent and School Attorney, San Diego, California	1990	<i>Stephen B. Thomas</i> , Professor & Coordinator of Educational Administration, Kent State University, Ohio
1973	<i>Roger M. Shaw</i> , Professor of Education, Kent State University (Deceased)		
1974	<i>Robert E. Phay</i> , Kenan Professor of Public Law and Director of Principals' Executive Program,		

1991	<i>Joseph C. Beckham</i> , Professor of Education, Florida State University - Tallahassee	1999	<i>Charles J. Russo</i> , Professor and Fellow, Center for International Programs, School of Education and Allied Professions, University of Dayton, Dayton, Ohio
1992	<i>James C. Ullman</i> , Attorney at Law, Jennings, Strouss & Salmon, Phoenix, Arizona	2000	<i>Terrence Leas</i> , Dean, Yakima Valley Community College, Grandview, Washington
1993	<i>Steve W. Batson</i> , Vice President of Planning & Institutional Advancement, West Virginia State College	2001	<i>Ralph D. Mawdsley</i> , Professor of Educational Administration, Department of Counseling, Administration, Supervision, and Adult Learning, Cleveland State University, Cleveland, Ohio
1994	<i>Nelda Cambron-McCabe</i> , Professor of Educational Administration, Miami University of Ohio - Oxford	2002	<i>R. Craig Wood</i> , Attorney at Law, McGuireWoods LLP, Charlottesville, Virginia
1995	<i>Ivan Gluckman</i> , Director of Legal Services and General Counsel, National Association of Secondary School Principals, Reston, Virginia	2003	<i>Allan G. Osborne, Jr.</i> , Principal, Snug Harbor Community School, Quincy, Massachusetts
1996	<i>Perry A. Zirkel</i> , Iacocca Professor of Education, Lehigh University, Bethlehem, Pennsylvania	2004	<i>Philip T.K. Daniel</i> , Professor, The Ohio State University, Columbus, Ohio
1997	<i>Richard Dickinson</i> , General Counsel, Ohio School Boards Association, Columbus, Ohio	2005	<i>P.Tyson Bennett</i> , Attorney, Reese & Carney, LLP, Annapolis, Maryland
1998	<i>Jeffrey J. Horner</i> , Attorney at Law, Bracewell & Patterson, LLP, Houston, Texas		

Outstanding Dissertation Award

1987	Rosette Liberman	1998	Douglas R. Pearson
1990	Terrence Leas	1999	Cheri C. Magill
1991	Jill Jones White	2000	Theresa B. Harrison
1992	Anne Browning Masters	2001	Kerry Brian Melear
1993	James Thomason Jeffers	2002	Watt Lesley Black, Jr.
1994	Julie Fisher Mead	2003	Richard Elliott Day
1996	Patricia Todd Bausch	2004	Judith Risch
1997	Susan Clark	2005	John LaNear

ELA Executive Directors

1954–56	Lee O. Garber (Deceased)
1957–61	Roger M. Shaw (Deceased)
1962–82	Marion A. McGhehey (Deceased)
1983–90	Thomas N. Jones
1990–91	Stephen B. Thomas (Interim)
1991–94	Floyd G. Delon
1995–99	Robert M. Wagner
2000–present	Mandy Schrank

M.A. McGhehey Award

The Education Law Association presents the M.A. McGhehey Award each year in recognition of outstanding service in the field of education law and to the Education Law Association. The award is presented at the Annual Conference.

- Individuals receiving the award have a long history of service to the Education Law Association.
- The individual's work has had an impact nationally in the field of law and education through publications, both within and outside the Education Law Association, through recognition by other national organizations, or by briefs filed at the U.S. Court of Appeals or the U.S. Supreme Court level.

1984.....	Reynolds C. Seitz
1985.....	Roger M. Shaw (Deceased)
1986.....	E. Edmund Reutter, Jr.
1987.....	Irving C. Evers (Deceased)
1988.....	M. Chester Nolte
1989.....	Walter L. Hetzel
1990.....	Stephen B. Thomas
1991.....	Kelly Frels
1992.....	Martha M. McCarthy
1993.....	Martha L. Ware (Deceased)
1994.....	Floyd G. Delon
1995.....	August W. Steinhilber
1996.....	Joseph C. Beckham
1997.....	Nelda Cambron-McCabe
1998.....	John Lewis
1999.....	D. Parker Young
2000.....	Perry Zirkel
2001.....	Clifford P. Hooker
2002.....	Charles J. Russo
2003.....	Jeffrey J. Horner
2004.....	Ralph D. Mawdsley
2005.....	Richard J. Dickinson

School Law Reporters

Editors

Brad Colwell
Southern Illinois University -
Carbondale
David P. Thompson
University of Texas at San Antonio

Reporters

Federal Courts

U.S. Supreme Court
Fred Hartmeister, Texas Tech
University
Rebecca Hellbaum, Texas Tech
University, Health Sciences Center

Court of Appeals

Karen Miksch, University of
Minnesota (1st & 2nd Cir.)
Mark Littleton, Tarleton State
University (3rd & 5th Cir.)
Jennifer Sughrue, Florida Atlantic
University (4th Cir.)
Valerie Riedthaler, Kent State
University (6th Cir., Ohio)
Suzanne Eckes, Indiana University
(7th Cir.)
Amy Steketee, Indiana University
(7th Cir.)
Cindy Lavorato, University of St.
Thomas (8th Cir.)
John Dougherty, Lindenwood
University (8th Cir.)
Richard Daugherty, University of
Nevada - Reno (9th Cir.)
Larry Rossow, Oklahoma University
(10th Cir.)
David D'Agata, Squire, Sanders &
Dempsey, LLP (11th Cir.)

Federal Supplement

Michael Yates, Missouri Southern
State University
Brenda Kallio, Central Michigan
University

Higher Education

Luke M. Cornelius, State University
of West Georgia (federal cases)

Alvin Schilling, Gainesville, FL
(federal cases)

John LaNear, University of Wisconsin
- Milwaukee (state cases)

State Courts

Southern

Johnny R. Purvis, University of
Central Arkansas

Northwestern

Rick Geisel, Grand Valley State
University

Northeastern

Jesulon Gibbs, South Carolina State
University
Justin Bathon, Indiana University

Southwestern

Stacey Edmonson, Sam Houston State
University
Michael Tan, William Woods
University

Southeastern

Michael Dyer, Nova Southeastern
University
Jennifer Sughrue, Florida Atlantic
University

Atlantic

Rich Haglund, Tennessee State Board
of Education

Pacific

Kay Hartwell Hunnicutt, Arizona
State University

New York

Vivian Hopp Gordon, Loyola
University Chicago

Guest Columnists

Rich Haglund, Tennessee State Board
of Education

Cindy Lavorato, University of St.
Thomas

Alvin Schilling, Gainesville, FL
Stacey L. Edmonson, Sam Houston
State University

David D'Agata, Squire, Sanders &
Dempsey, LLP

American Public School Law

Sixth Edition

2005

Kern Alexander

University of Illinois, Urbana/Champaign

M. David Alexander

Virginia Tech, Blacksburg

The work that has become the standard for the education and training of school administrators and teachers in the United States.

This book is designed for graduate courses entitled Law and Education, School Law, Law and the Teacher, and/or Legal Aspects of Education in university departments of education, departments of education administration in Colleges of Education, and in elective courses in Law Schools.

An **Instructor's Manual** with Test Bank prepared by the authors provides extensive clarification for each point of law within the case and gives instructors concise briefs on issues for discussion. The Test Bank of examination questions is provided at the end of each chapter in the Instructor's Manual.

A Website for Instructors and Students

www.wadsworth.com/education/alexander

- Sample class syllabi
- Instructional suggestions in use of case/textbook
- New case law
 - ▶ State and Federal
- Website links

Order Your Complimentary Review Copy Today!

Please refer to Offer (Source) Code 5WWED101

ISBN 0-534-27424-2

Include your name, department, school, address, phone, and email

<http://servicedirect.thomsonlearning.com>

Phone: 1-800-423-0563

Fax: 1-859-647-5020

Index: Topics

Concurrent Topic Sessions A..... 13	
A1: Due Process/Teaching School Law 13	
Principal Preparation Programs— Are We Teaching the Law That They Need to Know? 13	
Applying Adult Learning Methods to Education Law Classes 13	
A2: Legal Overview 13	
A Legal Overview for K-12 Administrators..... 13	
A3: Higher Education—Students.. 14	
The Courts, College Students, and Administrators: A Review of the Recent Past 14	
A4: First Amendment 14	
The Conversation Continues Establishment Clause Update.... 14	
A5: Constitutional Law 14	
Survival of the Fittest: Evolution and Intelligent Design as Competing Ideas in the Legal and Educational Matrix 14	
Did the Judge in the <i>Dover</i> Case Go Too Far?..... 15	
A6: School Discipline/Sexual Harassment 15	
A Preliminary Assessment of Zero Tolerance Weapons Policies in Public Schools: Political Rhetoric or Practical Reality? 15	
Every School a Safe School Free of Sexual Predators: Is This a Pipe Dream? 15	
A7: Student Records/Privacy 15	
Common Law Privacy in School and University Settings 15	
Concurrent Topic Sessions B..... 16	
B1: School Reform 16	
Vouchers: The Florida State Ruling on the Unconstitutionality of Vouchers—Comparison and Implications..... 16	
B2: Education Litigation and Expert Testimony 16	
From the Classroom to the Courtroom: Bridging the Knowledge Gap between Educators, Attorneys, and Judges in Litigation 16	
B3: IDEA..... 16	
Orton-Gillingham Methodology: The Case Law under the IDEA .. 16	
B4: First Amendment..... 17	
The Tightrope of Religion in the Schools: Walking A Thin Line .. 17	
The Establishment Clause: An Update from the Courts 2006.... 17	
B5: No Child Left Behind/Equal Protection 17	
Cultural Wars and the No Child Left Behind Act at Five 17	
Race-Conscious Curricular Responses to NCLB 17	
B6: Administrative Law/ Constitutional Law..... 18	
Changing the Student Code of Silence: School Structure and the Law 18	
Sex, Drugs, and Violence: The Changing Landscape of Parental Rights to Limit or Prohibit Schools from Introducing Controversial Matter to Their Children..... 18	
B7: Fourth Amendment..... 18	
Search and Seizure in Public Schools: 2006 Update of Fourth Amendment Cases 18	
B8: Legal Obligations of School Leaders/First Amendment..... 18	
Spotting the Sexual Predator in Your School..... 18	
Cyberbullying: The Conflict between Student First Amendment Rights and Teacher-Student Privacy Rights 19	

Concurrent Topic Sessions C	19
C1: No Child Left Behind.....	19
School Reform, No Child Left Behind, and Globalization.....	19
C2: Labor Law	19
Workplace Security of the Early Childhood Educator in South Africa, with Special Reference to Physical and Psychological Issues.....	19
C3: Equal Protection	20
Is it a True Color-Defined Educational Opportunity in the Race to Close the Achievement Gap?	20
C4: Tort Law	20
I Never Thought of That: Legal Issues Arising from Volunteers and Independent Contractors in Public Schools Context	20
The Legal Topography of Education: The Employees Versus the Board	20
C5: Technology Legal Issues	21
Employee and Student Misconduct Issues Related to Technology	21
Legal Aspects of Cyberbullying: Guidelines for Educators.....	21
C6: School Finance/Constitutional Law.....	21
Race-Conscious Funding Strategies and School Finance Litigation.....	21
Desegregation in the 21st Century: The Legal Links between School Funding Litigation	21
C7: Special Education Law	21
Advocacy, Accountability, and Inclusion for Students with Problem Behaviors	21
C8: Special Education Law	22
Special Education Due Process under IDEA 2004: Appropriate Reform or Chilling Complexities?.....	22
Response to Intervention (RTI): Legal Issues for Secondary Schools.....	22

Concurrent Topic Sessions D	24
D1: Special Education Law	24
Are There Benefits from Special Education Mediation?	24
D2: School Finance	24
School Funding Litigation: Scanning the Event Horizon.....	24
D3: Constitutional Law	24
School Law for Busy Administrators: An Update	24
D4: Constitutional Law/Equal Access	24
Rethinking the Enforcement of Rights: A Proposal for a Collaborative Approach to a Federal Right to Education.....	24
The Effect of Choice on Public Education in the United States and Abroad	25
D5: Social Justice/Equal Access..	25
All Over but the Crying: Post- <i>Zelman</i> Voucher Litigation Favors Voucher Opponents	25
<i>Bush v. Holmes</i> and the Principle of Uniformity	25
D6: First Amendment	25
Chilling Effects on Academic Freedom in the Age of the War on Terror.....	25
Legislative Re-Engineering of Professors' Rights: The Conflicts between Professors and the State, Universities, and Students.....	25
D7: No Child Left Behind/School Reform.....	26
No Child Left Behind and Education for Homeless Children and Youth: A Look at the <i>McKinney-Vento Homeless Education Assistance Improvements Act</i>	26
Compulsory Education and Home Schooling: Compatible or Conflicting Concepts.....	26

Concurrent Topic Sessions E..... 27	Peer Mediation and Arbitration: A Ten-Year Success Story 30
E1: Fourth Amendment..... 27	F3: Affirmative Action 31
An Analysis of Random Drug- Testing of Students: Policies and Patterns of Practice in Virginia Public Schools..... 27	The Incongruities of <i>Grutter</i> 31
E2: Collaborative Work Along Educational Pipeline 27	Is Access to Higher Education Shrinking? 31
Collaborative Strategies for Addressing the Crisis of Minority Under-Representation in the Legal Profession..... 27	F4: Constitutional Law/First Amendment..... 31
E3: IDEA..... 27	Untangling the Knots of Student Speech 31
IDEA Final Regulations: Accountable to Whom?..... 27	Creating Accountability by Regulating the Speech or Conduct of the Renegade Board Member or Superintendent..... 31
E4: First Amendment..... 28	F5: School Reform/Constitutional Law 31
Extracurricular Activities and Liability in Higher Education: A Primer for Administrators 28	No College Student Left Behind: Federal and State Initiatives to Improve College Readiness by Reforming the High School Curriculum 31
The First Amendment and College Student Newspapers..... 28	Determining the Best Interests of the Child in Curriculum Matters 32
E5: Due Process 28	F6: Discrimination Law..... 32
Sexual Minority Youth and the Culture Wars: Out of the Closest and Drafted into Battle..... 28	<i>Knight v. The State of Alabama:</i> Winners and Losers 32
E6: Equal Protection..... 28	F7: No Child Left Behind 32
Assessment Policies for English Language Learner Students..... 28	Accountability and Access: An Inherent Tension in SES Programs 32
<i>Briggs v. Elliott</i> : The Struggle for Equal Opportunity in South Carolina..... 29	Concurrent Topic Sessions G 33
E7: Special Education Law 29	G1: School Finance/Equal Protection 33
Burden of Proof Under IDEA—A Positive Movement: A Review of <i>Schaeffer v. West</i> 29	Diminished Scrutiny of School Desegregation and Financial Windfalls for Local Communities 33
Concurrent Topic Sessions F 30	The Evolution of Desegregation: Interest in Maintaining Racial Identity in Schools - A Case Study 33
F1: Responsible School Practices/ Equal Protection..... 30	G2: Sexual Harassment 33
Legal Issues and Responsible Practices in School Health Services 30	Peer Sexual Harassment in Elementary Schools: Judicial Messages for Schools..... 33
Legal Aspects on HIV/Aids in South-African Schools 30	How to Avoid Sexual Exploitation in Schools: Setting the Boundaries 33
F2: Equal Protection/Due Process..... 30	
The Path Towards Accountability and Away from Equality..... 30	
Resolving Grievances through	

G3: Special Education Law.....34
 Special Education Subgroups under NCLB: Legal Issues to Consider34
 Meaningful Benefit as a Measure of FAPE: How Do the Courts Decide Whether a FAPE Was Provided?.....34

G4: First Amendment/Due Process.....34
 Discipline of Students for Off-Campus Misconduct.....34
 Due Process in a Crisis: Glenbrook North Hazing Incident May 4, 200334
 Disciplining Students for Misconduct Off-Campus.....34

G5: Teaching School Law.....35
 How to Enhance Your School Law Course: “Tech for Non-Techies”.....35

Interesting Assignments for Your School Law Class35
 Teaching Education Law in an Era of Accountability: Is It Still Relevant?.....35

G6: Technology Legal Issues/First Amendment.....35
 Schools in a Rapidly Advancing Technological Age: Is the Law Keeping Pace?.....35
 Student Internet Speech and Public School Regulation.....36

G7: Academic Freedom36
 The Effects of the Control of Policy-Making Boards on Religious-Affiliated Colleges: A Contrast of the Experiences of Two Baptist Institutions36

call for SLR Reporters

Do you enjoy writing? Is keeping up-to-date on education law important to you? Would you like to use your skills and interests to help ELA continue to be **the premier source of information on education law**? The *School Law Reporter* needs your help in continuing its tradition of excellent legal reporting. Join the *School Law Reporter* team.

For more information, contact:

Brad Colwell ◀
 bcolwell@siu.edu
 or

▶ **David Thompson**
 david.thompson@utsa.edu

Index: Presenters

Alexander, M. David.....	10,27	Harpool, David.....	16	Scharffs, Brett.....	27
Arnberger, Kelly.....	22	Hazelkorn, Michael.....	24	Schilling, Alvin J.....	25
Beetlestone, Wendy.....	32	Huefner, Dixie S.....	27	Schimmel, David M.....	14
Benedict, Louis.....	28	Hunnicutt, Kay Hartwell.....	19	Schlosser, Rebecca.....	13
Birdwell, Denise.....	19	Hunter, Richard C.....	19	Schwartz, Brian.....	13
Borkowski, John W.....	23	Hyman, Ronald.....	18	Schwartz, Lynn Rossi.....	21
Borman, Amy.....	25	Jenkins, J. Kevin.....	36	Searl, Jodi.....	16
Borraeca, Christopher.....	27	Kajs, Lawrence.....	30	Seigler, Timothy.....	20
Brady, Kevin P.....	21	Kallio, Brenda.....	26	Siegrist, Jerry.....	17
Brooks, Gary D.....	30	Keating, Jeannine.....	20	Smit, Marius H.....	30
Brooks, Irma.....	30	Kent, Chester.....	15	Smith-Evans, Leticia.....	18
Brown, Frank.....	19	Kuntz, Raymond G.....	12	Sperry, David J.....	32
Brown, Lynn T.....	26	LaNear, John.....	16	Stader, David L.....	28
Bruner, Darlene.....	16	Lavorato, Cindy.....	31	Stefkovich, Jacqueline A.....	18
Buckner, Kermit G.....	35	Lawton, Stephen B.....	19	Steketee, Amy M.....	35
Caldas, Stephen J.....	31	LeBlanc, Robert.....	10	Stellman, Leslie.....	29
Cantrell, Jan.....	13	Lee, Raymond.....	14	Sughrue, Jennifer.....	10,27
Clark, Susan.....	34	Leon, Sara.....	17	Sun, Jeffrey C.....	26
Cloud, Robert C.....	28	Letzring, Timothy.....	14	Sutton, Lenford C.....	33
Colwell, Brad.....	13	Lineburg, Mark.....	27	Tan, Michael S.....	34
Conn, Kathleen.....	33	Littleton, Mark.....	13	Thomeczek, James.....	22
Cornelius, Luke M.....	25	Mahon, J. Patrick.....	24	Thro, William E.....	10,32
Crockett, Jean.....	22	Mawdsley, Ralph D.....	14	Van Patten, James J.....	17
D'Agata, David.....	18	McCarthy, Martha.....	14	VanGorder, Brenda B.....	27
Dagley, Dave.....	15	McNeal, Laura.....	20	Vergon, Chuck.....	15
Daniel, Philip T. K.....	11,19	Mead, Julie.....	18	Villani, Christine.....	29
Darden, Edwin.....	14	Melear, K.B.....	14	Vital, Cheryl.....	30
Davenport, Elizabeth K.....	33	Meyer, Liz.....	28	Walsh, Marion.....	35
Davies, Jim.....	18	Miksich, Karen.....	31	Walsh, William.....	35
de Casal, Carole.....	28	Mooney, Cynthia.....	29	Wood, R. Craig.....	24
DeMitchell, Todd.....	10	Mulligan, Patricia.....	28	Yates, Michael.....	35
Doty, David.....	31	Murray, R. Kent.....	29	Zirkel, Pery.....	17
Dragan, Edward.....	33	Nelson, Mary Ann.....	22		
Eckes, Suzanne.....	34	Oldaker, Lawrence Lee.....	15		
Eike, William.....	34	Osborne, Allan.....	13		
Elkins, Penny.....	36	Pauken, Patrick.....	11		
Eynon-Kokrda, Elizabeth.....	21	Pedersen, David.....	21		
Farmer, Randall.....	20	Perkins, Brian.....	20		
Fisher, Daniel L.....	16	Permeth, Steve.....	16		
Fossey, Richard.....	10,25	Potter, Lance.....	15		
Fraissinet, Philip.....	33	Ravitch, Frank S.....	17		
Friedman, David.....	31	Redfield, Sarah E.....	27		
Garda, Robert.....	30	Robinson, Kimberly Jenkins.....	24		
Geisel, Richard T.....	26	Roettger, Caroline.....	20		
Gibbs, Jesulon.....	35	Roettger, Lloyd.....	20		
Gilbert, Christopher.....	11	Rose, Tessie.....	17		
Goldenberg, David H.....	16	Rossouw, J.P.....	19		
Gooden, John.....	32	Rossow, Lawrence.....	18		
Gooden, Mark A.....	20	Rumple, Janet.....	35		
Graca, Thomas J.....	36	Russo, Charles J.....	14		
Green, Paul.....	20	Safransky, Robert.....	35		
Green, Preston.....	21	Sandifer, Cody.....	20		
Guy, Mary Jane.....	25				

2006 Exhibitors / Sponsors

HANGLEY
ARONCHICK
SEGAL
& PUDLIN
Attorneys at Law / A Professional Corporation



Kern Alexander



George Jay Joseph
(Jefferson Law Book Company)

Tired of dealing with piles of paper?

Make the switch to

Monthly Online

and receive your monthly mailings via email!

As a convenience to our members, the Education Law Association is now offering to send *School Law Reporter* and *ELA Notes* via email. Why make the switch from hard copy to email?

- Create less paper waste
- Receive more timely delivery of information
- Access electronic files that are easily searchable by keyword or phrase
- Eliminate the risk of mailings being lost, misdirected, or damaged

What you will receive:

Each month you will receive an email with a direct link to the current issue of *ELA Notes* and *School Law Reporter*, as well as any other items included in the hard copy mailing. Archived issues of our newsletters are also available on our website.

How to sign up:

Send an email to ela@educationlaw.org. Write "Monthly Online" as the subject line. Include your name and contact information in the body of your email. You will receive a confirmation email that your name has been added to our list, and your next issues of *ELA Notes* and *School Law Reporter* will appear in your email inbox. Please note, you must have Adobe Acrobat in order to subscribe to our email service. This free download is available at <http://www.adobe.com/products/acrobat/readstep2.html>.

Questions?

Contact the Education Law Association
phone: (937) 229-3589
fax: (937) 229-3845
email: ela@educationlaw.org
website: <http://www.educationlaw.org>

Thank you for attending the

Education Law Association

2006 52ND ANNUAL CONFERENCE

The Education Law Association extends its heartfelt thanks to:

- Mr. George Jay Joseph, Publisher, Journal of Law and Education, Jefferson Law Book, Baltimore Maryland, for generously co-sponsoring the Wednesday evening Welcome Reception. Mr. Joseph has consistently supported the ELA Annual Conference over the past several years, and his outstanding support is much appreciated.
- Lexis Nexis for their continued support of ELA.



Education Law Association
300 College Park - 0528
Dayton, OH 45469

phone: (937) 229-3589
fax: (937) 229-3845

email: ela@educationlaw.org
web: <http://www.educationlaw.org>

The premier source of information on education law . . .