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Book Reviews

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Book Reviews

THE RIGHTS OF STUDENTS AND TEACHERS. By Louis Fischer and David Schimmel. New York, New York: Harper & Row, 1982. Pp. 447.

*Reviewed by Hope Dohnal**

The Rights of Students and Teachers is a combination and updated version of two earlier books entitled *The Civil Rights of Students* and *The Civil Rights of Teachers*. It focuses on the constitutional rights of students and teachers and does not address matters based upon state law (i.e., tenure, collective bargaining) or common law (i.e., torts). The content is somewhat narrower in scope, therefore, than the title suggests, but the book is nonetheless an important one in the area of school law. It emphasizes those areas of the law still in conflict or presently undergoing change. Topics discussed include: freedom of speech, press, association and religion; racial and sex discrimination; due process; search and seizure; academic freedom; discipline; school records; personal appearance; and issues relating to the private lives of teachers.

The authors utilize a modified case method in the book. Typically, they start off with a legal conflict arising from the educational setting, then pose questions to ponder, and follow up with a summary of the court's opinion and rationale. For example, in the chapter "Teacher Freedom of Speech Outside the Classroom," the famous *Pickering*¹ fact pattern is presented to the readers. In this case a high school teacher, critical of the way the superintendent and school board went about trying to raise money for new schools, wrote a rambling and controversial letter to the editor of the local newspaper. After quoting the letter in its entirety, the authors ask:

1. Did *Pickering* have the right to publish letters criticizing the superintendent and school board? If so, should he have gone through channels before making his criticism public?
2. Did *Pickering* have a duty of loyalty to his superiors? Should he have been careful not to damage their professional reputations?

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¹ *Pickering v. Board of Education*, 225 N.E.2d 1 (Ill. 1967); 391 U.S. 563 (1968).

3. If Pickering's public criticism was correct, should this protect him? If some of his criticism was incorrect, does this justify the school board in dismissing him?
4. Are there sometimes reasons for limiting a teacher's right of free speech or should a teacher have the same rights as any other citizen?

This method draws readers into the dispute, tickles their curiosity with thought-provoking questions, and then compels them to read on for the court's resolution of the conflict. It is an effective, even tantalizing approach.

Where the law provides, as yet, no clear answers, the authors help the reader to understand the controversy by suggesting the questions to be asked, the interests to be balanced, and the issues to be resolved. They then examine a cross-section of cases in search of a trend in the law.

One of the strengths of the Fischer and Schimmel book is the summary at the end of each chapter. This important opportunity to integrate the material presented in the chapter is all too often omitted in school law texts. The appendices contain selected constitutional amendments, a description of the nation's court system, and an explanation of where to find the law cited in the book. Other nice features of the book include a glossary of terms and an index that includes not only subject headings but also case and statute names.

The authors suggest several purposes for their book, including:

- to fill a gap in the knowledge of teachers, administrators, and parents in the application of the Bill of Rights to the public school setting;
- to serve as a text or reference book in college courses and inservice programs;
- to increase awareness of student and teacher rights and how to legally assert them;
- to increase reader sensitivity to the arguments on both sides of current civil rights controversies.

Difficult as it may be to write a book for both law people and professionals, Fischer and Schimmel have succeeded. Parents, classroom teachers, administrators, and high school students will all find this book pertinent to and informative about the rights of students and teachers. It is written primarily in plain English, and when legal terms are necessary for precision, they are defined in the glossary. This book will enable those readers without legal training to understand their civil rights and how to assert them. School law professionals will appreciate that the book is a scholarly, well-documented text dealing with subjects on the cutting edge of the law. Instructors of college courses and inservice programs will definitely want to add this

book to their personal library, and it also deserves serious consideration for use as a textbook.

SCHOOLS AND THE LAW OF THE HANDICAPPED. Edited by Eve H. Malakoff. Washington, D.C.: National School Board Association, 1981.

*Reviewed by Eric Jones**

The Council of School Attorneys, which is under the aegis of the National School Boards Association, has recently published *Schools and the Law of the Handicapped*, edited by Eve H. Malakoff. This revised edition consists of eight timely articles on the "Education for all Handicapped Children Act of 1975" (P.L. 94-142), and it is the outgrowth of a symposium sponsored by this national group of school lawyers.

P.L. 94-142 created quite a stir when enacted in 1975, and the dust has yet to settle. The statute says that a handicapped child is "entitled to a free, appropriate public education consisting of special education and related services designed to meet the special needs of the handicapped child," and the Department of Education has promulgated regulations that attempt to explain what the "appropriate public education" consists of. Unfortunately, many such explanations end up being decided in the courts. Thus, the courts have had to rule on the school's responsibility to provide such services to students as clean intermittent catheterization (CIC) every 3-4 hours and a sign language interpreter in the classroom.

This is a very complex area of educational law that is generating a substantial amount of litigation. To help the uninitiated, Ms. Malakoff has assembled a wealth of material on the legal issues. One article, by Michael I. Levin, an attorney from Harrisburg, Pennsylvania, does an excellent job of pointing out the intricate blend of federal and state issues, both statutory and constitutional, which also are affected by regulations promulgated by state and federal agencies. When these layers of complexity are superimposed upon the difficult and costly issues of year-round programs, residential placement, and disciplinary problems, the difficulties appear gargantuan. As if this were not enough, Mr. Levin admonishes us that this area of the law is "still in its infancy."

The last article in this set, and one of special interest to all board

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members and administrators, even if they have yet to have a law suit based upon P.L. 94-142, is one on educational malpractice. In this piece an Iowa attorney, Edward Remsburg, deftly assembles and explains the recent cases on this newest of torts. As the author states, the difficulty is establishing an appropriate duty of care on the part of the school system. The courts generally have not been receptive to the complaints. In spite of this lack of success to date, Mr. Remsburg concludes that we can expect an increasing number of claims in the 1980's. He makes these assertions: P.L. 94-142 contains that "elusive duty of care"; now the courts are less hesitant to review day-to-day operations of the school; for the appropriate injury the courts will ignore the floodgates argument; and lastly, the courts will be receptive to reasonable monetary damages.

This collection of articles is not easy reading, but the pieces are not about an easy subject. Nevertheless, the materials are about serious, complex issues confronting education during this decade. The problems arising under P.L. 94-142 and the new tort of educational malpractice are not going to go away. It behooves all parties in the midst of the educational process—board members and administrators as well as school attorneys—to look at these writings. Knowledge of the issues is the first step to effective loss control.