

Education Law
Tiffany Kessler, Adjunct Faculty
tkessler@gmu.edu
Fall 2024

Course Summary:

This course will focus on the statutory and regulatory requirements applicable to the provision of elementary and secondary education. We will also review K-12 educational policy and legal issues currently affecting the provision of public education. Topics will include the Elementary and Secondary Education Act, the Individuals with Disabilities Education Act, the General Education Provision Act, and other educational administrative requirements. Issues will include education funding, charter schools, private schools, serving students with disabilities, student and teacher freedom of speech, and federal/state sovereignty. Materials may include a review of statutes, regulations, federal and administrative case law, and federal guidance documents.

Learning Outcomes:

By the end of the course, the student will be able to:

- Understand and identify the major K-12 education statutes and regulations;
- Appreciate the complexities around federal education programmatic and fiscal legal requirements;
- Identify the legal distinctions and requirements between public and private schools; and
- Understand the hierarchy of federal v. state/local autonomy over education programs.

Class Schedule:

This class will generally meet on Mondays from 4:00 to 6:00pm, except for some holidays which will be made up on either a Wednesday or Thursday from 4:00 to 6:00pm (per the FA24 academic calendar).

Course Materials:

Reading lists are included on the syllabus.

Course Requirements:

The final grade will be based on a substantial research paper (80%) and a presentation on the selected research paper (20%). Grades may be adjusted a single increment (e.g., from B to B+) up or down for extraordinary or unsatisfactory participation at professor's sole determination and discretion.

Classroom Participation:

All students are expected to attend and actively participate in all sessions. Successful participation means regular, punctual attendance, contribution to conversation, engagement with the reading, and respectful and civil engagement with professors, lecturers, and peers.

Research Paper:

A research paper on a topic of the student's choice related to elementary and secondary education is required. Papers should be generally based on the readings and/or classroom

Education Law
Tiffany Kessler, Adjunct Faculty
tkessler@gmu.edu
Fall 2024

curriculum but must also involve research beyond the course materials. Your paper should take an important or currently relevant topic and seek to contribute to the analysis of this topic. Therefore, you must be able to demonstrate engagement with course materials and a wide range of other relevant sources as well as articulate and defend your topics/position.

A 1-2 page summary of the requested topic and rough outline must be submitted to the professor no later than September 27, 2024. All research paper topics must be approved by the professor.

Papers must be at least 20 pages long (but no more than 30 pages); double-spaced, 12-point Time New Roman font.

Presentations

All students will be expected to give a 20-minute presentation on their paper. The presentation must be with limited notes, PowerPoint slides may be used but the presentation must have limited writing on each slide, and it must explain thoroughly the basis and reasoning for the topic. The presenter may be asked questions during the presentation by the professor and students.

Deadlines

- A 1-2 page summary of the requested topic and rough outline must be submitted to the professor no later than 8:00pm EST on September 27, 2024.
- Final Papers are due no later than 8:00pm EST on November 17, 2024.
- Presentations will occur on November 11, 2024, November 18, 2024, and November 21, 2024 as assigned early to mid-semester.

Academic Policies & Honor Code

Unless students have been otherwise specifically informed in class, this course follows the standard policies adopted by the Law School, as they are amended from time to time. You can find more information about those policies here:

- <http://www.law.gmu.edu/academics/regulations>
- http://www.law.gmu.edu/academics/honor_code

Education Law
Tiffany Kessler, Adjunct Faculty
tkessler@gmu.edu
Fall 2024

Class Syllabus

August 26, 2024

Class 1: The Right to Public Education

Topics: Hierarchy of laws in education and whether education is a fundamental right.

Hierarchy of laws in education

- Chapter 1 “The Legal System and How it Works”, *Special Education Law* by Laura F. Rothstein and Sott F. Johnson (Handout Provided)

Education as a Fundamental Right

- *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1972) – *Majority Opinion Only*
- *Papasan v. Allain*, 478 U.S. 265 (1986)
- *Pierce v. Society of Sisters*, 269 U.S. 510, (1925)
- *Wisconsin v. Yoder*, 406 U.S. 205 (1972)

September 2, 2024 – No Class (Holiday)

September 4, 2024 (Note: Wednesday Class)

Class 2: Access and Equity in Education

Topics: Education desegregation and The Equal Protection Act.

Equal Protection Clause of the 14th Amendment

- *Brown v. Board of Education of Topeka, Shawnee County, Kansas*, 347 U.S. 483 (1954)
- *Lau v. Nichols*, 414 U.S. 563 (1974)
- *Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382 (1982)
- *Sheff v. O’Neill*, 45 Conn.Supp. 630 (1999) – *Majority Opinion Only*
- *Parents Involved in Community Schools v. Seattle School District*, 551 U.S. 701 (2007) – *Majority Opinion Only*
- *Coalition for TJ v. Fairfax County School Board*, 68 F.4th 864 (2023)

September 9, 2024

Class 3: The Elementary and Secondary Education Act

Education Law
Tiffany Kessler, Adjunct Faculty
tkessler@gmu.edu
Fall 2024

Topics: The Elementary and Secondary Education Act, an overview of the programs and administrative requirements.

- Congressional Research Service: The Elementary and Secondary Education Act (ESEA), as Amended by the Every Student Succeeds Act (ESSA): A Primer, located at: <https://crsreports.congress.gov/product/pdf/R/R45977>
- *Association of Community Organizations for Reform Now v. New York City Department of Education*, 269 F.Supp.2d 338 (S.D.N.Y), June 20, 2003
- *National Law Center on Homelessness and Poverty, RI v. New York State Education Department*, 224 F.R.D. 314, (E.D. New York), October 23, 2004
- *Additional General Resources:*
 - The Every Student Succeeds Act of 2015; Public Law 114-95
 - Title I, A regulations 34 CFR Part 200
 - ESEA General Provision Regulations 34 CFR Part 299

September 16, 2024

Class 4: The Individuals with Disabilities Education Act

Topics: Individuals with Disabilities Education and providing students a free and appropriate public education.

- *Board of Education of the Hendrick Hudson Central School District, et. al., v. Amy Rowley*, 102 S.Ct. 3034 (1982)
- *School Committee of Town of Burlington, Mass. V. Department of Educ. Of Mass*, 471 U. S. 359 (1985)
- *Endrew F. ex rel. Joseph F. v Douglas County School District*, 580 U.S. 386 (2017)
- Office of Civil Rights, Docket No. 11-21-5901, Fairfax County Public Schools Decision, dated November 30, 2022, located here: <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11215901-a.pdf>
 - OCR case background information located here: <https://www.ed.gov/news/press-releases/us-department-educations-office-civil-rights-announces-resolution-investigation-fairfax-county-public-schools-virginia-related-needs-students-disabilities-during-covid-19-pandemic>
- *Additional General Resources:*
 - IDEA, Part B Code of Federal Regulations: 34 CFR Part 300 (2007) - Specifically, Sec. 300.17 - Definition of Free and Appropriate Public Education and Subpart D “Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements”

Education Law
Tiffany Kessler, Adjunct Faculty
tkessler@gmu.edu
Fall 2024

- Endrew Guidance Document: <https://sites.ed.gov/idea/questions-and-answers-ga-on-u-s-supreme-court-case-decision-endrew-f-v-douglas-county-school-district-re-1/>

September 23, 2024

Class 5: IDEA Administrative and Procedural Cases

Topics: IDEA focusing on administrative and procedural requirements.

- *Schaffer ex re. Schaffer v. Weast*, 546 U.S. 49 (2005)
- *Association for Community Living in Colorado v. Romer*, 992 F.2d 1040 (10th Cir. (1993)
- *Perez c. Sturgis Pub. Sch.*, 143 S.Ct. 859 (2023)
- 21-08-O, Massachusetts Department of Elementary and Secondary Education, USDE ALJ Decision (2021), located at: <https://oha.ed.gov/oha/files/2021/08/2021-08-O.pdf>.
 - Secretary's Interlocutory Appeal Decision (2022), located at: <https://oha.ed.gov/oha/files/2022/07/2021-08-O-S1-Decision-On-Interlocutory-Appeal.pdf>
- *Additional General Resources:*
 - IDEA, Part B Code of Federal Regulations: 34 CFR Part 300 (2007) - Specifically, Subpart E "Procedural Safeguards Due Process Procedures for Parents and Children."

September 30, 2024

Class 6: Private Schools

Topics: Private schools and the provisions of equitable services.

Private Schools and the Establishment Clause

- *Lemon v. Kurtzman*, 403 U.S. 602 (1971)
- *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017) – *Majority Opinion Only*
- *Espinoza v. Montana Department of Revenue*, 591 U.S. ---, 140 S.Ct. 2246 (2020)
- *Carson as next friend of O.C. v. Makin*, 596 U.S. 767 (2022)
- *Additional General Resources:*
 - ESEA Sec. 8501 [20 USC 7881] Participation by Private School Children and Teachers, located at:

Education Law
Tiffany Kessler, Adjunct Faculty
tkessler@gmu.edu
Fall 2024

- <https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/essa-legislation-table-contents/title-viii-general-provisions/#TITLE-VIII-PART-F>

October 7, 2024

Class 7: Public Schools of Choice

Topics: Charter schools and voucher programs in public education.

Charter Schools

- *Peltier v. Charter Day School, Inc.*, 37 F.4th 104 (4th Cir. 2022) – *Majority Opinion Only*
- *Drummond v Oklahoma Statewide Virtual Charter School Board: et al.*, 2024 WL 3155937; Supreme Court of Oklahoma, (June 25, 2024)
- *Additional General Resources:*
 - The Every Student Succeeds Act of 2015; Public Law 114-95, Title IV, Part C “Expanding Opportunity Through Quality Charter Schools”

Voucher Programs

- *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002)

October 14, 2024 – No Class (Holiday)

October 21, 2024

Class 8: Education Funding

Topics: Education appropriations, the Education Department General Administrative Regulations (EDGAR), the General Education Provisions Act (GEPA), the Uniform Guidance and federal funding oversight.

- Chapter 14 “Enforcement Options and Requirements”, *Federal Education Grants Management: What Administrators Need to Know -- Fifth Edition* by Leigh Manasevit, Tiffany Kessler and Steven Spillan (Handout Provided)
- ED OIG Audit: Oklahoma’s Administration of the Governor’s Emergency Education Relief Fund Grant (July 18, 2022) (Handout Provided)
- *Additional General Resources:*

Education Law
Tiffany Kessler, Adjunct Faculty
tkessler@gmu.edu
Fall 2024

- The General Education Provisions Act, 34 CFR Part 81, Enforcement; Subpart B – Hearings for Recovery of Funds, located at: <https://www.ecfr.gov/current/title-34/subtitle-A/part-81>
 - Also: The General Education Provisions Act, 20 USC Chapter 31, Subchapter IV Enforcement, located at/: <https://www.law.cornell.edu/uscode/text/20/chapter-31/subchapter-IV>
- The Education Department General Administrative Regulations; 34 CFR Part 76
- Uniform Grants Guidance; 2 CFR Part 200, Subpart D, E

October 28, 2024

Class 9: Freedom of Speech in Schools

Topics: Freedom of speech for students and school prayer.

School Prayer

- *Engel v. Vitale*, 374 U.S. 203 (1962)
- *Lamb’s Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384, 113 S.Ct. 2141 (1993)

Student Free Speech

- *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943)
- *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969)
- *Melton v. Young*, 465 F.2d 1332 (1972)
- *Bethel Sch. Dist. No. 403 v. Fraser*, 106 S.Ct. 3159 (1986)

November 4, 2024

Class 10: Freedom of Speech in Schools (cont.)

Topics: Social media free speech in schools and teacher free speech.

Social Media Free Speech

- *Bell v. Itawamba County School Board*, 799 F.3d 379 (5th Cir. 2015) – *Majority Opinion Only*
- *Mahanoy Area School District v. B.L. by and through Levy*, 594 U.S. --, 141 S.Ct. 2038 (2021)

Teacher Free Speech

Education Law
Tiffany Kessler, Adjunct Faculty
tkessler@gmu.edu
Fall 2024

- *Pickering v. Board of Education*, 391 U.S. 563, 88 S. Ct. 1731 (1968)
- *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022)

November 11, 2024

Class 11: Book Banning

Topics: *Free Speech and school libraries.*

- *Board of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 102 S. Ct. 2799 (1982) – *Majority Opinion Only*
- *American Civil Liberties Union of Florida, Inc. v. Miami-Dade County School Bd.*, 557 F.3d 1177 (2009) – *Majority Opinion Only*
- *PEN American Center, Inc. v. Escambia County School Board*, 2024 WL 133213 (2024)

Student Presentations (as needed)

Students will present research paper summaries

November 18, 2024

Class 12: Student Presentations

Students will present research paper summaries

November 21, 2024 (Note: Thursday Class)

Class 13: Student Presentations

Students will present research paper summaries