

LAW EDUCATIONAL ADMINISTRATION

Topic Objective:

At the end of this topic student will be able to understand:

- Legal System on Education in USA:
- Education of students with special needs
- Educating children with disabilities
- Contemporary education issues
- The No Child Left Behind Act of 2001
- Problems with standardized tests
- Incentives against low-performing students
- Incentives against gifted, talented, and high-performing students
- State refusal to produce non-English assessments

Definition/Overview:

American Legal System for Education: The legal system regarding education in the United States, on the federal level and in almost all states, is based on the British system of common law. One state, Louisiana, has a system modeled on the French legal code.

Key Points:

1. Legal System on Education in USA:

Education in the United States is provided mainly by government, with control and funding coming from three levels: federal, state, and local. School attendance is mandatory and nearly universal at the primary and secondary levels (often known inside the United States as the elementary and high school levels). At these levels, school curricula, funding, teaching, and other policies are set through locally elected school boards with jurisdiction over school districts. School districts are usually separate from other local jurisdictions, with independent officials and budgets. Educational standards and standardized testing decisions are usually made by state governments. The ages for compulsory education vary by state, beginning at ages five to eight and ending at the ages of fourteen to eighteen. A growing number of states are now requiring school attendance until the age of 18.

Compulsory education requirements can generally be satisfied by attending public schools, state-certified private schools, or an approved home school program. In most public and private schools, education is divided into three levels: elementary school, junior high school (also often called middle school), and senior high school. In almost all schools at these levels, children are divided by age groups into grades, ranging from kindergarten (followed by first grade) for the youngest children in elementary school, up to twelfth grade, which is the final year of high school. The exact age range of students in these grade levels varies slightly from area to area.

Post-secondary education, better known as "college" in the United States, is generally governed separately from the elementary and high school system, and is described in a separate section below.

In the year 2000, there were 76.6 million students enrolled in schools from kindergarten through graduate schools. Of these, 72 percent aged 12 to 17 were judged academically "on track" for their age (enrolled in school at or above grade level). Of those enrolled in compulsory education, 5.2 million (10.4 percent) were attending private schools. Among the country's adult population, over 85 percent have completed high school and 27 percent have received a bachelor's degree or higher. The average salary for college or university graduates is greater than \$51,000, exceeding the national average of those without a high school diploma by more than \$23,000, according to a 2005 study by the U.S. Census Bureau. While the United States presently leads the world with over 5,000 Montessori schools, China has expressed ambitions to replace much of their school system with the Montessori Methods pedagogy. As part of a trial run towards achieving this objective, China's Minister of Education called for 1,000 teachers to receive certification from the Association Montessori International in 2007. The U.S. Department of Education has no formal plans to compete against China on similar initiatives at this time.

The country has a reading literacy rate at 98% of the population over age 15, while ranking below average in science and mathematics understanding compared to other developed countries. In 2008, there was a 77% graduation rate from high school, below most developed countries. The poor performance has pushed public and private efforts such as the No Child Left Behind Act. In addition, the ratio of college-educated adults entering the workforce to general population (33%) is slightly below the mean of other developed countries (35%) and rate of participation of the labor force in continuing education is high. A 2000s study by Jon Miller of Michigan State University concluded that "A slightly higher proportion of American adults qualify as scientifically literate as European or Japanese adults".

2. Education of students with special needs

In the United States, education for students with special needs is structured to adhere as closely as possible to the same experience received by typically developing peers. This concept was developed with the passing of IDEA. This law directed states to develop opportunities for children with special needs to be educated within the public education system.

Students with special needs must have the opportunity to be with typically developing peers in the mainstream school. For example: recess, cafeteria, assemblies, hallways, regular classes, etc. This process is known as mainstreaming. Special education (educational programs required to assist special needs students) must be provided for these students in order for mainstreaming to be possible. Students with special needs attend special schools only if their need for very specialized services makes mainstreaming impossible. The level of mainstreaming that is provided varies greatly within different school districts. For example, larger school districts are often able to provide more adequate and quality care for those with special needs rather than smaller school districts.

Students with special needs are required to attend the same amount of time as typically developing peers. Students receiving special education services are entitled by law to an annual review of yearly progress as well as an evaluation every three years to determine the needs for continued services. Parents who have specific desires for their child's education must act as advocates to assure their child's best interests are being met.

In order to more clearly identify special needs students, the federal government defined thirteen categories of special needs. These included autism, deaf-blindness, deafness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, serious emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment. The key to overcoming special needs in the mainstream school for students is:

- Attending sessions (i.e. resource room) during the day to supplement regular or special classroom instruction. The goal of these programs is for students to learn compensatory strategies and study skills to enable them to succeed in mainstream classes. These sessions are generally for students who are fully included into the general educational environment.

- Students with similar needs are placed together in a self-contained classroom if their education cannot be satisfactorily achieved in the general educational environment. In other words, these classrooms are provided for students who do not benefit educationally, socially or emotionally from a standard classroom placement. These classrooms, commonly known as special classes, are taught by teachers with training in adapting curricula to meet the needs of students with special needs.

3. Educating children with disabilities

IDEA is a federal law that requires states to ensure that all school districts provide services to meet the individual needs of students with special needs. Students must be placed in the Least Restrictive Environment (LRE). This means that school districts must meet with the parents to develop an Individualized Education Program that determines best placement for their child. School districts that fail to provide an appropriate placement for students with special needs can be taken to due process wherein parents may legally and formally submit their grievances and demand appropriate services for their child. All special needs students are entitled to a free and appropriate public education (FAPE).

The federal government supports the standards developed in the Individuals with Disabilities Education Improvement Act of 2004. The law mandates that schools must accommodate students with special needs as defined by the act, and specifies methods for funding the (sometimes large) costs of providing them with the necessary facilities.

4. Contemporary education issues

Major educational issues in the United States center on curriculum, funding, and control. Of critical importance, because of its enormous implications on education and funding, is the No Child Left Behind Act

4.1 Curriculum issues

Curricula in the United States vary widely from district to district. Not only do schools offer a range of topics and quality, but private schools may include religious classes as mandatory for attendance (raising the question of government funding vouchers; see below). This has produced camps of argument over the standardization of curricula and to what degree. Some feel that schools should be nationalized and curricula changed to a national standard. These same groups often are advocates of standardized testing, which is mandated by the No Child Left Behind Act. Aside from

who controls curricula, groups argue over the teaching of the English language, evolution, and sex education.

A large issue facing curricula today is the use of the English language in teaching. English is spoken by over 95% of the nation, and there is a strong national tradition of upholding English as the de facto official language. Some 9.7 million children aged 5 to 17 primarily speak a language other than English at home. Of those, about 1.3 million children speak English "not well" or "not at all." While a few, mostly Hispanic, groups want bilingual education, the majority of school districts are attempting to use English as a Second Language (ESL) course to teach Spanish-speaking students English. In addition, many feel there are threats to the "integrity" of the language itself. For example, there has been discussion about whether to classify as a "second language" the dialect called African American Vernacular English (known colloquially as Ebonics, a portmanteau of "ebony" and "phonics"). While it is not taught in any American schools, debate continues over its place in education. In 1999 the School Board of the state of Kansas caused controversy when it decided to eliminate testing of evolution in its state assessment tests. This caused outrage among scientists and average citizens alike, and intense media coverage and the national spotlight persuaded the board to eventually overturn the decision. As of 2005, such controversies have not abated. Not surprisingly, scientists stress the importance of evolution in the curriculum and most do not support the teaching of intelligent design or creationism in public school biology courses, as they are not scientifically testable or supported by scientific evidence. Many fundamentalist religious and "family values" groups, on the other hand, claim that evolution is simply a religion, and as such creationist ideas should therefore be taught alongside it as an "alternative viewpoint". While a majority of United States citizens approve of teaching evolution, many also support teaching intelligent design and/or creationism in public schools. However, support for evolution was also found to be greater among the better educated

5. The No Child Left Behind Act of 2001

The No Child Left Behind Act of 2001 (Public Law 107-110), often abbreviated in print as NCLB and sometimes shortened in pronunciation to "nickelbee", is a United States federal law (Act of Congress) that was originally proposed by President George W. Bush on January

23, 2001, immediately after taking office. Congress based its legislation on this "blueprint" proposed by the President. The legislation was co-Authored by Representatives John Boehner (R-OH) and George Miller (D-CA) and Senators Judd Gregg (R-NH) and Edward Kennedy (D-MA), and signed by President Bush. The law reauthorized a number of federal programs aiming to improve the performance of U.S. primary and secondary schools by increasing the standards of accountability for states, school districts, and schools, as well as providing parents more flexibility in choosing which schools their children will attend. Additionally, it promoted an increased focus on reading and re-authorized the Elementary and Secondary Education Act of 1965 (ESEA). The Act, introduced as HR 1 during the 107th Congress, was passed in the House of Representatives on May 23, 2001, United States Senate on June 14, 2001 and signed into law on January 8, 2002.

NCLB is the latest federal legislation which enacts the theories of standards-based education reform, formerly known as outcome-based education, which is based on the belief that setting high standards and establishing measurable goals can improve individual outcomes in education. The Act requires states to develop assessments in basic skills to be given to all students in certain grades, if those states are to receive federal funding for schools. NCLB does not assert a national achievement standard, standards are set by each individual state, in line with the principle of local control of schools and in order to comply with the Tenth Amendment to the United States Constitution, which specifies that powers not granted to the federal government nor forbidden to state governments are reserved powers of the individual states.

The Act also requires that the schools distribute the name, home phone number and address of every student enrolled to military recruiters and institutions of higher education, unless the student (or the student's parent) specifically opts out.

The effectiveness and desirability of NCLB's measures are hotly debated. A primary criticism asserts that NCLB could reduce effective instruction and student learning because it may cause states to lower achievement goals and motivate teachers to "teach to the test." A primary supportive claim asserts that systematic testing provides data that shed light on which schools are not teaching basic skills effectively, so that interventions can be made to improve outcomes for all students while reducing the achievement gap for disadvantaged and disabled students.

Over the time of this law, Congress increased federal funding of education, from \$42.2 billion in 2001 to \$54.4 billion in 2007. No Child Left Behind received a 40.4% increase

from \$17.4 billion in 2001 to \$24.4 billion. The funding for reading quadrupled from \$286 million in 2001 to \$1.2 billion. A 2008 study from the Department of Education, Reading First Impact Study: Interim Report, analyzes the performance of students in 12 states who were in grades one to three during the 2004-5 and 2005-6 school years and concluded that the Reading First Program, a major billion dollar a year NCLB effort, had proven "ineffective." A final report on the impacts from 2004-2007 (three school years with Reading First funding) and on the relationships between changes in instructional practice and student reading comprehension is expected in late 2008.

1. Problems with standardized tests

Critics have argued that the focus on standardized testing (all students in a state take the same test under the same conditions) as the means of assessment encourages teachers to teach a narrow subset of skills that will increase test performance rather than focus on deeper understanding that can readily be transferred to similar problems. For example, if the teacher knows that all of the questions on a math test are simple addition equations (e.g., $2+3=5$), then the teacher might not invest any class time on the practical applications of addition (e.g., story problems) so that there will be more time for the material which is assessed on the test. This is colloquially referred to as "teaching to the test."

Moreover, many teachers who practice "teaching to the test" actually misinterpret the educational outcomes the tests are designed to measure. On two state tests (New York State and Michigan) and the National Assessment of Educational Progress (NAEP) almost two-thirds of eighth graders missed math word problems that required an application of the Pythagorean theorem to calculate the distance between two points. Wiggins and McTighe blamed the low success rate on teachers who correctly anticipated the content of the tests, but incorrectly assumed each test would present rote knowledge/skill items rather than well-constructed, higher-order items.

The practice of giving all students the same test, under the same conditions, has been accused of inherent cultural bias because different cultures may value different skills. It also may conflict with the Individuals with Disabilities Education Act (IDEA), which states that schools must accommodate disabled students. For example, it is normally acceptable for visually impaired students to be read test material aloud. However, on a NCLB-mandated test, a group of blind students had their scores invalidated (reported as zeros) because the testing protocol did not specifically allow for test readers to speak.

The practice of determining educational quality by testing students has been called into question.

2. Incentives against low-performing students

Because the law's response if the school fails to make adequate progress is not only to provide additional help for students, but also to impose punitive measures on the school, the incentives are to set expectations lower rather than higher and to increase segregation by class and race and push low-performing students out of school altogether. Under the NCLB Act schools that do not meet certain established standards are given additional funds in an attempt to boost scores. Critics argue that schools have less of an incentive to do better if they are already receiving more funds. However, schools are also given bonuses for meeting yearly requirements. Since these requirements are given each year, schools are less likely to rapidly increase their scores, as a slow and gradual improvement would be financially better. Another part of the NCLB act gives schools that perform well awards and special recognition that opponents argue would encourage schools already doing well to push out disadvantaged students even more.

3. Incentives against gifted, talented, and high-performing students

Some local schools are only funding instruction for core subjects or for remedial special education. In other words, NCLB forces school programs to ration education in such a manner as to only guarantee mandated skill levels in reading, writing, and arithmetic to all students. All other programs not essential to providing mandated skills to regular students or remedial special education students are being gutted by those districts. While Federal law is silent on the requirement for funding gifted programs, the practice can violate the mandates of several states (such as Arizona, California, Virginia, and Pennsylvania) to identify gifted students and provide them with an appropriate education, including grade advancement.

4. State refusal to produce non-English assessments

All students who are learning English have an automatic three-year window to take assessments in their native language, after which they must normally demonstrate proficiency on an English language assessment. However, the local education authority may grant an exception to any individual English learner for another two years' testing in his or her native language on a case-by-case basis. In practice, however, only 10 states choose to test any English language learners in their native language (almost entirely Spanish speakers). The vast majority of English language learners are given English language assessments. NCLB's focus on math and English language skills (and eventually science) may elevate scores on two fundamental skills while students lose the benefits of a broad education. A study

conducted by the American Heart Association and the National Association for Sport and Physical Education contends that diminishing physical education in school has contributed to rising levels of childhood obesity. Surveys of public school principals indicate that since the implementation of NCLB, 71% believe instructional time has increased for reading, writing, and math (subjects tested under the law), and decreased for the arts, elementary social studies, and foreign languages. In some places, the implementation of NCLB during a time of budget restraints has been blamed for the elimination of classes and activities which are outside of NCLB's focus area. "It hurts me to give up art, but it hurts me even more to have kids who can't read," said school Principal Kathy Deck in Indianapolis, Indiana. These restraints may have affected humanities and social studies curricula as well. Common Core, a group that encourages a broad inclusive curriculum, recently found that many American high school students lack basic knowledge in history, civics, and literature. The group blamed NCLB for not including these topics in its focus.

Topic :**Topic Objective:**

At the end of this topic student will be able to understand.

- Public Schools of USA
- Role of Public Schools in Achieving Compulsory Education
- Public Schools of Canada
- Public Schools in England, Wales and Northern Ireland
- Public Schools in Germany

Definition/Overview:

Public School: The term public school has two distinct (and virtually opposite) meanings depending on the location of usage:

- In the United States, Australia and Canada: A school funded from tax revenue and most commonly administered to some degree by government or local government agencies. This usage is synonymous with its British English equivalent, state school.
- In the United Kingdom and a few other Commonwealth countries: A traditional privately operated secondary school which commonly requires the payment of fees for its pupils, and is usually a boarding school. This usage is common in the United Kingdom (although can be

ambiguous in Scotland). These schools, wherever located, often follow a British educational tradition and are committed in principle to public accessibility. Originally, many were single-sex boarding schools, but most independent schools are now co-educational with both boarders and day-pupils. This usage is synonymous with its American English equivalent, preparatory school.

Key Points:

1. Public Schools of USA

Public-school education is the most common form of education in the United States and is provided mainly by local governments, with control and funding coming from three levels: federal, state, and local. Curricula, funding, teaching, and other policies are set through locally elected school boards by jurisdiction over school districts. The school districts are special-purpose districts authorized by provisions of state law. Generally, state governments can and do set minimum standards relating to almost all activities of primary and secondary schools, as well as funding and authorization to enact local school taxes to support the schools -- primarily through real property taxes. The federal government funds aid to states and school districts that meet minimum federal standards. School accreditation decisions are made by voluntary regional associations. The first tax-supported public school in America was in Dedham, Massachusetts. The vast majority of adults born in the U.S. have attended a U.S. public school.

Public school is normally split up into three stages: primary (elementary) school (kindergarten to 4th or 5th or 6th grade), junior high (also "intermediate", or "middle") school (5th or 6th or 7th to 8th or 9th) and high school (9th or 10th to 12th, somewhat archaically also called "secondary school"), with some less populated communities incorporating high school as 7th to 12th. Some Junior High Schools (Intermediate Schools) contain 7th to 9th grades or 7th and 8th, in which case the High School is 10th to 12th or 9th to 12th respectively. The middle school format is increasing in popularity, in which the Elementary School contains kindergarten through 5th grade and the Middle School contains 6th through 8th grade. In addition, some elementary schools are splitting into two levels, sometimes in separate buildings: Primary (usually K-2) and Intermediate (3-4 or 3-5). Some middle schools consist of only 7th and 8th grades.

The K-8th format is also an emerging popular concept, in which students may attend only two schools for all of their K-12 education. Many charter schools feature the K-8 format in

which all primary grades are housed in one section of the school while the traditional junior high school aged students are housed in another section of the school.

Some very small school districts, primarily in rural areas, still maintain a K-12 system in which all students are housed in a single school.

In the United States, institutions of higher education that are operated and subsidized by U.S. states are also referred to as "public." However, unlike public secondary schools, public universities charge tuition, though these fees are usually much lower than those charged by private universities, particularly for "in-state" students. Community colleges, state colleges, and state universities are examples of public institutions of higher education. In particular, many state universities are regarded as among the best institutions of higher education in the U.S., though usually they are surpassed in ranking by certain private universities and colleges, such as those of the Ivy League, which are often very expensive and extremely selective in the students they accept. In several states, the administrations of public universities are elected via the general electoral ballot.

2. Role of Public Schools in Achieving Compulsory Education

Compulsory education requirements can generally be satisfied by attending public schools, state-certified private schools, or an approved home school program. In most public and private schools, education is divided into three levels: elementary school, junior high school (also often called middle school), and senior high school. In almost all schools at these levels, children are divided by age groups into grades, ranging from kindergarten (followed by first grade) for the youngest children in elementary school, up to twelfth grade, which is the final year of high school. The exact age range of students in these grade levels varies slightly from area to area.

Post-secondary education, better known as "college" in the United States, is generally governed separately from the elementary and high school system, and is described in a separate section below.

In the year 2000, there were 76.6 million students enrolled in schools from kindergarten through graduate schools. Of these, 72 percent aged 12 to 17 were judged academically "on track" for their age (enrolled in school at or above grade level). Of those enrolled in compulsory education, 5.2 million (10.4 percent) were attending private schools. Among the country's adult population, over 85 percent have completed high school and 27 percent have received a bachelor's degree or higher. The average salary for college or university graduates is greater than \$51,000, exceeding the national average of those without a high school

diploma by more than \$23,000, according to a 2005 study by the U.S. Census Bureau. While the United States presently leads the world with over 5,000 Montessori schools, China has expressed ambitions to replace much of their school system with the Montessori method's pedagogy. As part of a trial run towards achieving this objective, China's Minister of Education called for 1,000 teachers to receive certification from the Association Montessori Internationale in 2007. The U.S. Department of Education has no formal plans to compete against China on similar initiatives at this time. The country has a reading literacy rate at 98% of the population over age 15, while ranking below average in science and mathematics understanding compared to other developed countries. In 2008, there was a 77% graduation rate from high school, below most developed countries.

3. Public Schools of Canada

Public-school education in Canada is a provincial responsibility and, as such, there are many variations between the provinces. Junior Kindergarten (or equivalent) exists as an official program in some, but not most, places. Kindergarten (or equivalent) is available in every province, but provincial funding and the level of hours provided varies widely. Starting at grade one, at about age five there is universal publicly-funded access up to grade twelve (or equivalent). Schools are generally divided into Elementary or Primary school (Kindergarten to Grade 7), and Secondary, or High School (Grade 8 to 12). In some schools, particularly in rural areas, the elementary and middle levels can be combined into one school. Commencing in 2003, Grade 13, or OAC, was eliminated in Ontario. It had previously been required only for students who intended to go on to university. Children are required to attend school until the age of sixteen.

Some Canadian provinces offer segregated-by-religious-choice, but nonetheless publicly-funded and publicly-regulated, religiously-based education. In Ontario, for example, Roman Catholic schools are known as "Catholic School", not "Public School", although these are, by definition, no less 'public' than their secular counterparts.

The Act of Parliament which brought Alberta into Confederation stipulates that each school district in the province must have both a public school system and a separate school system. (Despite their names, both school systems are considered "public" in the greater scope of the term, as both are funded by taxpayers.) In districts where the majority of taxpayers are Roman Catholics, the public school system is run by the Roman Catholic school board. In districts where the majority of taxpayers are not Roman Catholic, the separate school system is run by the Roman Catholic school board. A certain proportion of property taxes are allocated to schools; each taxpayer chooses which school system he or she wishes to support,

and is allowed to vote for school trustees based on their choice. As of 2006 only one school district, St. Albert, has a majority of Roman Catholic taxpayers, but many districts (including St. Paul and Bonnyville) have been majority Roman Catholic at one time or another. In Calgary, Jewish, Sikh, and Hindu public schools are also supported by the separate school system.

In some countries, such as Brazil and Mexico, the term "public schools" (escuelas pblicas in Spanish, escolas pblicas in Portuguese) is used for educational institutions owned by the federal, state, or city governments which do not charge tuition. Such schools exist in all levels of education, from the very beginning through post-secondary studies. Mexico has nine years of free and compulsory primary and secondary education. The later years of schooling are comparable to the state university systems in most US states.

4. Public Schools in England, Wales and Northern Ireland

In England, Wales and Northern Ireland the term "public school" refers to fee-charging independent secondary schools. The earliest known reference to a "public school" dates from 1364, when the Bishop of Winchester wrote concerning "the public school" at Kingston in his diocese. The term public then distinguished between education in a school generally provided by a church and open to public applicants, and schools where admission was restricted to children from a particular aristocratic class, such as City of London Freeman's School. Typically such schools admit applicants to a small number of free or highly subsidized charitable foundation scholarships, and grew by the headmaster accepting payments for other pupils, who might subsequently win the competitive scholarships.

In the nineteenth century the Clarendon Commission and the Public Schools Act 1868 used the common term to refer to the nine old-established schools whose outdated charitable trusts and governance they reformed. Many similar boarding schools were established for British Empire expatriates to educate their sons at home, and a number of ancient grammar schools later aimed to conform to the ethos of the Public Schools named in successive Acts.

The term Public School is generally used now in England, Wales, Northern Ireland and sometimes Scotland to refer to any school that is a member of the Headmasters' and Headmistresses' Conference: see the article Independent school (UK) for that sense of the term. The schools and their representative associations prefer the more inclusive term "independent schools", but common usage and the news media in England often refer to them by the traditional name of "Public Schools". This grouping primarily includes the prestigious independent schools, in a similar manner to the Ivy League grouping of American

Universities - other private schools might be called 'independent', but would not be called "Public Schools". An indication of this distinction may be seen in Ernest William Hornung's book 'A Thief in the Night', in which he bemoans the tendency of anyone who has received a private education to claim that they 'went to a Public School'.

These schools were (and are) public in the sense of being open to all students in principle, though at the time of their foundation most older schools were run by the established Church and were only open to boys of the same denomination. In practice however many such schools are highly academically selective and pupils usually need to pass the Common Entrance Examination before being admitted at all, and all but the best scholars must be able to afford the considerable fees for tuition and (for boarders) room and board. In these countries, the terms state school and county school are used for schools provided at public expense. The term private school means the same as in other English-speaking countries, or formerly and more specifically a privately-owned primary Preparatory ('Prep') School. In the United Kingdom the term "school" is not generally used to describe institutions of further or higher education (exceptions include the London School of Economics, the School of Oriental and African Studies and the Guildhall School of Music), but it is used to denote academic and administrative divisions within a university, such as a medical school or a school of engineering or political science. It is otherwise restricted to primary and secondary schools.

5. Public Schools in Germany

Education in Germany is provided to a large extent by the government, with control coming from state level, (Lnder) and funding coming from two levels: federal and state. Curricula, funding, teaching, and other policies are set through the respective states ministry of education. Decisions about the acknowledgment of private schools (the German equivalent to accreditation in the US) are also made by these ministries. However, public schools are automatically recognised, since these schools are supervised directly by the ministry of education bureaucracy.

Kindergartens are not part of the German public school system. (Although the first kindergarten in the world was opened in 1840 by Friedrich Wilhelm August Frbel in the German town of Bad Blankenburg, and the term Kindergarten is even a loanword from the German language). Article 7 Paragraph 6 of the German constitution (the Grundgesetz)

abolished pre-school as part of the German school system. However, kindergartens exist all over Germany, where many of these institutions actually are public, but these kindergartens are controlled by local authorities, charging tuition fees and are likewise not considered to be part of the public school system.

A German public school does not charge tuition fees. The first stage of the German public school system is the Grundschule. (Primary School - 1st to 4th grade or, in Berlin and Brandenburg, 1st to 6th grade) After Grundschule (at 10 or 12 years of age), there are four secondary schooling options:

- Hauptschule (the least academic, much like a modernized Volksschule) until 9th or, in Berlin and North Rhine-Westphalia until 10th Grade.
- Realschule (formerly Mittelschule) until 10th grade.
- Gymnasium (high school) until 12th grade or 13th grade (with Abitur as exit exam, qualifying for admission to university).
- Gesamtschule (comprehensive school) with all the options of the three "tracks" above.

A Gesamtschule largely corresponds to an American high school. However, it offers the same school leaving certificates as the other three types of German secondary schools - the Hauptschulabschluss (school leaving certificate of a Hauptschule after 9th Grade or in Berlin and North Rhine-Westphalia after 10th Grade), the Realschulabschluss, also called Mittlere Reife, (school leaving certificate of a Realschule after 10th Grade) and Abitur, also called Hochschulreife, after 13th or seldom after 12th Grade. Students who graduate from Hauptschule or Realschule continue their schooling at a vocational school until they have full job qualifications. This type of German school, the Berufsschule, is generally an upper-secondary public vocational school, controlled by the German federal government. It is part of Germany's dual education system. Students who graduate from a vocational school and students who graduate with good GPA from a Realschule can continue their schooling at another type of German public secondary school, the Fachoberschule, a vocational high school. The school leaving exam of this type of school, the Fachhochschulreife, enables the graduate to start studying at a Fachhochschule (polytechnic), and in Hesse also at a university within the state. The Abitur from a Gesamtschule or Gymnasium enables the graduate to start studying at a polytechnic or at a university in all states of Germany.

In Germany, most institutions of higher education are subsidized by German states and are therefore also referred to as staatliche Hochschulen. (public universities) Most German public universities and polytechnics do not charge for tuition, though fees for guest or graduate students are charged by many universities. However, many German states plan to introduce general tuition fees for all students at public institutions of higher education in the near future.

In Section 2 of this course you will cover these topics:

- Public Schools: Religious Controversies
- Tort Liability Under State Law

Topic : Public Schools: Religious Controversies

Topic Objective:

At the end of this topic student will be able to understand:

- Public Schools and American Constitution
- Student Prayers
- Graduation Prayer and Baccalaureates
- Official Participation or Encouragement of Religious Activity
- Teaching about Religion
- Student Assignments and Religion
- Distribution of Religious Literature
- Religious Persuasion Versus Religious Harassment
- Equal Access Act
- Religious Holidays
- Excusal from Religiously-Objectionable Lessons
- Teaching Values
- Student Garb

Definition/Overview:

Religious Controversies in Public Schools: The presence and extent of religion in public schools is one of the most difficult and contentious issues when it comes to the separation of

church and state. On the one hand are those who sincerely believe that a lack of religion in the schools "teaches" atheism or secular humanism, resulting in a decline in morality and performance. On the other hand are those who sincerely believe that state sanctioned religion and state supported religious observances infringe upon the religious liberties of all students.

Key Points:

1. Public Schools and American Constitution

The Constitution permits much private religious activity in and about the public schools. Unfortunately, this aspect of constitutional law is not as well known as it should be. Some say that the Supreme Court has declared the public schools "religion-free zones" or that the law is so murky that school officials cannot know what is legally permissible. The former claim is simply wrong. And as to the latter, while there are some difficult issues, much has been settled. It is also unfortunately true that public school officials, due to their busy schedules, may not be as fully aware of this body of law as they could be. As a result, in some school districts some of these rights are not being observed.

The organizations whose names appear below span the ideological, religious and political spectrum. They nevertheless share a commitment both to the freedom of religious practice and to the separation of church and state such freedom requires. In that spirit, we offer this statement of consensus on current law as an aid to parents, educators and students. Many of the organizations listed below are actively involved in litigation about religion in the schools. On some of the issues discussed in this summary, some of the organizations have urged the courts to reach positions different than they did. Though there are signatories on both sides which have and will press for different constitutional treatments of some of the topics discussed below, they all agree that the following is an accurate statement of what the law currently is.

2. Student Prayers

Students have the right to pray individually or in groups or to discuss their religious views with their peers so long as they are not disruptive. Because the Establishment Clause does not apply to purely private speech, students enjoy the right to read their Bibles or other scriptures, say grace before meals, pray before tests, and discuss religion with other willing student listeners. In the classroom students have the right to pray quietly except when required to be

actively engaged in school activities (e.g., students may not decide to pray just as a teacher calls on them). In informal settings, such as the cafeteria or in the halls, students may pray either audibly or silently, subject to the same rules of order as apply to other speech in these locations. However, the right to engage in voluntary prayer does not include, for example, the right to have a captive audience listen or to compel other students to participate.

3. Graduation Prayer and Baccalaureates

School officials may not mandate or organize prayer at graduation, nor may they organize a religious baccalaureate ceremony. If the school generally rents out its facilities to private groups, it must rent them out on the same terms, and on a first-come first-served basis, to organizers of privately sponsored religious baccalaureate services, provided that the school does not extend preferential treatment to the baccalaureate ceremony and the school disclaims official endorsement of the program.

The courts have reached conflicting conclusions under the federal Constitution on student-initiated prayer at graduation. Until the issue is authoritatively resolved, schools should ask their lawyers what rules apply in their area.

4. Official Participation or Encouragement of Religious Activity

Teachers and school administrators, when acting in those capacities, are representatives of the state, and, in those capacities, are themselves prohibited from encouraging or soliciting student religious or anti-religious activity. Similarly, when acting in their official capacities, teachers may not engage in religious activities with their students. However, teachers may engage in private religious activity in faculty lounges.

5. Teaching about Religion

Students may be taught about religion, but public schools may not teach religion. As the U.S. Supreme Court has repeatedly said, it might well be said that one's education is not complete without a study of comparative religion, or the history of religion and its relationship to the advancement of civilization." It would be difficult to teach art, music, literature and most social studies without considering religious influences.

The history of religion, comparative religion, the Bible (or other scripture)-as-literature (either as a separate course or within some other existing course), are all permissible public school subjects. It is both permissible and desirable to teach objectively about the role of religion in the history of the United States and other countries. One can teach that the Pilgrims came to this country with a particular religious vision, that Catholics and others have been subject to persecution or that many of those participating in the abolitionist, women's suffrage and civil rights movements had religious motivations.

These same rules apply to the recurring controversy surrounding theories of evolution. Schools may teach about explanations of life on earth, including religious ones (such as "creationism"), in comparative religion or social studies classes. In science class, however, they may present only genuinely scientific critiques of, or evidence for, any explanation of life on earth, but not religious critiques (beliefs unverifiable by scientific methodology). Schools may not refuse to teach evolutionary theory in order to avoid giving offense to religion nor may they circumvent these rules by labeling as science an article of religious faith. Public schools must not teach as scientific fact or theory any religious doctrine, including "creationism," although any genuinely scientific evidence for or against any explanation of life may be taught. Just as they may neither advance nor inhibit any religious doctrine, teachers should not ridicule, for example, a student's religious explanation for life on earth.

6. Student Assignments and Religion

Students may express their religious beliefs in the form of reports, homework and artwork, and such expressions are constitutionally protected. Teachers may not reject or correct such submissions simply because they include a religious symbol or address religious themes. Likewise, teachers may not require students to modify, include or excise religious views in their assignments, if germane. These assignments should be judged by ordinary academic standards of substance, relevance, appearance and grammar. Somewhat more problematic from a legal point of view are other public expressions of religious views in the classroom. Unfortunately for school officials, there are traps on either side of this issue, and it is possible that litigation will result no matter what course is taken. It is easier to describe the settled cases than to state clear rules of law. Schools must carefully steer between the claims of student speakers who assert a right to express themselves on religious subjects and the

asserted rights of student listeners to be free of unwelcome religious persuasion in a public school classroom.

Religious or anti-religious remarks made in the ordinary course of classroom discussion or student presentations are permissible and constitute a protected right. If in a sex education class a student remarks that abortion should be illegal because God has prohibited it, a teacher should not silence the remark, ridicule it, rule it out of bounds or endorse it, any more than a teacher may silence a student's religiously-based comment in favor of choice. If a class assignment calls for an oral presentation on a subject of the student's choosing, and, for example, the student responds by conducting a religious service, the school has the right -- as well as the duty -- to prevent itself from being used as a church. Other students are not voluntarily in attendance and cannot be forced to become an unwilling congregation.

Teachers may rule out-of-order religious remarks that are irrelevant to the subject at hand. In a discussion of Hamlet's sanity, for example, a student may not interject views on creationism.

7. Distribution of Religious Literature

Students have the right to distribute religious literature to their schoolmates, subject to that reasonable time, place, and manner or other constitutionally- acceptable restrictions imposed on the distribution of all non-school literature. Thus, a school may confine distribution of all literature to a particular table at particular times. It may not single out religious literature for burdensome regulation. Outsiders may not be given access to the classroom to distribute religious or anti-religious literature. No court has yet considered whether, if all other community groups are permitted to distribute literature in common areas of public schools, religious groups must be allowed to do so on equal terms subject to reasonable time, place and manner restrictions.

8. Religious Persuasion Versus Religious Harassment

Students have the right to speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics. But school officials should intercede to stop student religious speech if it turns into religious harassment aimed at a student or a small group of students. While it is constitutionally permissible for a student to approach another

and issue an invitation to attend church, repeated invitations in the face of a request to stop constitute harassment. Where this line is to be drawn in particular cases will depend on the age of the students and other circumstances.

9. Equal Access Act

Student religious clubs in secondary schools must be permitted to meet and to have equal access to campus media to announce their meetings, if a school receives federal funds and permits any student non-curricular club to meet during non-instructional time. This is the command of the Equal Access Act. A non-curricular club is any club not related directly to a subject taught or soon-to-be taught in the school. Although schools have the right to ban all non-curriculum clubs, they may not dodge the law's requirement by the expedient of declaring all clubs curriculum-related. On the other hand, teachers may not actively participate in club activities and "non-school persons" may not control or regularly attend club meeting.

The Act's constitutionality has been upheld by the Supreme Court, rejecting claims that the Act violates the Establishment Clause. The Act's requirements are described in more detail in *The Equal Access Act and the Public Schools: Questions and Answers on the Equal Access Act*, a pamphlet published by a broad spectrum of religious and civil liberties groups.

10. Religious Holidays

Generally, public schools may teach about religious holidays, and may celebrate the secular aspects of the holiday and objectively teach about their religious aspects. They may not observe the holidays as religious events. Schools should generally excuse students who do not wish to participate in holiday events. Those interested in further details should see *Religious Holidays in the Public Schools: Questions and Answers*, a pamphlet published by a broad spectrum of religious and civil liberties groups.

11. Excusal from Religiously-Objectionable Lessons

Schools enjoy substantial discretion to excuse individual students from lessons which are objectionable to that student or to his or her parent on the basis of religion. Schools can exercise that authority in ways which would defuse many conflicts over curriculum content. If it is proved that particular lessons substantially burden a student's free exercise of religion

and if the school cannot prove a compelling interest in requiring attendance the school would be legally required to excuse the student.

12. Teaching Values

Schools may teach civic virtues, including honesty, good citizenship, sportsmanship, courage, respect for the rights and freedoms of others, respect for persons and their property, civility, the dual virtues of moral conviction and tolerance and hard work. Subject to whatever rights of excusal exist (see 5 above) under the federal Constitution and state law, schools may teach sexual abstinence and contraception; whether and how schools teach these sensitive subjects is a matter of educational policy. However, these may not be taught as religious tenets. The mere fact that most, if not all, religions also teach these values does not make it unlawful to teach them.

13. Student Garb

Religious messages on T-shirts and the like may not be singled out for suppression. Students may wear religious attire, such as yarmulkes and head scarves, and they may not be forced to wear gym clothes that they regard, on religious grounds, as immodest. Schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation or penalize those who do not attend. Schools may not allow religious instruction by outsiders on premises during the school day.

Topic : Tort Liability Under State Law

Topic Objective:

At the end of this topic student will be able to understand:

- Tort Law in Western World
- Categories of torts
- Tort Liability in Education Sector
- Tort Liability and other Sources of Risk

Definition/Overview:

Tort Law: Tort law is the name given to a body of law that addresses, and provides remedies for, civil wrongs not arising out of contractual obligations. A person who suffers legal damages may be able to use tort law to receive compensation from someone who is legally responsible, or "liable," for those injuries. Generally speaking, tort law defines what constitutes a legal injury and establishes the circumstances under which one person may be held liable for another's injury. Torts cover intentional acts and accidents.

Key Points:

1. Tort Law in Western World

In much of the western world, the touchstone of tort liability is negligence. If the injured party cannot prove that the person believed to have caused the injury acted with negligence, at the very least, tort law will not compensate them. Tort law also recognizes intentional torts and strict liability, which apply to defendants who engage in certain actions. In tort law, injury is defined broadly. Injury does not just mean a physical injury, such as where Brenda was struck by a ball. Injuries in tort law reflect any invasion of any number of individual "interests." This includes interests recognized in other areas of law, such as property rights. Actions for nuisance and trespass to land can arise from interfering with rights in real property. Conversion and trespass to chattels can protect interference with movable property. Interests in prospective economic advantages from contracts can also be injured and become the subject of tort actions. A number of situations caused by parties in a contractual relationship may nevertheless be tort rather than contract claims, such as breach of fiduciary duty.

Tort law may also be used to compensate for injuries to a number of other individual interests that are not recognized in property or contract law, and are intangible. This includes an interest in freedom from emotional distress, privacy interests, and reputation. These are protected by a number of torts such as infliction, privacy torts, and defamation. Defamation and privacy torts may, for example, allow a celebrity to sue a newspaper for publishing an untrue and harmful statement about him. Other protected interests include freedom of movement, protected by the intentional tort of false imprisonment. The equivalent of tort in civil law jurisdictions is delict. The law of torts can be categorised as part of the law of obligations, but unlike voluntarily assumed obligations (such as those of contract, or trust), the duties imposed by the law of torts apply to all those subject to the relevant jurisdiction. To

behave in 'tortious' manner is to harm another's body, property, or legal rights, or possibly, to breach a duty owed under statute. One who commits a tortious act is called a "tortfeasor".

Torts is one of the American Bar Association mandatory first year law school courses.

2. Categories of torts

Torts may be categorised in a number of ways: one such is to divide them into Negligence Torts, and Intentional Torts. The dominant action in tort is negligence. The tort of negligence provides a cause of action leading to damages, or to injunctive relief, in each case designed to protect legal rights, including those of personal safety, property, and, in some cases, intangible economic interests. Negligence actions include claims arising primarily from automobile accidents and personal injury accidents of many kinds, including clinical negligence. Product liability cases may also be considered negligence actions, but there is frequently a significant overlay of additional statutory content.

Among intentional torts may be certain torts arising out of the occupation or use of land. One such is the tort of nuisance, which connotes strict liability for a neighbor who interferes with another's enjoyment of his real property. Trespass allows owners to sue for incursions by a person (or his structure, for example an overhanging building) on their land. There is a tort of false imprisonment, and a tort of defamation, where someone makes an unsupportable allegation represented to be factual which damages the reputation of another. Workers' compensation laws were a legislative response to the common law torts doctrine placing limits on the extent to which employees could sue their employers in respect of injuries sustained during employment.

2.1 Statutory torts

A statutory tort is like any other, in that it imposes duties on private or public parties, however they are created by the legislature, not the courts. One example is in consumer protection, with the Product Liability Directive in the European Union, where businesses making defective products that harm people must pay for any damage resulting. Liability for defective products is strict in most jurisdictions. The theory of risk spreading provides support for this approach. Since manufacturers are the 'cheapest cost avoiders', because they have a greater chance to seek out problems, it makes sense to give them the incentive to guard against product defects.

Another example is the Occupiers' Liability Acts in the UK whereby a person, such as a shopowner, who invites others onto land, or has trespassers, owes a minimum duty

of care for people's safety. One early case was *Cooke v Midland Great Western Railway of Ireland*, where Lord MacNaughton felt that children who were hurt whilst looking for berries on a building site, should have some compensation for their unfortunate curiosity. Statutory torts also spread across workplace health and safety laws and health and safety in food produce.

The concept of statutory torts is not held throughout all common-law countries, however. Courts in both the United States and Canada have rejected the concept that a statutory duty can be the basis of a private cause of action, absent a specific provision in statute authorising such a cause of action.

2.2 Negligence

Negligence is a tort which depends on the existence of a breach of duty of care owed by one person to another. One well-known case is *Donoghue v. Stevenson* where Mrs. Donoghue consumed part of a drink containing a decomposed snail while in a public bar in Paisley, Scotland and claimed that it had made her ill. The snail was not visible, as the bottle of ginger beer in which it was contained was opaque. Neither her friend, who bought it for her, nor the shopkeeper who sold it were aware of its presence. The manufacturer was Mr. Stevenson, whom Mrs. Donoghue sued for damages for negligence. She could not sue Mr. Stevenson for damages for breach of contract because there was no contract between them. The majority of the members of the House of Lords agreed (3-2) that Mrs. Donoghue had a valid claim, but disagreed as to why such a claim should exist. Lord MacMillan thought this should be treated as a new product liability case. Lord Atkin argued that the law should recognise a unifying principle that we owe a duty of reasonable care to our neighbors. He quoted the Bible in support of his argument, specifically the general principle that "thou shalt love thy neighbor." The elements of negligence are:

- Duty of care
- Breach of that duty
- Breach being a proximate or not too remote a cause, in law
- Breach causing harm in fact

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2.4 Nuisance

Legally, the term nuisance is traditionally used in three ways: (1) to describe an activity or condition that is harmful or annoying to others (e.g., indecent conduct, a rubbish heap or a smoking chimney); (2) to describe the harm caused by the before-mentioned activity or condition (e.g., loud noises or objectionable odors); and (3) to describe a legal liability that arises from the combination of the two. The law of nuisance law was created to stop such bothersome activities or conduct when they unreasonably interfered either with the rights of other private landowners (i.e., private nuisance) or with the rights of the general public (i.e., public nuisance).

The tort of nuisance allows a claimant (formerly plaintiff) to sue for most acts that interfere with their use and enjoyment of their land. A good example of this is in the case of *Jones v Powell* (1629). A brewery made stinking vapors which wafted onto neighbors' property, damaging his papers. As he was a landowner, the neighbor sued in nuisance for this damage. But Whitelocke J, speaking for the Court of the King's Bench, said that because the water supply was contaminated, it was better that the neighbor's documents were risked. He said "it is better that they should be spoiled than that the common wealth stand in need of good liquor." Nowadays, interfering

with neighbors' property is not looked upon so kindly. Nuisance deals with all kinds of things that spoil a landowner's enjoyment of his property.

A subset of nuisance is known as the rule in *Rylands v. Fletcher* where a dam burst into a coal mine shaft. So a dangerous escape of some hazard, including water, fire, or animals means strict liability in nuisance. This is subject only to a remoteness cap, familiar from negligence when the event is unusual and unpredictable. This was the case where chemicals from a factory seeped through a floor into the water table, contaminating East Anglia's reservoirs.

2.5 Intentional torts

Intentional torts are any intentional acts that are reasonably foreseeable to cause harm to an individual, and that do so. Intentional torts have several subcategories, including tort(s) against the person, including assault, battery, false imprisonment, intentional infliction of emotional distress, and fraud. Property torts involve any intentional interference with the property rights of the claimant. Those commonly recognized include trespass to land, trespass to chattels, and conversion.

3. Tort Liability in Education Sector

During the late twentieth century, American society and higher education experienced a substantial increase in lawsuits resulting from some form of personal injury, according to John F. Adams and John W. Hall. A response to the trend of litigiousness, risk management seeks to control exposure to legal risk, thus limiting the negative impact of liability on the institution. In 1995 William A. Kaplin and Barbara A. Lee described four of the most common methods of risk management: risk avoidance, risk control, risk transfer, and risk retention. Risk avoidance entails an effort on the institution's part to limit risk by eliminating programs or activities or avoiding creating those that involve risk. A less extreme approach is risk control, which seeks to manage liability by structuring activities and programs in ways that reduce or limit institutional risk. There are several methods of transferring risk to other parties including insurance, indemnification agreements, and releases and waivers. Risk retention describes the self-insurance as a means to prepare for the financial implications of legal liability.

One of the primary areas of legal liability that risk management addresses is tort liability, which is generally defined as "a civil wrong, other than a breach of contract, for which the

courts will allow a damage remedy". The area within tort liability with which institutions of higher education must most often deal is negligence. Most of these cases involve lawsuits by students and others who suffered injuries that they claim the institution should have prevented through the exercise of reasonable care. The four elements of negligence are duty, breach of that duty, injury (physical or emotional), and proximate cause. In addition to duties commonly associated with any business enterprise, colleges and universities, according to some courts and authors, have a special relationship with students that demands a higher level of care. Many of the cases heard in the 1980s and 1990s rejected this claim of a higher duty. For example, in *Beach v. the University of Utah* (1986) the institution was freed from any legal responsibility for the injuries that befell Donna Beach while on a university-sponsored field trip where underage students, including Beach, were served alcohol in the presence of the faculty member supervising the trip.

4. Tort Liability and other Sources of Risk

Risk management in higher education does not end with the consideration of tort liability and negligence. Public and private institutions must address the issue of potential institutional contract liability in the enforcement of contracts in which its agents enter the institution.

Public institutions may also face lawsuits brought under 42 USC 1983 for intentional violations of federal constitutional rights. Additionally, institutions must pay careful attention to compliance with federal legislation and regulations governing higher education, which expand and grow more complicated with each congressional session.

Much of the legislation directly affecting higher education passed in the late 1980s and 1990s must be viewed in the context of the negligence cases involving harm to students. Congress passed legislation related to both alcohol (Drug-Free Schools and Communities Act) and campus crime (Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act). In 1998 Congress authorized the use of fines by the Department of Education to enforce the Campus Security Act. Under federal law, another significant concern for institutions is sexual harassment, which is a form of sexual discrimination prohibited under Title IX of the Educational Amendments of 1972. The Supreme Court has allowed students to recover monetary damages for both quid pro quo and hostile environment sexual harassment. In order to win monetary damages, the student must show that a school official with authority to take corrective action had actual knowledge of the sexual harassment and responded with deliberate indifference. However, the Department of Education's Office of Civil Rights holds institutions of higher education to even higher standard in administrative enforcement of the legislation.

Risk management is an issue that demands careful attention by all institutions of higher education. In the fall of 2000 the Massachusetts Institute of Technology settled the lawsuit brought by the parents of Scott Krueger, a freshman who died as a result of excessive alcohol consumption at a fraternity, for \$6 million. This is a clear indication of the profound financial implications of educational institutions' lack of response to this important issue.

In Section 3 of this course you will cover these topics:

- Professional Employees: Employment Rights And Obligations
- Professional Employees: Civil Rights

Topic : Professional Employees: Employment Rights And Obligations

Topic Objective:

At the end of this topic student will be able to understand:

- Labor Rights in Educational Setups
- Standard of Care and Duty
- Denial or Revocation of Teaching Certificate
- Tenure and Dismissal of Teachers
- Due Process Rights of Teachers
- Teacher Contracts
- Ratification of Contracts by School Districts
- Remedies for Breach of Contract
- Collective Bargaining by Teachers
- Teacher Freedoms and Rights
- Academic Freedom
- Privacy Rights
- State and Local Laws Regarding Teachers' Rights
- Student Rights in United States

Definition/Overview:

Employment Rights: Employment rights is dealt under labor laws which is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organisations. As such, it mediates many aspects of the relationship

between trade unions, employers and employees. In Canada, employment laws related to unionized workplaces are differentiated from those relating to particular individuals. In most countries however, no such distinction is made. However, there are two broad categories of labor law. First, collective labor law relates to the tripartite relationship between employee, employer and union. Second, individual labor law concerns employees' rights at work and through the contract for work. The labor movement has been instrumental in the enacting of laws protecting labor rights in the 19th and 20th centuries. Labor rights have been integral to the social and economic development since the industrial revolution.

Key Points:

1. Labor Rights in Educational Setups

Although teachers and other school personnel are not expected to be legal experts, it is very important that they understand their basic rights and responsibilities under the law. Americans are a litigious people and today's schools function in a complex legal environment. There are a wide range of legal issues that influence the lives of teachers, students, parents and administrators . Any professional development devoted to the law and teachers must be developed in collaboration with the legal department(s) of local and centralized school districts. Eight key topics that might be addressed are:

- Certification, Employment, Contracts, Collective Bargaining
- Due Process, Insubordination
- Student Records, Family Educational Rights and Privacy Act
- Standard of Care and Duty, Liability
- Copyrights and Fair Use
- Academic Freedom
- Freedom of Expression, Disruptive Speech, Slander and Libel

Child Abuse and Neglect

The process of teaching and learning takes place in an environment in which the rights of teachers and students are constantly being balanced against the rights and responsibilities

of school officials to maintain a safe, caring and orderly environment. Many local school boards and districts, as well as professional teacher unions, provide their teaching staff with trainings, seminars, and workshops which provide detailed information about the first three topics mentioned above. This column will provide a focus on liability and standard of care and duty. Next month we will examine copyright and fair use. Future columns will examine other areas. A word of caution --- the law is constantly changing and the information presented here is to stimulate professional development, which should be specifically designed for you, your locality and school district. This column may not be substituted for formal legal advice from a knowledgeable lawyer and/or your professional association.

2. Standard of Care and Duty

It is generally agreed that teachers have two basic duties, the delivery of instruction and supervision. The courts have held that teachers have a mandatory duty to supervise students under their control during the school day as well as at school-sponsored activities. In determining whether a teacher failed to provide the appropriate standard of care, the courts compare the actions of the teacher with those of a hypothetical "reasonable and prudent" teacher. Teachers of younger children are held to a higher standard of care than teachers of more mature students. A higher standard of care also is demanded of teachers of the physically or mentally challenged and vocational, industrial arts and physical education teachers.

If teachers must take reasonable care to ensure that students do not meet with foreseeable injury, they have a duty to protect them against foreseeable risks of personal injury or harm. This duty of care applies while students are on the school grounds or premises during school operating hours.

When teachers have not fulfilled their obligations properly, and when that action has resulted specifically in injury to a student, the question of liability is always a concern. However, liability will not be assessed unless it can be shown that the teacher's action was the proximate cause of the injury. There are no absolute criteria for determining what constitutes negligent action, since each case is factually unique and must be examined on the basis of its own individual merits.

A tort can be defined as a civil wrong done by one person to another and for which a court will provide a remedy in the form of an action for damages. The law regulates the relations between two parties when one party claims to have been injured as a result of the intentional or accidental action of the other party. Criminal wrongs are not torts.

Negligence is the most common category of torts in education. Negligence may be defined as the omission to do something that a reasonable person, guided by those ordinary considerations that ordinarily regulate human affairs, would do. There are four ingredients to be proved before an educator can be found guilty of negligence:

- A legal duty to provide appropriate standard care
- A failure in that duty to provide the reasonable standard of care (a breach of duty)
- A causal relationship between the negligent action and the resultant injury
- A physical or mental injury resulting in actual loss

It must be noted that legislation has recently been introduced in the House (H.R.1103) and Senate (S.316) that drastically limits liability for teachers, instructors, principals, administrators and other educational professionals. This type of legislation attempts to define liability as harm caused by "willful misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights of safety" of plaintiffs. This is a much higher burden than is usually found in tort cases. However, charges of negligence, even if unsubstantiated, may be damaging to the reputations of teachers and administrators and may cost them their jobs.

Courts have also held school officials personally liable for damages if they violate the clearly established constitutional rights of students or teachers. Professional development should attempt to address the following questions:

- Are teachers required to supervise their students at all times?
- Can teachers be held liable if a student injures another student or teacher?
- Are there special legal definitions that impact upon teachers who supervise the cafeteria or playground?
- If teachers are careless, are they automatically liable for damages?
- Are there special liability standards for substitute teachers and student teachers?
- What is the "assumption of risk"? What is "contributory negligence"?

- Can teachers use governmental immunity as a defense against negligence?
- Can schools be held liable for failure to maintain a safe environment?
- What kinds of damages do the courts award?

In Ontario, Canada the law requires teachers to perform various duties from a parental perspective. For example, teachers must be positive role models for their students and must act as kind, firm, and judicious parents when disciplining students (see www.oct.on.ca/english/ps/december_1998/duty.htm) Operating under the doctrine of in loco parentis (in place of a parent) school authorities exercised almost unlimited and usually unchallenged discretion in restricting the rights of students and in disciplining students. Although this doctrine has been weakened in recent years, it does generate discussions about student rights and responsibilities. Professional development that generates these types of discussions helps teachers become legally literate. It's a good first step to help clear up misunderstandings and misinformation.

Labor law (also known as employment or labor law) is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organisations. As such, it mediates many aspects of the relationship between trade unions, employers and employees. In Canada, employment laws related to unionized workplaces are differentiated from those relating to particular individuals. In most countries however, no such distinction is made. However, there are two broad categories of labor law. First, collective labor law relates to the tripartite relationship between employee, employer and union. Second, individual labor law concerns employees' rights at work and through the contract for work. The labor movement has been instrumental in the enacting of laws protecting labor rights in the 19th and 20th centuries. Labor rights have been integral to the social and economic development since the industrial revolution.

Positive obligations in human rights law denote a State's obligation to engage in an activity to secure the effective enjoyment of a fundamental right, as opposed to the classical negative obligation to merely abstain from human rights violations. Classical human rights, such as the right to life or freedom of expression, are formulated or understood as prohibitions for the State to act in a way that would violate these rights. Thus, they would imply an obligation for the State not to kill, or an obligation for the State not to impose press censorship. Modern or social rights, on the other hand, imply an obligation for the State to become active, such as to

secure individuals' rights to education or employment by building schools and maintaining a healthy economy. Such social rights are generally more difficult to enforce. Positive obligations transpose the concept of State obligations to become active into the field of classical human rights. Thus, in order to secure an individual's right to family life, the State may not only be obliged to refrain from interference therein, but positively to facilitate for example family reunions or parents' access to their children.

Teachers in the United States enjoy a number of rights pertaining to their employment, including recognition of certain freedoms, prohibition against certain forms of DISCRIMINATION, and significant protections against DISMISSAL from their position. These rights are derived from state and federal constitutional provisions, state and federal statutes, and state and federal regulations. Constitutional provisions provide protection to teachers at public schools that are generally not available to teachers at private schools. Since public schools are state entities, constitutional restrictions on state action limit some actions that public schools may take with respect to teachers or other employees. Rights that are constitutional in nature include the following:

- Substantive and procedural due process rights, including the right of a teacher to receive notice of termination and a right to a HEARING in certain circumstances
- Freedom of expression and association provided by the First Amendment of the BILL OF RIGHTS
- Academic freedom, a limited concept recognized by courts based on principles of the First Amendment
- Protection against unreasonable searches and seizures by school officials of a teacher's PERSONAL PROPERTY provided by the Fourth Amendment

Though private school teachers do not generally enjoy as much of the constitutional protection as public school teachers, statutes may provide protection against discrimination. The CIVIL RIGHTS Act of 1964, for example, protects teachers at both public and private schools from racial, sexual, or religious discrimination. Private school teachers may also enjoy rights in their contracts that are similar to due process rights, including the inability of a private school to dismiss the teacher without cause, notice, or a hearing.

3. Teacher Certification Requirements

Every state requires that teachers complete certain requirements to earn a teacher's certificate in order to teach in that state. Most states extend this requirement to private schools, though

some jurisdictions may waive this for certain sectarian or denominational schools. The requirements that must be satisfied and the procedures that must be followed to earn certification vary from state to state. Requirements generally include completion of a certified education program, completion of a student teaching program, acceptable performance on a standardized test or tests, and submission of background information to the appropriate state agency in charge of accreditation. Some states require more extensive physical and mental testing of teachers and a more extensive background check. Some states also require drug testing of applicants prior to certification. An increasing number of states now require teachers to complete a satisfactory number of continuing education credits to maintain certification.

4. Denial or Revocation of Teaching Certificate

Courts have held consistently that teaching certificates are not contracts. Thus, requirements to attain or maintain a certificate may be changed and applied to all teachers and prospective teachers. The certification process is administered by state certifying agencies in each state, and most of these agencies have been delegated significant authority with respect to the administration of these rules. Despite this broad delegation, however, the state agencies may not act arbitrarily, nor may these agencies deny or revoke certification on an arbitrary basis. Some state statutes provide that a certificate may be revoked for "just cause." Other common STATUTORY

grounds include the following:

- Immoral conduct or indecent behavior
- INCOMPETENCY
- Violations of ethical standards
- Unprofessional conduct
- Misrepresentation or FRAUD
- Willful neglect of duty

5. Tenure and Dismissal of Teachers

Most states protect teachers in public schools from arbitrary dismissal through tenure statutes. Under these tenure statutes, once a teacher has attained tenure, his or her contract renews automatically each year. School districts may dismiss tenured teachers only by a showing of cause, after following such procedural requirements as providing notice to the teacher, specifying the charges against the teacher, and providing the teacher with a meaningful

hearing. Most tenure statutes require teachers to remain employed during a probationary period for a certain number of years. Once this probationary period has ended, teachers in some states will earn tenure automatically. In other states, the local school board must take some action to grant tenure to the teacher, often at the conclusion of a review of the teacher's performance. Tenure also provides some protection for teachers against demotion, salary reductions, and other discipline. However, tenure does not guarantee that a teacher may retain a particular position, such as a coaching position, nor does it provide indefinite employment. Prior to attaining tenure, a probationary teacher may be dismissed at the discretion of the school district, subject to contractual and constitutional restrictions. Laws other than those governing tenure will apply to determine whether a discharge of a teacher is wrongful. If a probationary teacher's dismissal does not involve discrimination or does not violate terms of the teacher's contract, the school district most likely does not need to provide notice, summary of charges, or a hearing to the teacher. In the absence of a state tenure STATUTE, a teacher may still attain de facto tenure rights if the customs or circumstances of employment demonstrate that a teacher has a "legitimate claim of entitlement for job tenure." The United States Supreme Court recognized this right in the case of *Perry v. Sindermann*, which also held that where a teacher has attained de facto tenure, the teacher is entitled to due process prior to dismissal by the school district. State laws do not govern the tenure process at private schools. However, a contract between a private school district and a teacher may provide tenure rights, though enforcement of these rights is related to the contract rights rather than rights granted through the state tenure statute.

6. Dismissal for Cause

A school must show cause in order to dismiss a teacher who has attained tenure status. Some state statutes provide a list of circumstances where a school may dismiss a teacher. These circumstances are similar to those in which a state agency may revoke a teacher's certification. Some causes for dismissal include the following:

- Immoral conduct
- Incompetence
- Neglect of duty
- Substantial noncompliance with school laws
- CONVICTION of a crime
- Insubordination
- Fraud or misrepresentation

7. Due Process Rights of Teachers

The Due Process Clause of the Fourteenth Amendment, like its counterpart in the Fifth Amendment, provides that no state may "deprive any person of life, liberty, or property, without due process of law." This clause applies to public school districts and provides the minimum procedural requirements that each public school district must satisfy when dismissing a teacher who has attained tenure. Note that in this context, due process does not prescribe the reasons why a teacher may be dismissed, but rather it prescribes the procedures a school must follow to dismiss a teacher. Note also that many state statutory provisions for dismissing a teacher actually exceed the minimum requirements under the Due Process Clause. The United States Supreme Court case of *Cleveland Board of Education v. Loudermill* is the leading case involving the question of what process is due under the Constitution. This case provides that a tenured teacher must be given oral or written notice of the dismissal and the charges against him or her, an explanation of the EVIDENCE obtained by the employer, and an opportunity for a fair and meaningful hearing.

8. Teacher Contracts

The law of contracts applies to contracts between teachers and school districts. This law includes the concepts of offer, acceptance, mutual ASSENT, and consideration. For a teacher to determine whether a contract exists, he or she should consult authority on the general law of contracts. This section focuses on contract laws specific to teaching and education.

9. Ratification of Contracts by School Districts

Even if a school official offers a teacher a job and the teacher accepts this offer, many state laws require that the school board ratify the contract before it becomes binding. Thus, even if a principal of a school district informs a prospective teacher that the teacher has been hired, the contract is not final until the school district accepts or ratifies the contract. The same is true if a school district fails to follow proper procedures when determining whether to ratify a contract.

10. Teacher's Handbook as a Contract

Some teachers have argued successfully that provisions in a teacher's handbook granted the teacher certain contractual rights. However, this is not common, as many employee handbooks include clauses stating that the handbook is not a contract. For a provision in a handbook to be legally binding, the teacher must demonstrate that the actions of the teacher and the school district were such that the elements for creating a contract were met.

11. Breach of Teacher Contract

Either a teacher or a school district can breach a contract. Whether a breach has occurred depends on the facts of the case and the terms of the contract. Breach of contract cases between teachers and school districts arise because a school district has terminated the employment of a teacher, even though the teacher has not violated any of the terms of the employment agreement. In several of these cases, a teacher has taken a leave of absence, which did not violate the employment agreement, and the school district terminated the teacher due to the leave of absence. Similarly, a teacher may breach a contract by resigning from the district before the end of the contract term (usually the end of the school year).

12. Remedies for Breach of Contract

The usual remedy for breach of contract between a school district and a teacher is monetary damages. If a school district has breached a contract, the teacher will usually receive the amount the teacher would have received under the contract, less the amount the teacher receives (or could receive) by attaining alternative employment. Other damages, such as the cost to the teacher in finding other employment, may also be available. Non-monetary remedies, such as a court requiring a school district to rehire a teacher or to comply with contract terms, are available in some circumstances, though courts are usually hesitant to order such remedies. If a teacher breaches a contract, damages may be the cost to the school district for finding a replacement. Many contracts contain provisions prescribing the amount of damages a teacher must pay if he or she terminates employment before the end of the contract.

13. Collective Bargaining by Teachers

Teachers' contractual rights often arise through COLLECTIVE BARGAINING through teachers' unions. For more information regarding collective bargaining by teachers, see Education: Teacher's Unions/Collective Bargaining.

14. Teacher Freedoms and Rights

The EQUAL PROTECTION Clause of the Fourteenth Amendment of the Constitution protects teachers at public schools from discrimination based on race, sex, and national origin. These forms of discrimination are also barred through the enactment of Title VII of the Civil Rights Act of 1964, which was amended in 1972 to include educational institutions. This law provides that it is an unlawful employment practice for any employer to discriminate against an individual based on the race, color, religion, sex, or national origin of the individual. Title IX of the Education Amendments of 1972 provides protection against discrimination based on sex at educational institutions that receive federal financial

assistance. A teacher who has been subjected to discrimination has several causes of action, though proof in some of these cases may be difficult. A teacher may bring a cause of action under section 1983 of Title 42 of the United States Code for deprivation of rights under the Equal Protection Clause (or other constitutional provision). However, to succeed under this cause of action, the teacher would need to prove that the school had the deliberate intent to discriminate. Similarly, a teacher bringing a claim under Title VII must demonstrate that the reasons given by a school for an employment decision were false and that the actual reason for the decision was discrimination.

15. Academic Freedom

Teachers in public schools have limited freedoms in the classroom to teach without undue restrictions on the content or subjects for discussion. These freedoms are based on rights to freedom of expression under the First Amendment of the Bill of Rights. However, the concept of academic freedom is quite limited. The content taught by a teacher must be relevant to and consistent with the teacher's responsibilities, and a teacher cannot promote a personal or political agenda in the classroom. Factors such as the age, experience, and grade level of students affect the latitude in which a court will recognize the academic freedom of a teacher.

15.1 Freedom of Expression

A leading case in First Amendment JURISPRUDENCE regarding protected forms of expression is *Pickering v. Board of Education*. This case involved a teacher whose job was terminated when he wrote to a local newspaper an editorial critical of the teacher's employer. The Supreme Court held that the school had unconstitutionally restricted the First Amendment rights of the teacher to speak on issues of public importance. Based on *Pickering* and similar cases, teachers generally enjoy rights to freedom of expression, though there are some restrictions. Teachers may not materially disrupt the educational interest of the school district, nor may teachers undermine authority or adversely affect working relationships at the school.

15.2 Freedom of Association

Similar to rights to freedom of expression, public school teachers enjoy rights to freedom of association, based on the First Amendment's provision that grants citizens the right to peaceful assembly. These rights generally permit public school teachers to join professional, labor, or similar organizations; run for public office; and similar forms of association. However, teachers may be required to ensure that participation in these activities is completely independent from their responsibilities to the school.

15.3 Freedom of Religion

The First Amendment and Title VII of the Civil Rights Act of 1964 provide protection against religious discrimination by school districts against teachers. Teachers may exercise their religious rights, though there are certain restrictions to such rights. This existence of restrictions is particularly relevant to the public schools, since public schools are restricted from teaching religion through the Establishment Clause of the First Amendment. Thus, for example, a teacher is free to be a practicing Christian, yet the teacher cannot preach Christianity in the classroom.

16. Privacy Rights

Teachers enjoy limited rights to personal privacy, though courts will often support disciplinary action taken by a school district when a teacher's private life affects the integrity of the school district or the effectiveness by which a teacher can teach. Thus, for example, a teacher may be terminated from his or her position for such acts as ADULTERY or other sexual conduct outside marriage, and courts will be hesitant to overrule the decisions of the school board.

16.1 Age

The Age Discrimination in Employment Act of 1967, with its subsequent amendments, provides protection for teachers over the age of 40 against age discrimination. Under this act, age may not be the sole factor when a school district terminates the employment of a teacher. If a teacher charges a school district with age discrimination, the school district has the burden to show that some factor other than age influenced its decision.

16.2 Pregnancy

The Pregnancy Discrimination Act of 1978 provides protection for teachers who are pregnant. Under this act, a school district may not dismiss or demote a pregnant teacher on the basis of her pregnancy, nor may a district deny a job or deny a promotion to a pregnant teacher on the basis of her pregnancy.

17. State and Local Laws Regarding Teachers' Rights

Each state provides laws governing education agencies, hiring and termination of teachers, tenure of teachers, and similar laws. Teachers should consult with statutes and education regulations in their respective states, as well as the education agencies that enforce these rules, for additional information regarding teachers' rights. Moreover, teachers should review their contracts, COLLECTIVE BARGAINING AGREEMENT, and/or employee handbook for specific provisions that may have been included in an agreement.

The information below summarizes the grounds on which a state may revoke or suspend a teaching certificate or on which a district may dismiss or suspend a teacher.

- **ALABAMA:** Teacher's certificate may be revoked for immoral conduct, or unbecoming or indecent behavior. Teachers may be dismissed or suspended on similar grounds, except that tenured teachers may not be suspended or terminated on political grounds.
- **ALASKA:** Teacher's certificate may be revoked or suspended for incompetency, immorality, substantial noncompliance with school laws or regulations, violations of ethical or professional standards, or violations of contractual obligations. Teachers may be dismissed or suspended by local school boards on similar grounds.
- **ARIZONA:** Teacher's certificate may be revoked or suspended for immoral or unprofessional conduct, evidence of unfitness to teach, failure to comply with various statutory requirements, failure to comply with student disciplinary procedures, teaching sectarian books or doctrine, or conducting religious exercises. Teachers may be dismissed or suspended on similar grounds. Probationary employees may be dismissed when they are unsuited or not qualified. Permanent employees may be discharged only for cause, and are entitled to due process.
- **ARKANSAS:** Teacher's certificate may be revoked for cause. Teachers may be dismissed for any cause that is not arbitrary, capricious, or discriminatory.
- **CALIFORNIA:** Permanent teachers may be dismissed for immoral or unprofessional conduct, dishonesty, incompetency, evident unfitness for service, a physical or mental condition unfitting for a teacher to instruct or associate with children, persistent violation of school laws or regulations, conviction of a FELONY or crime involving moral turpitude, or alcoholism or drug abuse rendering teacher unfit for service. Teacher's certificate may be revoked or suspended on the same grounds as those for dismissal or suspension.
- **COLORADO:** Teacher's certificate may be annulled, revoked, or suspended if certificate has been obtained through fraud or misrepresentation; teacher is mentally incompetent; teacher violates statutes or regulations regarding unlawful sexual behavior, use of controlled substances, or other violations. Teachers may be dismissed on similar grounds.
- **CONNECTICUT:** Teacher's certificate may be revoked if certificate has been obtained through fraud or misrepresentation; teacher has neglected duties or been convicted of a crime involving moral turpitude; teacher has been neglectful of duties; or other due and sufficient cause exists. Teachers may be dismissed on similar grounds.

- DELAWARE: Teacher's certificate may be revoked for immorality, misconduct in office, incompetency, willful neglect of duty, or disloyalty. Teachers may be dismissed or suspended on similar grounds.
- FLORIDA: Teacher's certificate may be revoked or suspended for obtaining certificate by fraud, incompetence, gross immorality or an act involving moral turpitude, revocation of a teaching certificate in another state, conviction of a crime other than a minor traffic violation, breach of teaching contract, or delinquency in CHILD SUPPORT obligations. Teachers may be dismissed or suspended on similar grounds.
- GEORGIA: Teachers may be dismissed for incompetency, insubordination, willful neglect of duties, immorality, encouraging students to violate the law, failure to secure and maintain necessary educational training, and any other good and sufficient cause.
- HAWAII: Teacher's certificate may be revoked for conviction of crime other than traffic offense or if the employer finds that teacher poses a risk to the health, safety, or well being of children. Teacher may be dismissed for inefficiency, immorality, willful violations of policies and regulations, or other good and JUST CAUSE.
- IDAHO: Teacher's certificate may be revoked for gross neglect of duty, incompetence, breach of contract, making a false statement on application for certificate, conviction of a crime involving moral turpitude or drugs or a felony offense involving children. Grounds for revocation of a teacher's certificate are also grounds for dismissal.
- ILLINOIS: Teacher's certificate may be revoked or suspended for immorality, health condition detrimental to students, incompetence, unprofessional conduct, neglect of duty, willful failure to report CHILD ABUSE, conviction of certain sex or narcotics offenses, or other just cause. Teachers may be dismissed on similar grounds.
- INDIANA: Teacher's certificate may be revoked for immorality, misconduct in office, incompetency, willful neglect of duty, or improper cancellation of a contract. Permanent and semi-permanent teachers may be dismissed on similar grounds.
- IOWA: Teacher's certificate may be revoked for any cause that would have permitted refusal to grant the certificate. Teachers may be dismissed for just cause.
- KANSAS: Teacher's certificate may be revoked for immorality, gross neglect of duty, annulling a written contract, or any other cause that would have justified refusal to grant the certificate.
- KENTUCKY: Teacher's certificate may be revoked for immorality, misconduct in office, incompetency, willful neglect of duty, or submission of false information. Teachers may be dismissed or suspended on similar grounds.

- LOUISIANA: Permanent teachers may be dismissed for incompetence, dishonest, willful neglect of duty, or membership or contribution to an unlawful organization.
- MAINE: Teacher's certificate may be revoked for evidence of child abuse, gross incompetence, or fraud. Teachers may be dismissed on similar grounds.
- MARYLAND: Teachers may be dismissed or suspended for immorality, misconduct in office, insubordination, incompetency, or willful neglect of duty.
- MASSACHUSETTS: Teacher's certificate may be revoked for cause. Teachers may be dismissed for inefficiency, incapacity, conduct unbecoming of a teacher, insubordination, failure to satisfy teacher performance standards, or other just cause.
- MICHIGAN: Teacher's certificate may be revoked or suspended for conviction of SEX OFFENSES and crimes involving children. Teachers may be dismissed for reasonable and just causes or failure to comply with school law.
- MINNESOTA: Teacher's certificate may be revoked or suspended for immoral character or conduct, failure to teach the term of a contract without just cause, gross inefficiency, willful neglect of duty, failure to meet requirements for licensing, or fraud or misrepresentation in obtaining a license. Teachers may be dismissed on similar grounds.
- MISSISSIPPI: Teachers may be dismissed or suspended for incompetency, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil, or other good cause.
- MISSOURI: Teacher's certificate may be revoked or suspended for incompetency, cruelty, immorality, DRUNKENNESS, neglect of duty, annulling a written contract without consent from the local board, or conviction of a crime involving moral turpitude. Teachers may be dismissed on similar grounds.
- MONTANA: Teacher's certificate may be revoked or suspended for false statements on an application for the certificate, any reason that would have disqualified the person from receiving a certificate, incompetency, gross neglect of duty, conviction of a crime involving moral turpitude, or nonperformance of an employment contract. Teachers may be dismissed on similar grounds.
- NEBRASKA: Teacher's certificate may be revoked for just cause, including incompetence, immorality, intemperance, cruelty, certain crimes, neglect of duty, unprofessional conduct, physical or mental incapacity, or breach of contract. Teachers may be dismissed for just cause, as defined by statute.
- NEVADA: Teacher's certificate may be revoked for immoral or unprofessional conduct, unfitness for service, physical or mental incapacity, conviction of a crime involving moral turpitude or sex offenses, advocacy of the overthrow of the government, persistent refusal to

obey rules, or breach of a teaching contracts. Teachers may be dismissed or suspended on similar grounds.

- NEW HAMPSHIRE: Teachers may be dismissed for immorality, incompetence, failure to conform to regulations, or conviction of certain crimes.
- NEW JERSEY: Teacher's certificate may be revoked if teacher is a noncitizen; certificate may be suspended if teacher breaches contract. Teachers may be dismissed on similar grounds.
- NEW MEXICO: Teacher's certificate may be revoked or suspended for incompetency, immorality, or any other good and just cause. Teachers may be dismissed for good cause.
- NEW YORK: Teacher's certificate may be revoked if teacher is unfit to teach due to moral character or if teacher fails to complete a school term without good cause. Teachers may be dismissed on similar grounds.
- NORTH CAROLINA: Teachers may be dismissed for inadequate performance, immorality, insubordination, neglect of duty, physical or mental incapacity, HABITUAL or excessive use of alcohol or other controlled substances, or conviction of a crime involving moral turpitude.
- NORTH DAKOTA: Teacher's certificate may be revoked or suspended for any cause that would permit refusal to issue the certificate, incompetency, immorality, intemperance, cruelty, commission of a crime, refusal to perform duties, violation of professional codes, breach of teacher contract, or wearing religious garb. Teachers may be dismissed on similar grounds.
- OHIO: Teacher's certificate may be revoked for intemperance, immorality, incompetence, NEGLIGENCE, or other conduct unbecoming of the position. Teachers may be dismissed on similar grounds, including assisting a student to cheat on an achievement, ability, or proficiency test.
- OKLAHOMA: Teachers may be dismissed for immorality, willful neglect of duty, cruelty, incompetency, teaching disloyalty to the U. S. government, moral turpitude, or criminal sexual activity.
- OREGON: Teacher's certificate may be revoked or suspended for conviction of certain crimes (including sale or possession of a controlled substance), gross neglect of duty, gross unfitness, or wearing religious dress at school. Teachers may be dismissed or suspended on similar grounds.
- PENNSYLVANIA: Teacher's certificate may be revoked for incompetency, cruelty, negligence, immorality, or intemperance. Teachers may be dismissed on similar grounds.

- RHODE ISLAND: Teacher's certificate may be revoked, or teacher may be dismissed, for good and just cause.
- SOUTH CAROLINA: Teacher's certificate may be revoked for just cause, including incompetence, willful neglect of duty, willful violation of state board rules, unprofessional conduct, drunkenness, cruelty, crime, immorality, conduct involving moral turpitude, dishonesty, evident unfitness, or sale or possession of narcotics. Teachers may be dismissed on similar grounds.
- SOUTH DAKOTA: Teacher's certificate may be revoked or suspended for any cause that would have permitted issue of the certificate, violation of teacher's contract, gross immorality, incompetency, flagrant neglect of duty; or conviction of a crime involving moral turpitude. Teachers may be dismissed on similar grounds.
- TENNESSEE: Teacher's certificate may be revoked if teacher is guilty of immoral conduct. Teachers may be dismissed or suspended on similar grounds, including incompetence, inefficiency, neglect of duty, unprofessional conduct, and insubordination.
- TEXAS: Teacher's certificate may be revoked or suspended if teacher's activities are in violation of the law, the teacher is unworthy to instruct the youth of the state, the teacher abandons his or her contract, or the teacher is convicted of a crime. Teachers may be dismissed or suspended on similar grounds.
- UTAH: Teacher's certificate may be revoked or suspended for immoral or incompetent conduct, or evidence of unfitness for teaching. Teachers may be dismissed for cause.
- VERMONT: Teacher's certificate may be revoked for cause. Teachers may be dismissed for just and sufficient cause. Teachers may be suspended for incompetence, conduct unbecoming of a teacher, failure to attend to duties, or failure to carry out reasonable orders and directions of superintendent or board.
- VIRGINIA: Teachers may be dismissed for incompetency, immorality, noncompliance with school laws or rules, certain DISABILITY, and convictions of certain crimes. Teachers may be suspended for good and just cause when the safety or welfare of children are threatened.
- WASHINGTON: Teacher's certificate may be revoked for immorality, violation of a written contract, intemperance, a crime involving child neglect or abuse, or unprofessional conduct. Teachers may be dismissed for sufficient cause.
- WEST VIRGINIA: Teacher's certificate may be revoked for drunkenness; untruthfulness; immorality; unfitness due to physical, mental or moral defect; neglect of duty; using FRAUDULENT, unapproved, or insufficient credit; or other cause. Teachers may be dismissed or suspended on similar grounds.

- WISCONSIN: Teacher's certificate may be revoked for incompetency, immoral conduct, or conviction of certain felonies. Tenured teachers may be dismissed on similar grounds.
- WYOMING: Teacher's certificate may be revoked or suspended for incompetency, immorality, other reprehensible conduct, or gross neglect of duty. Teachers may be dismissed on similar grounds.

18. Student Rights

A teacher should be well aware of Student rights. Student rights are those rights which protect students, here meaning those persons attending schools, universities and other educational institutions. The level of rights accorded to students, whether legally or by convention, varies considerably around the world.

19. Student Rights in United States

In 1969, the United States federal courts, in *Tinker v. Des Moines Independent Community School District*, ruled that, "Students do not shed their constitutional rights... at the schoolhouse gate." The *Morse v. Frederick* trial was a First Amendment student free speech case argued before the Supreme Court of the United States on March 19, 2007. The case involves Joseph Frederick, a then 18-year-old high school senior in Juneau, Alaska, now 24, who was suspended for 10 days after displaying a "Bong Hits 4 Jesus" banner across the street from his high school during the Winter Olympics Torch Relay in 2002.

In addition to the United States Constitution granting Freedom of Expression Rights to public school students, some state constitutions afford greater rights to public school students than those granted by the United States Constitution. For example, Massachusetts General Laws Chapter 71, sec. 82 grants broader rights to public secondary school schools regarding Rights of Students to Freedom of Expression. It states:

The right of students to freedom of expression in the public schools of the commonwealth shall not be abridged, provided that such right shall not cause any disruption or disorder within the school. Freedom of expression shall include without limitation, the rights and responsibilities of students, collectively and individually, (a) to express their views through speech and symbols, (b) to write, publish and disseminate their views, (c) to assemble peaceably on school property for the purpose of expressing their opinions. Any assembly planned by students during regularly scheduled school hours shall be held only at a time and

place approved in advance by the school principal or his designee. No expression made by students in the exercise of such rights shall be deemed to be an expression of school policy and no school officials shall be held responsible in any civil or criminal action for any expression made or published by the students. For the purposes of this section and sections eighty-three to eighty-five, inclusive, the word student shall mean any person attending a public secondary school in the commonwealth. The word school official shall mean any member or employee of the local school committee. The result is students in the public secondary schools of the Commonwealth of Massachusetts are only held to the Tinker standard regarding Freedom of Expression.

Students in public higher education have substantially greater rights than students in primary and secondary education. First, the vast majority of students in public higher education are legal adults; thus, the state does not stand in loco parentis in relation to them, as they are their own guardians, possessing the same rights that all citizens have. In addition, public universities and colleges are institutions dedicated to the free exchange of ideas, the concept of academic freedom, and the concept of shared governance. This translates to the fact that free speech and participation in governance of the institution by students is common.

Students rights' in the context of higher education often extends to concepts like:

- the right to form groups of their choosing to express their views, and receive funding for them;
- the right to speak freely, assemble, and demonstrate;
- the right to due process and a impartial hearing in any disciplinary matter;
- the right to participate in the governance of the institution;
- the right to make rules and regulations and have primary responsibility for the governance of student conduct;
- the right to do as they will, so long as they harm no other;

Especially at large public research universities with large residential populations (flagship/land-grant universities) students organize around these issues using their student government and negotiate with the university administration on them.

Topic : Professional Employees: Civil Rights**Topic Objective:**

At the end of this topic student will be able to understand:

- Civil and Political Rights
- Civil Rights in United States
- Role of Education in Civil Rights Formulation

Definition/Overview:

Civil and political rights are a class of rights ensuring things such as the protection of peoples' physical integrity; procedural fairness in law; protection from discrimination based on gender, religion, race, sexual orientation, etc; individual freedom of belief, speech, association, and the press; and political participation.

Key Points:**1. Civil and Political Rights**

Civil and political rights are a class of rights ensuring things such as the protection of peoples' physical integrity; procedural fairness in law; protection from discrimination based on gender, religion, race, sexual orientation, etc; individual freedom of belief, speech, association, and the press; and political participation. Contrast with economic, social and cultural rights. Civil and political rights are included in the Universal Declaration of Human Rights and elaborated upon in the International Covenant on Civil and Political Rights. The theory of three generations of human rights considers these to be first-generation rights, and most (but not all) of them are considered to be negative rights.

Examples of civil rights and liberties include the right to get redress if injured by another, the right to privacy, the right of peaceful protest, the right to a fair investigation and trial if suspected of a crime, and more generally-based constitutional rights such as the right to vote, the right to personal freedom, the right to freedom of movement and the right of equal protection. Laws guaranteeing civil rights may be written down, derived from custom, or implied. In the United States and most continental European countries, civil rights laws are most often written. As civilizations emerged and their laws were formalized through written constitutions, some of the more important civil rights were granted to citizens. When those

grants were later found inadequate, civil rights movements emerged as the vehicle for claiming more equal protection for all citizens and advocating new laws to restrict the effects of discrimination.

Implied rights are rights that a court may find to exist even though not expressly guaranteed by written law or custom, on the theory that a written or customary right must necessarily include the implied right. One famous (and controversial) example of a right implied from the U.S. Constitution is the "right to privacy", which the U.S. Supreme Court found to exist in the 1965 case of *Griswold v. Connecticut*. In the 1973 case of *Roe v. Wade*, the court found that state legislation prohibiting or limiting abortion violated this right to privacy. As a rule, state governments can expand civil rights beyond the U.S. Constitution, but they cannot diminish Constitutional rights.

2. Civil Rights in United States

Civil rights can refer to protection against public (government) and or private sector discrimination. In the United States, the Fourteenth Amendment to the United States Constitution protects citizens against many forms of State discrimination, with its due process and equal protection requirements. Civil rights can also refer to protection against private actors or entities. The U.S. Congress subsequently addressed the issue through the Civil Rights Act of 1964 Sec. 201. which states: (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin or sex. This legislation and the Americans with Disabilities Act of 1990 are constitutional under the Commerce Clause, as the Supreme Court has ruled that the Fourteenth Amendment only applies to the State. States generally have the power to enact similar legislation, provided that they meet the federal government under the doctrine of police powers.

The terms civil rights and civil liberties are often used interchangeably in the United States. Thomas Jefferson wrote, "a free people [claim] their rights as derived from the laws of nature, and not as the gift of their chief magistrate." The United States Constitution recognizes different civil rights than do most other national constitutions. Two examples of civil rights found in the US but rarely (if ever) elsewhere are the right to bear arms (Second Amendment to the United States Constitution) and the right to a jury trial (Sixth Amendment to the United States Constitution). Few nations, not even including a world organization body such as the United Nations, have recognized either of these civil rights. Many nations

recognize an individual's civil right to not be executed for murdering another, a civil right not recognized within the US.

3. Role of Education in Civil Rights Formulation

Education played a very important part in post-1945 civil rights history. Much time and effort was spent on education - the belief being that in a democracy it was only right and fair that all people regardless of skin colour should have the right to a decent education. This issue of civil rights and education made international headlines with the affair that took place at Little Rock High School in 1957. But education was to remain at the forefront of civil rights even after this event. In 1945, the two areas where segregation and racism was most obviously applied was in housing and in education. In the southern states, the African Americans lived in the poorest areas with the worst facilities. That they did was symbolic that they had the worst paid jobs that could only afford the most basic of facilities. The worst financed schools were also in these areas so the separation between education and the general standard of lifestyle in America is a clinical one - the two must be seen as being one of a whole. This problem was not only restricted to the southern states either.

Within the south, the general philosophy that had developed since the civil war, was that if African Americans were kept ill-educated they would remain in their place in society. An educated "boy" could become a danger. There was also a belief in some areas that African Americans were not intelligent enough to deserve an education. The shadow of "Jim Crow" cast itself over education in the south. The result of this was very much linked to the poverty most African Americans found themselves in - without a good education, no-one could advance themselves in southern society. Therefore, a poor education guaranteed a poor lifestyle for the African Americans

There had been some movement after the Second World War regarding attitudes. The horror of the death camps in Europe and the abject nonsense of scientific racism had moved by degrees some sections

of southern society. The whole element of black equalling backwardness weakened though it did not die out. Military service by African Americans had made young men more assertive and the NAACP built on this development.

In Section 4 of this course you will cover these topics:

- Student Rights And Discipline
- The Pyramid Of Discrimination Remedies

Topic : Student Rights And Discipline

Topic Objective:

At the end of this topic student will be able to understand:

- Students' union
- Public Higher Education
- National Youth Rights Association
- Student activism
- Student Rights in USA

Definition/Overview:

Student rights are those rights which protect students, here meaning those persons attending schools, universities and other educational institutions. The level of rights accorded to students, whether legally or by convention, varies considerably around the world.

Key Points:

1. Student Rights in USA

In 1969, the United States federal courts, in *Tinker v. Des Moines Independent Community School District*, ruled that, "Students do not shed their constitutional rights... at the schoolhouse gate." The *Morse v. Frederick* trial was a First Amendment student free speech case argued before the Supreme Court of the United States on March 19, 2007. The case involves Joseph Frederick, a then 18-year-old high school senior in Juneau, Alaska, now 24, who was suspended for 10 days after displaying a "Bong Hits 4 Jesus" banner across the street from his high school during the Winter Olympics Torch Relay in 2002.

In addition to the United States Constitution granting Freedom of Expression Rights to public school students, some state constitutions afford greater rights to public school students than those granted by the United States Constitution. For example, Massachusetts General Laws Chapter 71, sec. 82 grants broader rights to public secondary school schools regarding Rights of Students to Freedom of Expression. It states:

Chapter 71: Section 82. Public secondary schools; right of students to freedom of expression; limitations; definitions

Section 82. The right of students to freedom of expression in the public schools of the commonwealth shall not be abridged, provided that such right shall not cause any disruption or disorder within the school. Freedom of expression shall include without limitation, the rights and responsibilities of students, collectively and individually, (a) to express their views through speech and symbols, (b) to write, publish and disseminate their views, (c) to assemble peaceably on school property for the purpose of expressing their opinions. Any assembly planned by students during regularly scheduled school hours shall be held only at a time and place approved in advance by the school principal or his designee. No expression made by students in the exercise of such rights shall be deemed to be an expression of school policy and no school officials shall be held responsible in any civil or criminal action for any expression made or published by the students. For the purposes of this section and sections eighty-three to eighty-five, inclusive, the word student shall mean any person attending a public secondary school in the commonwealth. The word school official shall mean any member or employee of the local school committee. The result is students in the public secondary schools of the Commonwealth of Massachusetts are only held to the Tinker standard regarding Freedom of Expression.

2. Public Higher Education

Students in public higher education have substantially greater rights than students in primary and secondary education. First, the vast majority of students in public higher education are legal adults; thus, the state does not stand in loco parentis in relation to them, as they are their own guardians, possessing the same rights that all citizens have. In addition, public universities and colleges are institutions dedicated to the free exchange of ideas, the concept of academic freedom, and the concept of shared governance. This translates to the fact that free speech and participation in governance of the institution by students is common.

Students rights' in the context of higher education often extends to concepts like:

- the right to form groups of their choosing to express their views, and receive funding for them;
- the right to speak freely, assemble, and demonstrate;
- the right to due process and a impartial hearing in any disciplinary matter;
- the right to participate in the governance of the institution;
- the right to make rules and regulations and have primary responsibility for the governance of student conduct;
- the right to do as they will, so long as they harm no other;

Especially at large public research universities with large residential populations (flagship/land-grant universities) students organize around these issues using their student government and negotiate with the university administration on them.

3. National Youth Rights Association

The **National Youth Rights Association**, or **NYRA**, is the largest youth rights group in the United States, with several thousand members. NYRA proposes lessening and removing various legal restrictions that are imposed on young people but not adults, for example, the voting age, drinking age, curfews, etc. NYRA also favors easier access to legal emancipation for young people and greater respect for student rights. Its slogan was formerly "the last civil rights movement", in reference to the youth rights movement and its aims to remove the last existing legal causes for discrimination (age). It also referred to the theory that removing the first discrimination people experience (age) will reduce or eliminate all other forms.

However, by vote of the membership in 2008 prompted by belief that the slogan was too long or controversial, it was changed to "live free, start young".

2005 was a significant year for NYRA. In late March, several NYRA members traveled to Vermont in support of a bill lowering the drinking age to eighteen. They visited numerous colleges and signed up over 2000 new supporters. They participated in a debate at the Vermont state house, and the event was significantly covered by the media. Meanwhile in Washingtonstate, a new chapter in Olympia, Washington, testified in support of a state constitutional amendment to lower the state's voting age to sixteen. From February to August 2006, President Adam King led a local campaign to add a nonvoting student adviser onto the Buncombe County (N.C.) Board of Education. His project had the support of the Asheville Citizen-Times and over 60 faculty members and administrators at his high school. However, in August, the Board of Education rejected his proposal citing that they already had sufficient student input. During his campaign, King made several appearances in the media. By 2006, NYRA's main area of focus was expanding its local chapters. Chapters had increased fivefold between 2003 and 2006. In 2006, the Board of Directors formally established that chapters are separate legal entities. The chapter formation division saw a major restructure near the end of 2006. Previously, the division was divided into five regions with one person assigned to that region. However, the division's management decided to utilize a national pool of representatives working with all intents throughout the nation.

4. Student activism

Student activism is work done by students to effect political, environmental, economic, or social change. It has often focused on making changes in schools, such as increasing student influence over curriculum or improving educational funding. In some settings, student groups have had a major role in broader political events. In the United States, student activism is often understood as a form of youth activism that is specifically oriented toward change in the American educational system. Student activism in the United States dates to the beginning of public education, if not before. The best early historical documentation comes from the 1930s. The American Youth Congress was a student-led organization in Washington, DC, which lobbied the US Congress against racial discrimination and for youth programs. It was heavily supported by First Lady Eleanor Roosevelt.

The 1960s saw student activists gaining increased political prominence. One highlight of this period was Students for a Democratic Society (SDS) launched in Ann Arbor, Michigan, a student-led organization that focused on schools as a social agent that simultaneously oppresses and potentially uplifts society. SDS eventually spun off the Weather Underground. Another successful group was Ann Arbor Youth Liberation, which featured students calling for an end to state-led education. Also notable was the Student Nonviolent Coordinating Committee, which fought against racism and for integration of public schools across the US. These specific organizations closed in the mid-1970s. The largest student strike in American history took place in May and June 1970, in response to the Kent State shootings and the American invasion of Cambodia.

In the early 1980s several formalized organizations brought neoliberal models of student activism to campuses across the nation, especially the Campus Outreach Opportunity League (C.O.O.L.). They claim large responsibility for identifying and championing the interest in service among higher education students. American society saw an increase in student activism again in the 1990s with the ushering in of the neoliberal community service policies of Bill Clinton. The popular education reform movement has led to a resurgence of populist student activism against standardized testing and teaching, as well as more complex issues including military/industrial/prison complex and the influence of the military and corporations in education. There is also increased emphasis on ensuring that changes that are made are sustainable, by pushing for better education funding and policy or leadership changes that engage students as decision-makers in schools. Major contemporary campaigns

include work for funding of public schools, against increased tuitions at colleges or the use of sweatshop labor in manufacturing school apparel (e.g. United students against sweatshops), for increased student voice throughout education planning, delivery, and policy-making (e.g. The Roosevelt Institution), and to raise national and local awareness of the humanitarian consequences of the Darfur Conflict. There is also increasing activism around the issue of global warming. Antiwar activism has also increased leading to the creation of the Campus Antiwar Network and the refounding of SDS in 2006.

Numerous critics of student activism suggest that the automatic typification of student activists as "students" (or "agents of activism") rather than free-thinking individuals is in itself a form of oppression; by isolating individuals as students without acknowledging their multiple other identities, activist movements tend to disenfranchise the very students that participate in them.

5. Students' union

A students' union, student government, student senate, students' association, guild of students or government of student body is a student organization present in many colleges, universities and has started to appear in some high schools. In the latter, said organization is often accorded its own building on the campus, dedicated to social and organizational activities of the student body.

Many students' unions are run by students for students, independent of the educational facility. The purpose of these organizations is to represent students both within the institution and externally, including on local and national issues. They are also responsible for providing a variety of services to students. Students can get involved in its management through numerous and varied committees, councils and general meetings, or become one of its elected officers.

Many students' unions are highly politicized bodies, and often serve as a training ground for aspiring politicians. Campaigning and debate is often very vigorous, with the youthful enthusiasm of the various partisans, a student media that is itself often partisan, inexperienced, and under no financial pressure to slant coverage to please a broad readership,

and a general lack of serious consequences for decision all encouraging political gamesmanship. Other unions however are less politicized. Students' Unions generally have similar aims irrespective of the extent of politicization, and focus on providing facilities, support and services to students as well as political goals. Students' unions often officially recognize and allocate an annual budget to other organizations on campus. In some institutions, postgraduate students are within the general students' unions, whereas in others they have their own Postgraduate Representative Body. In some cases graduate students to lack formal representation in student government. In the United States, these groups are often known as student government or "Associated Students." In the U.S., the phrase "student union" often refers to a "student activity center" (also known as a "student center" or "student commons"), a building containing a "union" of many dining halls, game rooms, lounges, student offices, and other spaces for student activities. At institutions with large graduate, medical school, and individual "college" populations, there are often student governments that serve those specific constituencies

Topic : The Pyramid Of Discrimination Remedies

Topic Objective:

At the end of this topic student will be able to understand:

- Educational inequality
- Forms of Sex Discrimination in Education
- Consequences of Sex Discrimination in Education
- Bias in school textbooks
- Property tax dilemma
- Social mobility

Definition/Overview:

Racial and ethnic discrimination: Racial and ethnic discrimination in education exacts a terrible toll on children and adults by denying access to the very avenues that would assist them to become fully functional and motivated contributors to society. In the United States, despite decades of successful civil rights advocacy, discrimination and segregation in education persist, and in many areas are worsening. In European Union member states, recently arrived immigrants as well as ethnic minority European citizens are often shunted

into inferior schools and classes, or denied access to the range of educational options available to non-minority Europeans.

Key Points:

1. Educational inequality

Educational inequality occurs in educational systems designed in such a way that schools perpetuate, rather than reduce, inequality. Rather than attempting to decrease societal inequality gaps, this type of educational system results in the maintenance of class and race boundaries. Distributing unequal resources to children with different socioeconomic status backgrounds, has been linked to lower test scores and low college enrollment rates, which is a negative side effect of this educational inequality. In the U.S., school quality and availability of resources are determined by the amount of funding that schools receive. Furthermore, the amount of funding schools receive is determined to a large extent by property taxes paid by homeowners; close to half of property taxes go to nearby school districts

2. Forms of Sex Discrimination in Education

Sex discrimination in education is applied to women in several ways. First, many sociologists of education view the educational system as an institution of social and cultural reproduction. Existing patterns of inequality, especially for gender inequality, are reproduced within schools through formal and informal processes. Another way the educational system discriminates towards females is through course-taking, especially in high school. This is important because course-taking represents a large gender gap in what courses males and females take, which leads to different educational and occupational paths between males and females. For example, females tend to take fewer advanced mathematical and scientific courses, thus leading them to be ill-equipped to pursue these careers in higher education. This can further be seen in technology and computer courses.

Also, cultural norms may also be a factor causing sex discrimination in education. For example, society suggests that women should be mothers and be responsible for the bulk of childrearing. Therefore, women feel compelled to pursue educational pathways that lead to occupations that allow for long leaves of absences, so they can be stay at home mothers . Furthermore, the idea of a hidden curriculum further adds to the discrimination of women in the educational system. The hidden curriculum refers to the idea that teachers interact and teach each of their students in a way that reinforces relations of gender, as well as race and

social class . For example, teachers may give more attention to boys, resulting in them becoming more social, whereas girls become quieter and learn that they should be passive and defer to boys . Students are also being socialized for their expected adult roles through the correspondence principle of sociology through schools. For example, girls may be encouraged to learn skills valued in female-dominated fields, while boys might learn leadership skills for male-dominated occupations.

3. Consequences of Sex Discrimination in Education

Sex discrimination in education invariably occurs when women remain considerably behind men in economic and social status. In addition, this discrimination results in a substantial gender gap in pay towards women (.75 cents for every dollar that men make), for the most part, being in low status, sex-stereotyped occupations, which in part is due to gender differences in majors . They also have to endure the main responsibilities of domestic tasks, even though their labor force participation has increased. Sex discrimination in education also causes schools to reproduce inequality towards women. Sex discrimination in high school and college course-taking also results in women not being prepared or qualified to pursue more prestigious, high paying occupations. Sex discrimination in education also results in women being more passive, quiet, and less assertive, due to the effects of the hidden curriculum . In 2005, USA Today reported that the "college gender gap" was widening; stating that fifty-seven percent of U.S. college students are female.

4. Bias in school textbooks

The content of school textbooks is often the issue of debate, as their target audience is young people, and the term "whitewashing" is the one commonly used to refer to selective removal of critical or damaging evidence or comment. The reporting of military atrocities in history is extremely controversial, as in the case of the Holocaust (or Holocaust denial) and the Winter Soldier Investigation of the Vietnam War. The representation of every society's flaws or misconduct is typically downplayed in favor of a more nationalist or patriotic view. Also, Christians and other religionists have at times attempted to block the teaching of the theory of evolution in schools, as evolutionary theory appears to contradict their religious beliefs. In the context of secondary-school education, the way facts and history are presented greatly influences the interpretation of contemporary thought, opinion and socialization. One legitimate argument for censoring the type of information disseminated is based on the inappropriate quality of such material for the young. The use of the "inappropriate"

distinction is in itself controversial, as it can be used to enforce wider and more politically motivated censorship.

Many recent allegations against the United States have surfaced about the hiding of many historical facts from the public through public education and thus luring the public to believing that the actions taken by the U.S. government are justified and provide a global benefit. Such bias is typical in most countries. Howard Zinn and James Loewen are among the well-recognized critics of US history as presented in school textbooks. A People's History of the United States, by American historian and political scientist Zinn, seeks to present American history through the eyes of groups rarely heard in mainstream histories. Loewen spent two years at the Smithsonian Institution studying and comparing twelve American history textbooks widely used throughout the United States. His findings were published in Lies My Teacher Told Me: Everything Your High School History Textbook Got Wrong.

5. Property tax dilemma

The more affluent a neighborhood, the higher the property taxes, and the higher the funding for that school district is. Although this situation seems favorable, the problem emerges when the equation is reversed. In neighborhoods inhabited by predominantly working and lower class families, properties are less expensive, and so property taxes are much lower than those in affluent neighborhoods. Consequently, funding for the schools districts that working and lower class children are assigned to is also significantly lower than the funding for the school districts that children of affluent families are assigned to. Thus, students in working and lower class schools do not receive the same quality of education and access to resources as do students from affluent families. The reality of the situation is that distribution of resources for schools is based on the socioeconomic status of the parents of the students. As a result, the U.S. educational system significantly aids in widening the gap between the rich and the poor, a gap that has increased, rather than decreased, over the past few decades due to lack of social mobility.

6. Social mobility

Social mobility refers to the movement in class status from one generation to another. It is related to the "rags to riches" notion that anyone, with hard work and determination, has the ability to move upward no matter what background they come from. Contrary to that notion, however, sociologists and economists have concluded that although exceptions are heard of, social mobility has remained stagnant and even decreased over the past thirty years. Some of the decrease in social mobility may be explained by the stratified educational system. Since

the educational system forces low-income families to place their children into less-than-ideal school systems, those children are typically not presented with the same opportunities and educational motivation as are students from well-off families, resulting in patterns of repeated intergenerational educational choices for parent and child, also known as decreased or stagnant social mobility

Social immobility expresses itself in lower class children who follow in the same footsteps as their parents, mainly not obtaining higher education.

The result of such choices is that the poor remains poor and the rich go to college. Reasons for poor children opting to not pursue college range from a variety of different explanation. Lower class children have not grown up with the same expectations of life because these have not been instilled in them by their parents, or most importantly, by the educational system. The U.S. educational system fails its lower-income students by not providing them with the same access to resources and opportunities as it does to its more affluent students. Furthermore, several studies have shown that programs such as gifted education and tracking (education) further manage to separate those with higher level skills from those with lower level skills, which often happens to be the rich from the poor. In fact, the vast majority of children in gifted student programs happen to be middle-class Caucasian. This is not to say that poor students are not as smart as rich students, but it does imply that they have not received the same opportunities in childhood to develop certain skills. Middle and upper class students grow up with parents who foster their intellectual and educational development by engaging in a child raising approach known as concerted cultivation. This approach values education and learning, and parents engaged in this form of parenting value visits to the museum, extracurricular activities, homework, tutoring, and reading to their children. Furthermore, middle and upper-class parents can afford to place their children in significantly better childcare centers before they enter grade school. As the Carolina Abecedarian Project found, these are essential elements in future educational and life successes. Evidence for the unequal distribution of college students' socioeconomic status can be seen by examining college enrollment rates and demographics. One study examined the top 146 colleges in America and found that the average student representation on the colleges was the following: 75% of students came from socioeconomic backgrounds consistent with the richest 25% of the population. Less than 5% of students came from the poorest 25% of the population.

In Section 5 of this course you will cover these topics:

- Private Education: Alternatives To Public Schools

Topic Objective:

At the end of this topic student will be able to understand:

- Public Education in USA
- Educational Alternatives
- Lessons from History
- Legality of private schooling

Definition/Overview:

Public Education: Private schools, or independent schools, are schools not administered by local, state, or national government, which retain the right to select their student body and are funded in whole or in part by charging their students tuition rather than with public (state) funds. In the United Kingdom and some other Commonwealth countries the use of the term is generally restricted to primary and secondary educational levels: it is almost never used of universities or other tertiary institutions. Private education in North America covers the whole gamut of educational activity. Private schools range from pre-school to tertiary level institutions. Annual tuitions at K-12 schools range from nothing at tuition-free schools to more than \$40,000 at several boarding schools.

Key Points:**1. Public Education in USA**

The secondary level includes schools offering grades 7 through 12 and grade 13. This category includes preparatory schools or "prep schools", boarding schools and day schools. Tuition at private secondary schools varies from school to school and depends on many factors, including the location of the school, the willingness of parents to pay, peer tuitions, and the endowment. High tuition, schools claim, is used to pay higher salaries for the best teachers, and also used to provide enriched learning environments including a low student to teacher ratio, small class sizes and services such as libraries, science laboratories, and computers. Some private schools are boarding schools. Some military schools are privately owned or operated as well.

Religiously affiliated or denominational schools form a subcategory of private schools. Some such schools teach religious lessons together with the usual academic subjects to instill their

particular faith's beliefs and traditions in the students who attend. For example, The Epstein School in Atlanta, Georgia teaches conservative Judaism to its students. Others use the denomination as more of a general label to describe on what the founders based their belief, while still maintaining a fine distinction between academics and religion. They include parochial schools, a term which is often used to denote Catholic Christian schools. Other religious groups represented in the K-12 private education sector include Protestants, Jews, Muslims, and the Orthodox Catholics.

2. Educational Alternatives

Many educational alternatives, such as independent schools, are also privately financed. Private schools often avoid some state regulations, although in the name of educational quality, most comply with regulations relating to the educational content of classes. Religious private schools often simply add religious instruction to the courses provided by local public schools.

Special assistance schools aim to improve the lives of their students by providing services tailored to very specific needs of individual students. Such schools include tutoring schools and schools to assist the learning of handicapped children.

In the United States, the term "private school" can be correctly applied to any school for which the facilities and funding are not provided by the federal, state, or local government; as opposed to a "public school", which is operated by the government or, in the case of charter schools, independently with government funding and regulation. A small minority of private schools are prestigious non-religious institutions, but the vast majority of them are operated by religious organizations.

Private schools are generally exempt from most educational regulations, but tend to follow the spirit of regulations concerning the content of courses in an attempt to provide a level of education equal to or better than that available in public schools. Additionally, many students (particularly those at the transition between primary and secondary school) transfer to a public school, and therefore require similar preparation to that available in public schools.

3. Lessons from History

In the nineteenth century, as a response to the perceived domination of the public school systems by Protestant political and religious ideas, many Catholic parish churches, dioceses, and religious orders established schools, which operate entirely without government funding. For many years, the vast majority of private schools in the United States were Catholic schools. A similar perception (possibly relating to the evolution vs. creationism debates)

emerged in the late twentieth century among Protestants, which has resulted in the widespread establishment of new, non-Catholic, private schools.

Funding for private schools is generally provided through student tuition, endowments, and donations and grants from religious organizations or private individuals. Government funding for religious schools is either subject to restrictions, or possibly forbidden, according to courts' interpretation of the Establishment Clause of the First Amendment. Non-religious private schools theoretically could qualify for such funding, but prefer the advantages of independent control of their student admissions and course content.

A similar concept, recently emerging from within the public school system, is the concept of "charter schools", which are technically independent public schools, but in many respects operate similarly to non-religious private schools.

4. Legality of private schooling

Private schooling in the United States has been debated by educators, law makers, and parents since the beginnings of compulsory education in Massachusetts in 1852. United States Supreme Court precedent appears to favor educational choice, so long as states may set standards for educational accomplishment. Some of the most relevant Supreme Court case law on this is as follows: *Runyon v. McCrary*, 427 U.S. 160 (1976); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).) There is a potential conflict between the values espoused in the above cited cases and the limitations set forward in Article 29 of the United Nations Convention on the Rights of the Child.