

COURSE DESCRIPTION

Class Schedule

Classes will be held on Mondays and Wednesdays from 10:05 to 11:30 a.m.

Office Hours

Office hours are scheduled by appointment. It is best to arrange an appointment with me during the class break or at the close of class. Generally, I hold office hours in the study at my home at 38 Longfellow Avenue (just a short walk from campus). If you need to cancel an appointment, please call either my home (725-2695) or my office (786-3566).

Accountability

Tests will consist of an hour exam and a final. Both tests will be closed book-open notebook examinations. You may use your case briefs and class notes during the exams. You may not use the casebook, supplementary cases, handouts, or other photocopied materials (also excluded are photocopies of other students' case briefs and notes). Small study groups are encouraged in preparation for exams, and you may use your personal notes from these study groups during exams.

All assigned cases, whether in the casebook or in the supplementary materials, should be briefed. (We will discuss how to brief cases in one of the early classes, and you will also be provided with a handout on how to brief cases.) **Each student is expected to come to class prepared to discuss the reading assignment for that day.** If, for any reason, you have not been able to complete the assigned reading, you should still attend class, but you should inform me at the beginning of the class session that you are not prepared to participate. In that event, I will not call on you. Otherwise, because we use the Socratic method (a structured dialogue between the student and teacher designed to probe the principles contained in court decisions), I will feel free to call upon students on a random basis. Students are encouraged to volunteer during class discussions. Participation counts toward the final grade.

Early in the semester, you will be asked to write a short paper on an assigned topic. A 2,500-word research paper (approximately 10 double-spaced pages), on a subject of your choosing after consultation with me, will be due toward the end of the semester.

Each student will be asked to participate in a short in-class debate on an assigned topic. These two-person debates will consist of one advocate taking the “affirmative” position and will speak for three minutes in support of the proposition set forth in the question presented. This will be followed by the student taking the “negative” position and speaking for three minutes in opposition. There will be no formal rebuttal. Instead, both speakers will be subject to questions and comments from class members for five minutes. At the conclusion of the debate and questions/comments period, we will proceed with the regular class assignment.

The Final Exam is on Wednesday, May 15 at 8:30 a.m.

Research Training

The Library maintains a course guide for this class to assist students in conducting research (<https://bowdoin.libguides.com/spring2019-gov2024>). The assigned reference librarian is Barbara Levergood (blevergo@bowdoin.edu). There will be a legal database research training session for this class, conducted by Ms. Levergood, on Wednesday, February 6 at 7:00 p.m. in the Electronic Classroom in Hawthorne-Longfellow Library.

READING ASSIGNMENTS

The following readings are in Yudof et al., *Educational Policy and the Law* 5th Ed. (2011) and supplementary materials as indicated. This syllabus is intended as a guide, and the pace of our progress may be adjusted. Additional supplementary materials may be distributed during the course of the semester.

State Control Over The Educational Process

1. 1-17; 51-55; supplement. Also provisions of US Constitution - Preamble (p. 997); Congressional Powers, Art. I, Sec.8 (pp. 998-999); Bill of Rights, Amendments I, IV, V, IX, X, XIV (pp.1002-1004); 958-960 (through Note 1)

Principal Issues and Cases: early American colonial education laws and Jefferson's Virginia education bill (supplement); compulsory education laws and the right to attend a private school as an alternative to mandatory public education (Pierce v. Society of Sisters); state restraints on private schools (Farrington v. Tokushige; Meyer v. Nebraska); article Fiss, "The Forms of Justice."

Compulsory Schooling and Individual Freedoms

2. 17-34 (through Note 4); 114-115 (Note 2); supplement

Principal Issues and Cases: the conflict between the state's interests in universal, mandatory education and parents' objections to compulsory education laws on grounds of religious freedom and personal preferences (Wisconsin v. Yoder; note and photograph re Iowa/Amish school controversy—supplement; Bd. Of Educ. Kiryas Joel Village School v. Grumet—supplement; Employment Div., Dept. of Human Resources of Oregon v. Smith).

Parental Choice - Home Schooling and Charter Schools

3. 34-50 (through Note 4); 987-996; 495-498 (through Note 7); supplement

Principal Issues and Cases: the right to, and regulation of, home schooling (Care and Protection of Charles); religious freedom and home education (Combs v. Homer-Center School District); Maine Homeschooling Law – supplement; parental choice and charter schools; article Bulman and Kirp, "From Vouchers to Charters;" Notes 1-6; *U.S. News* and NEA articles re charter schools – supplement; race and charter schools; ethnicity-centric curricula

State Regulation of Private Schools

4. 56-86 (through Note 3); supplement

Principal Issues and Cases: the extent to which the state may regulate faculty certification, curriculum, and building standards of private schools over the religious objections of private schools (Fellowship Baptist Church v. Benton; State of Ohio v. Whisner; Kentucky State Bd. v. Rudasill; City of Sumner v. First Baptist Church of Sumner); labor laws and religious schools; discrimination by private religious schools in student admissions and faculty selection; (Runyon v. McCrary; Provisions of the Civil Rights Act of 1866 and note on Jones v. Alfred Mayer – supplement; Cook v. Hudson; Brown v. Dade Christian Schools. Inc.; Ohio Civil Rights Commission v. Dayton Christian Schools. Inc.).

State Aid to Private Religious Schools

5. 107-115 (Notes 1 & 3); supplement

Principal Issues and Cases: constitutional restrictions on state aid to private religious schools (summary of pre-voucher cases—supplement); direct aid to religious schools; (Agostini v. Felton; 1985 Pittsburgh Post-Gazette article and 1996 New York Times article—supplement; Mitchell v. Helms; Blaine Amendments and Harper's Weekly cartoon of 1871 - supplement; Trinity Lutheran Church v. Comer—supplement).

Voucher Programs

6. 86-96 (through Note 3); 973-986; supplement

Principal Issues and Cases: article Friedman, “Free to Choose”—supplement; voucher programs applicable to religious schools (Zelman v. Simmons-Harris); article Chubb and Moe, “Politics, Markets and The Organization of Schools;” article Bulman and Kirp, “From Vouchers to Charters;” article Rouse and Barrow, “School Vouchers and Student Achievement.”

Prayer and Religious Ceremony In Public Schools

7. 122-148 (through Note 4); supplement

Principal Issues and Cases: bible reading, prayers and moments of silence in public schools (Engel v. Vitale – supplement; Abington School District v. Schempp; Wallace v. Jaffree); invocations and benedictions at graduation ceremonies (Lee v. Weisman); prayers at school sporting events (Santa Fe Independent School District v. Doe); display of Ten Commandments (Stone v. Graham - supplement; note on McCreary v. ACLU and Van Orden v. Perry - supplement).

The Evolution Controversy

8. 148 (beginning with Note 2)-166 (through Note 2); supplement

Principal Issues and Cases: teaching of evolution and creationism (Epperson v. Arkansas; photographs from Tennessee Scopes trial and Tennessee anti-evolution statute – supplement; Edwards v. Aguillard; Selman v. Cobb Cnty. Sch. Dist.- supplement; “Intelligent Design” debate in *National History* magazine – supplement).

Curriculum and Religion

9. 166 (beginning with Note 3) - 185 (through Note 6); supplement

Principal Issues and Cases: community complaints alleging the teaching of secular humanism and objections to alleged anti-religious teaching (Smith v. Board of School Commissioners of Mobile County; materials on secular humanism—supplement; Mozert v. Hawkins County Board of Education; Fleischfresser v. Directors of School Dist. 200 – supplement; New Hampshire law permitting parents to exempt their children from studying objectionable materials – supplement).

Access By Student and Non-Student Groups to School Facilities;

10. 185 (beginning with Note 4) -222 (through Note 6); supplement

Principal Issues and Cases: right of student religious groups and secular student organizations to use of school facilities during non-instructional time (Widmar v. Vincent), Equal Access Act (Board of Education of Westside Community Schools v. Mergens); (Healy v. James); access to funding (Rosenberger v. Univ. of Va.) mandatory student fees; (Bd. of Regents of University of Wisconsin System v. Southworth); use of school buildings by religious groups after school hours (Lamb's Chapel v. Center Moriches Union Free School Dist. - supplement; Good News Club v. Milford Central School).

Nonsectarian Student Socialization

11. 226-248 (through Note 7); supplement

Principal Issues and Cases: the role of schools in socializing students, mandatory participation in civic ceremonies such as flag saluting (West Virginia State Board of Education v. Barnette; Elk Grove Unified School District v. Newdow - supplement); free speech objections to removal of books from school libraries (Board of Education Island Trees Union Free School District No. 26 v. Pico).

Student First Amendment Rights to Freedom of Expression

12. 248-283 (through Note 5)

Principal Issues and Cases: students' rights to symbolic speech and protest (Tinker v. Des Moines Independent Community School District); restrictions on use of lewd language at student assemblies (Bethel School District No. 403 v. Fraser); censoring student newspapers (Hazelwood School District v. Kuhlmeier); suspension of student for displaying pro-drug banner (Morse v. Frederick).

Controversial Student and Teacher Expression

13. 284-298 (through Note 5); supplement

Principal Issues and Cases: restriction by school administrators on "insensitive" student speech (Barr v. Lafon; IOTA XI Chapter v. George Mason University - supplement); controversial speech and publication by university faculty members (Levin v. Harleston - supplement); off-campus student speech (Doninger v. Niehoff; article on off-campus student speech in *Constitution Daily* – supplement).

Academic Freedom; Factors Relevant To Teacher Employment Decisions; Teachers' Rights of Free Expression

14. 299-323; supplement

Principal Issues and Cases: relevance of citizenship, loyalty oaths, political association, personal lifestyles and sexual orientation to employment of teachers (Ambach v. Norwick); restrictions on teacher expression (Pickering v. Board of Education); teacher expression of personal political views (Mayer v. Monroe - supplement); right of teachers to select course materials (Evans-Marshall v. Bd. of Ed.).

Procedural Due Process and Its Application to Teacher Employment and Student Discipline

15. 360-380 (through Note 3); 386-395 (through Note 5); 396-400

Principal Issues and Cases: article Kirp, “Proceduralism and Bureaucracy: Due Process in the School Setting;” teachers' procedural protections from arbitrary termination of employment (Board of Regents v. Roth; Perry v. Sindermann); students' procedural protections from arbitrary discipline (Goss v. Lopez); corporal punishment (Ingraham v. Wright); due process and academic standing (Board of Curators of the University of Missouri v. Horowitz).

Search and Seizure of Student Property

16. 328-355 (through Note 2b); 358-360 (starting and ending with Note 6)

Principal Issues and Cases: the extent to which school administrators are allowed to search students for contraband (New Jersey v. T.L.O.; Safford Unified School Dist. v. Redding); drug testing of students (Vernonia School District v. Acton; Board of Education of Pottawatomie County v. Lindsay Earls).

Desegregation of Public Schools

17. 407-416; 420 (beginning with Part III) - 430 (through Note 4); 432 (beginning with Part IV) - 436

Principal Issues and Cases: downfall of the “separate but equal” doctrine (Brown v. Board of Education of Topeka I); scope of relief to desegregate public schools (Brown v. Board of Education of Topeka II); expanding the scope of judicial intervention to desegregate school systems (Green v. County School Board; Swann v. Charlotte-Mecklenburg Board of Education; Keyes v. School District No.1); desegregation orders and school district borders (Milliken v. Bradley).

Scope and Limits of Integration Remedies

18. 438-440 (Notes 3-5); 485-488; 489-493; 496-498 (Notes 6 & 7); supplement

Principal Issues and Cases: use of magnet schools as a desegregation remedy; limits on court-ordered remedies (Missouri v. Jenkins, Thomas concurring opinion - supplement); article Kahlenberg, “Socioeconomic School Integration;” article Levin, “Race and School Choice;” race/ethnicity-centric curricula.

Competitive Admission Standards, Affirmative Action, and Racial Balancing

19. 455-484; supplement

Principal Issues and Cases: affirmative action in public university admissions (Regents of the Univ. of Cal. v. Bakke; Gratz v. Bollinger; Grutter v. Bollinger; Fisher v. University of Texas – supplement); racial balancing in student school assignments (Parents Involved in Community Schools v. Seattle School District No. 1); article “Harvard Defends Admission Policy As Asian-American Bias Trial Ends” – supplement.

Gender and Equal Educational Opportunity

20. 546-571 (through Note 2); 574-576 (through Note 2); 590-601 (through Note 4); 607-608 (through Note 4); 610-615 (through Note 4); supplement

Principal Issues and Cases: single sex educational institutions (Mississippi University for Women v. Hogan; United States v. Virginia); Title IX of the 1972 Education Amendments; equal protection and gender (Mercer v. Duke Univ.; Communities for Equity v. Michigan High School Athletic Association, Inc. – supplement; G.G. v. Gloucester County School Bd – supplement); Sharif by Salahudin v. New York State Education Department).

Equal Educational Opportunity and School Finance - Federal Issues

21. 808-831 (through Note 7); 704-713 (through Note 1); 714 (Notes 4&5); 878-881 (through Note 1)

Principal Issues and Cases: inequalities in school funding due to reliance on local property taxes to finance public education; Equal Protection objections to inequities resulting from school financing based on local property taxes (Serrano v. Priest; San Antonio Independent School District v. Rodriguez); right of children of illegal immigrants to a free public education (Plyer v. Doe); fees imposed on school bus transportation (Kadrmas v. Dickinson Public Schools).

Equal Educational Opportunity and School Finance - State Issues

22. 831-845; 849-858 (through Note 3); supplement

Principal Issues and Cases: state (*i.e.*, non-federal) constitutional grounds for addressing educational inequities resulting from school financing arrangements (Brigham v. State; Rose v. Council for Better Education, Inc.; Abbot v. Burke; Campaign for Fiscal Equity, Inc. v. New York - supplement).

The Federal Role in Providing Equal Educational Opportunities for the Handicapped

23. 736 (starting with Note 2) - 755 (through Colker article); 757-763 (IDEA procedural process); 764-769; supplement

Principal Issues and Cases: Individuals with Disabilities in Education Act (IDEA) (Board of Education v. Rowley; Endrew F. v. Douglas Cnty. Sch. Dist.—supplement; Roncker v. Walter; Hartmann v. Loudoun County Board of Education); article Colker, “The Disability Integration Presumption: 30 Years Later;” legalization of the educational setting for handicapped students; discipline and student disabilities (Honig v. Doe).

Public Sector Collective Bargaining and the Right to Strike

24. supplement

Principal Issues: The scope of collective bargaining rights for teachers and the process for negotiating labor agreements; arbitration as an alternative to the right to strike; public policy considerations regarding the role of teacher unions. Excerpt from Maine Statute Regarding Public Employees Collective Bargaining Process – supplement; excerpts from article by Hess and West, “A Better Bargain!”

Overhauling Teacher Collective Bargaining for the 21st Century” – supplement; article Toch, “Teacher Unions are Dead! Long Live Teacher Unions!” – supplement; article in The Daily Beast “Debate: Are Teachers’ Unions the Problem—or the Answer?” – supplement; article re Janus v. AFSCME – supplement.