

# Researching Education Law

By Keith Lacy

**E**ducation law in the United States is heavily informed by principles of federalism. However, the importance of education nationally has increasingly led to the federal government's involvement—particularly in respect to funding education and enforcing civil rights. The following is a brief description of the structure of education law in the United States, highlighting resources that may be helpful when researching legal issues involving teachers, students, and schools.

## Public education is a state responsibility

The legal framework for public education in the United States is highly decentralized and local. The Supreme Court has never recognized a right to education guaranteed by the U.S. Constitution.<sup>1</sup> Instead, authority for the provision of public education is considered among those powers reserved to the states.<sup>2</sup> Each state has enacted its own constitutional basis for providing public education—a list of all such constitutional clauses is available through the National Conference of State Legislatures (NCSL).<sup>3</sup> In fulfilling their civic responsibilities in this area, state lawmakers have made different decisions regarding the autonomy granted to local districts and schools, as well as the extent to which decision making about public education is centralized in state education agencies and boards. For example, some states—most notably Michigan—have tried to insulate higher education from state interference by making public colleges and universities constitutionally autonomous from the state legislature.<sup>4</sup>

Legal disputes in education law often involve litigating the precise boundaries of different actors' authority to direct educational

activities. The highly local nature of this authority—from state laws to individual school policies—can present difficulties when trying to gather relevant information on a particular topic. Rules and guidance documents are less likely to be collected in a systematic and intuitively searchable manner compared to cases or statutes. While these documents are often published on state or district websites, broken links and bad website design can be a frustrating research obstacle.

An efficient strategy is conducting a Google search of the institution or organization website using the “site:” operator. For example, typing *site:michigan.gov/mde student discipline* returns only results from the Michigan Department of Education website containing the words “student discipline.” This is a simple way to focus the power of Google's search algorithm to check only the places you want to look. There are other Google search operators that can improve your internet searching such as filtering by file type and proximity searches. Dan Russel, a senior research scientist at Google, maintains a list of documented search tools.<sup>5</sup>

## The federal government's role

While states are primarily responsible for public education, the importance of the fruits of education—social, cultural, and economic, as well as the constitutionally protected rights of students and educators—have led to the federal government playing

an enormous role in education. The U.S. Department of Education is the most prominent federal actor through its distribution of funding and efforts to ensure equal access to education.<sup>6</sup> In addition to the wealth of information about state and federal laws available on its website, it also sponsors ERIC, an online database of bibliographic records and full-text education research and literature.<sup>7</sup> When accessed through a public or university library subscription, the number of full-text files available on ERIC increases significantly.

Federal education statutes are codified in Title 20 of the United States Code. Regulations can be found in Title 34 of the Code of Federal Regulations. A few of the most important federal laws in this area include:

- Every Student Succeeds Act (ESSA), 20 USC 1001 *et seq.*, 20 USC 6301 *et seq.*, which reauthorized the Elementary and Secondary Education Act of 1965, setting federal education policy (replaced the No Child Left Behind Act of 2001).
- Federal Education Rights and Privacy Act (FERPA), 20 USC 1232(g), 34 CFR 99, which protects privacy of student educational records at institutions receiving federal funding.
- Title VI of the Civil Rights Act of 1964, 34 CFR 100, which prohibits discrimination based on race, color, or national origin in programs receiving federal financial assistance.

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- Title IX of the Civil Rights Act of 1964, 34 CFR 106, which prohibits discrimination based on sex in all programs or activities receiving financial assistance.
- Individuals with Disability Education Act (IDEA), 20 USC 1400 *et seq.*, which provides free public education and services to children with disabilities.

### Further reading

Education law is a truly vast field that touches on a number of developed areas in their own right—everything from the First Amendment to labor law and intellectual property. It's simply impossible to cover everything, but here are a few good starting points:

- For a good single-volume treatise with a national scope, see Dodd, *Practical Education Law for the 21st Century* (2nd ed) (Durham: Carolina Academic Press, 2010).
- The NCSL website at <https://www.ncsl.org> is an excellent and regularly updated source of information about educational initiatives in state legislatures (as well as many other important issues). Its offerings include bill tracking, funding statistics, and responses to COVID-19. To view their education resources, check the Education topic page by navigating to the NCSL homepage, mousing over the “Research” drop-down menu in the menu bar, and selecting “Education” under “Topics.”<sup>8</sup>
- Education Commission of the States at <https://www.ecs.org/> is another good online resource for bill tracking in all 50 states.<sup>9</sup> The site also publishes free newsletters for current awareness.
- Guidance memos for Michigan schools on COVID-19 and many other topics are available on the Michigan Department of Education website [https://www.michigan.gov/mde/0,4615,7-140-37818\\_53456\\_98453-523558--,00.html](https://www.michigan.gov/mde/0,4615,7-140-37818_53456_98453-523558--,00.html) [<https://perma.cc/5WQY-HK6J>]. Michigan provides updates on school outbreaks of COVID on Mondays at 3 p.m. at [https://www.michigan.gov/coronavirus/0,9753,7-406-98163\\_](https://www.michigan.gov/coronavirus/0,9753,7-406-98163_)

98173\_102480---,00.html [<https://perma.cc/Q42P-GS5U>].

- For an excellent spotlight on special education law, see Virginia Neisler's November 2019 Libraries and Legal Research column, *Resources for Special Education Advocacy*, 98 Mich B J 5 4 (2019) at <http://www.michbar.org/file/barjournal/article/documents/pdf4article3807.pdf> [<https://perma.cc/4VN8-HWKH>]. ■



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### ENDNOTES

1. *San Antonio Indep Sch Dist v Rodriguez*, 411 US 1; 93 S Ct 1278; 36 L Ed 2d 16 (1973).
2. US Const., Art X.
3. *The State Role in Education Finance*, NCSL (September 8, 2020) <<https://www.ncsl.org/research/education/state-role-in-education-finance.aspx#1>> [<https://perma.cc/KQ8E-TWTQ>]. All websites cited in this article were accessed February 3, 2021.
4. Const 1963, art 8, § 4. See also *Sterling v Regents of Univ Mich*, 110 Mich 369; 68 NW 253 (1896).
5. Russel, *Advanced Search Operators* (last updated August 23, 2019) <<https://docs.google.com/document/d/1ydVajJel1EYbVWlfj9TfBTE5IBADkQfZrQaBZxqXGs/edit>> [<https://perma.cc/V49M-S6X6>].
6. *About ED*, US Dep't of Education <<https://www2.ed.gov/about/landing.html?src=ft>> [<https://perma.cc/Y8EV-7NA8>].
7. ERIC, Inst of Education Sciences <<https://eric.ed.gov/>> [<https://perma.cc/GGF7-E9ER>].
8. *Education*, NCSL <<https://www.ncsl.org/research/Education.aspx>> [<https://perma.cc/G9VZ-F9GN>].
9. *State Education Policy Tracking*, Education Comm of the States <<https://www.ecs.org/state-education-policy-tracking/>> [<https://perma.cc/82YC-ARAS>].

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