



# A Primer on Federal Statutes Affecting Education

By Charles J. Russo, J.D., Ed.D.

This column summarizes major statutes affecting education.

**B**efore the Supreme Court’s monumental decision banning racial segregation in schooling in *Brown v. Board of Education* (1954), the federal government had little direct involvement in national education policy. Subsequently, the federal government has assumed a major role in setting national education policy.

The federal government’s first post-*Brown* major legislative enactment, in 1958, was the adoption of the National Defense Education Act (NDEA). Enacted largely in response to the Soviet Union’s launching of *Sputnik 1*, the NDEA, made federal funds available to education institutions to focus on areas considered critical to national defense, such as mathematics, science, and foreign languages. Even though the NDEA was ultimately consolidated as part of the Elementary and Secondary Education Act of 1965—now the No Child Left Behind Act—its effect can still be felt.

In light of the far-reaching consequences of federal laws, this column summarizes major statutes affecting education, so that school business officials and other education leaders can have a quick guide to those statutes. This review broadly divides cases involving students and employees. Some of the statutes, such as Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, affect students as well as employees and visitors. Where appropriate, the column briefly summarizes major Supreme Court cases that interpreted those statutes.

## Students/Educational Programming *Elementary and Secondary Education Act of 1965*

Initially enacted in 1965 during the height of the civil rights movement, the Elementary and Secondary Education Act of 1965

(ESEA) is the most expansive federal education statute in history. In fact, the ESEA was the first act of Congress to provide large-scale support for education, both public and nonpublic, creating a pool of federal funds that could be, and were, used to withhold support from those states that failed to comply with the Civil Rights Act of 1964.

Reauthorized in 2002 as the cornerstone of President George W. Bush’s education policy, the ESEA—renamed the No Child Left Behind Act (NCLB)—has been controversial since its enactment. Although the NCLB had strong bipartisan support in Congress, it remains to be seen whether the act can bring about the intended school improvement because of its far-reaching, essentially unfocused, scope.

At its heart, the NCLB is designed to help students perform at grade level. As debate rages on an array of issues surrounding the NCLB—particularly as the U.S. Department of Education has waived many of the law’s requirements—the reauthorization process that should have occurred in 2010 has yet to take place, although it is getting more attention of late. The most recent authorized legislation is divided into 9 subchapters, down from 14 in the earlier version.

NCLB retains many of its original provisions, such as Title (or Chapter) I, now Subchapter I, “Improving the Academic Achievement of the Disadvantaged,” perhaps the best-known part of the ESEA. Subchapter I requires local educational agencies (LEAs) that receive federal financial assistance to take steps to improve academic achievement among students who are economically disadvantaged. Subchapter I is divided into subparts designed to provide basic opportunities, such as remedial programs for specifically identified children from poor families.

Other key subparts of Subchapter I cover (a) allocations; (b) grants for reading skills improvements; (c) education for migratory children; (d) prevention and intervention programs for children and youth who are neglected, delinquent, or at risk; (e) national assessment of Subchapter I; (f) comprehensive school reform; (g) advanced placement programs; and (h) school dropout prevention. Moreover, the Supreme Court's 1997 judgment in *Agostini v. Felton*, which removed barriers to the contrary, now permits the on-site delivery of Subchapter I services to students who attend religiously affiliated nonpublic schools.

Subchapter II, "Preparing, Training, and Recruiting High Quality Teachers and Principals," contains sections that go to the heart of the NCLB and includes some of the act's most controversial and far-reaching provisions. The major parts of that subchapter address (a) teacher and principal recruiting funds, (b) mathematics and science partnerships, (c) innovations for teacher quality, and (d) programs for enhancing education through technology.

"Language Instruction for Limited English Proficient and Immigrant Students," Subchapter III, directs educators to provide improved language instruction for children needing such programs. Subchapter IV, "21st Century Schools," is divided into two major parts: the first concerns safe and drug-free schools and communities, whereas the second focuses on 21st-century learning centers.

Subchapter V, "Promoting Informed Parental Choice and Innovative Programs," covers innovative programs, public charter schools, assistance for magnet schools, and funding for improving education. Among the 20 initiatives identified under funding are (a) partnerships in character education, (b) programs for students who are gifted and talented, (c) Star Schools, (d) foreign-language assistance, (e) physical

education, (f) excellence in economic education, (g) grants to improve the mental health of children, (g) grants to combat domestic violence, and (h) the Women's Educational Equity Act. The programs in Subchapter V are designed to afford parents better choices while creating innovative educational programs, especially if LEAs are unresponsive to their needs and those of their children.

"Flexibility and Accountability," Subchapter VI, is divided into three major parts: (a) improving academic achievement, (b) rural education initiatives, and (c) general provisions. Subchapter VII, "Indian, Native Hawaiian, and Alaska Native Education," supports the educational efforts of states, LEAs, and postsecondary educational institutions that serve the target populations.

Subchapter VIII, "Impact Aid," offers financial aid to LEAs that are experiencing substantial and continuing financial burdens because of the acquisition of real property by the federal government. The subchapter is designed to provide education for children (a) who live on, and whose parents are employed on, federal property; (b) whose parents are in the military and live in low-rent housing; (c) who are part of heavy concentrations of students whose parents are federal employees but do not reside on federal property; (d) whose schools experience sudden and substantial increases or decreases in enrollments because of military realignments; or (e) whose schools need special help with capital expenditures for construction projects.

"General Provisions," Subchapter IX, largely includes (a) what can best be described as boilerplate language; (b) reviews of definitions; (c) flexibility in the use of administrative and other funds; (d) program coordination; (e) waivers; (f) uniform provisions, including such topics as participation by students and teachers in nonpublic schools; (g) complaint processes for the participation

of nonpublic schools; (h) uniform provisions; and (i) evaluations.

### ***Title IX, Education Amendments of 1972***

Title IX was initially enacted to eliminate gender-based discrimination in sports programs that received federal financial assistance. The Supreme Court later expanded the scope of Title IX by applying it in cases involving sexual harassment in school settings.

The first two Supreme Court cases addressing sexual harassment in schools involved teacher misbehavior. In *Franklin v. Guinnett County Public Schools* (1992), the Court held that a school board was liable for the actions of a male teacher who engaged in nonconsensual sexual relations with a female student. In *Gebser v. Lago Vista Independent School District* (1998), the Court found that a board could not be liable under Title IX for a teacher's actions unless a district official who, at a minimum, had the authority to institute corrective measures and had actual notice of, and was deliberately indifferent to, the inappropriate sexual misconduct.

In *Davis v. Monroe County Board of Education* (1999), the Supreme Court set the standards for peer-to-peer sexual harassment. The Court explained that a school board can be accountable only if educators—who have substantial control over the students and the context within which the harassment occurred—are deliberately indifferent to harassment of which they have actual knowledge, harassment that is so severe, pervasive, and objectively offensive that it deprives the victim of access to educational opportunities or benefits.

### ***Individuals with Disabilities Education Act (IDEA)***

Perhaps the most effective of all federal education statutes, the IDEA was initially enacted in 1975 as the Education for All Handicapped Children Act, a name it retained until 1990. Last updated

in 2005, the IDEA, like NCLB, is awaiting an overdue congressional reauthorization.

The IDEA guarantees a free appropriate public education in the least-restrictive environment for each student with a disability. The IDEA also provides students and their parents with unprecedented procedural and substantive due process rights. The IDEA's regulations flesh out the meaning of specific sections.

To be covered by the IDEA, students must meet four eligibility requirements: (a) they must be between the ages of 3 and 21, (b) they must have specifically identified disabilities, (c) they must be in need of a special-education program directed by individualized education programs (IEPs), and (d) they must be in need of related services.

*Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) was the first case interpreting the then Education for All Handicapped Children

Act. The Supreme Court ruled that an appropriate education was one formulated in accordance with the IDEA's procedures and was sufficient to confer some educational benefit on a child with a disability, even if it was not the best possible education under the circumstances. In *Honig v. Doe* (1988), the Court addressed disciplining students with disabilities for the only time.

In *Cedar Rapids Community School District v. Garrett F.* (1999), the Supreme Court decided that boards are required to provide and pay for full-time nurses while a student is in school if the student's medical condition requires constant nursing services. In *Schaffer ex rel. Schaffer v. Weast* (2005), the Court observed that absent state laws to the contrary, the burden of proof in due process hearings is on the party challenging IEPs—typically parents.

In *Murphy v. Arlington Central School District Board of Education* (2006), the Supreme Court

reasoned that the IDEA's fee-shifting provision did not cover the costs of expert witnesses for parents who challenged school boards in seeking services for their children. Later, in *Winkelman v. Parma City School District* (2007), the Court noted that insofar as nonattorney parents have rights that are separate and apart from their children, they can proceed on their own without an attorney in judicial actions challenging the IEPs of their children.

### *Section 504 of Rehabilitation Act of 1973*

Section 504, the first federal civil rights law protecting the rights of the disabled, is more expansive than the IDEA because it covers students, staff, parents, and visitors in school settings. Even so, Section 504 ultimately offers fewer protections for students. Under Section 504, individuals with disabilities who can participate in programs receiving federal financial assistance despite



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their impairments cannot be denied the benefits of or be subjected to discrimination if they can participate with reasonable accommodations.

In a major difference from the IDEA, Section 504 allows school officials three defenses to limit or excuse compliance with its terms: (a) cost, (b) significant alterations in the nature of programs, and (c) health or safety risks for individuals or others.

#### *Americans with Disabilities Act (ADA)*

The ADA, enacted in 1990, extends protections, similar to those available under Section 504, to individuals in the private sector in employment, public accommodations, and transportation.

#### *Family Educational Rights and Privacy Act (FERPA)*

FERPA, also known as the Buckley Amendment, clarifies the rights of students and their parents to educational records. FERPA's two main goals are (a) to grant students and their parents timely access to educational records and (b) to limit outsiders' access to those records.

#### *Stewart B. McKinney Homeless Assistance Act*

The McKinney Act requires states to ensure that children who are homeless have equal access to the same public school education as other children.

### **Nondiscrimination Statutes**

Federal nondiscrimination statutes are divided into two broad categories: (a) those prohibiting discrimination in employment and (b) those banning discrimination in institutions that receive federal financial assistance.

#### *Discrimination in Employment*

Key employment statutes applicable to school boards are Title VII of the Civil Rights Act of 1964; the Pregnancy Discrimination Act; the Age Discrimination in Employment Act of

1967; the ADA, discussed earlier; and the Family and Medical Leave Act.

**Title VII of the Civil Rights Act of 1964.** Title VII, the most far-reaching federal employment statute, forbids discrimination in programs that receive federal financial assistance. In part, Title VII prohibits employers from discriminating against any individual with respect to any aspect of employment on the basis of the person's race, color, religion, sex, or national origin. It also prohibits employers from limiting, segregating, or classifying employees or applications in any way that would deprive the person of an employment opportunity or affect his or her employment status because of race, color, religion, sex, or national origin.

Title VII covers all employers, regardless of whether they receive federal financial assistance, while recognizing an array of exceptions for religious organizations.

**Pregnancy Discrimination Act.** The PDA, now incorporated into Title VII, prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions.

**Age Discrimination in Employment Act.** The ADEA prohibits employers from discriminating against individuals who are 40 years of age or older with regard to hiring, firing, job classifications, and wages.

**Family and Medical Leave Act.** The FMLA protects employees who may be forced to choose between their families and jobs when they need extended leave to care for personal or family medical needs by providing a range of due process rights safeguarding their employment.

#### *Discrimination in Institutions That Receive Federal Financial Assistance*

Statutes applicable to school boards by virtue of their receiving federal financial assistance include Section 504 of the Rehabilitation Act of 1973, discussed earlier; Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments

of 1972, discussed earlier; the Equal Pay Act of 1963; the Fair Labor Standards Act; and FERPA, discussed earlier.

**Title VI of the Civil Rights Act of 1964.** This foundational legislation prohibits entities that receive federal funding assistance from discriminating against anyone on the grounds of race, color, or national origin.

**Equal Pay Act of 1963.** The EPA, part of the larger Fair Labor Standards Act, prohibits discrimination in pay on the basis of gender.

**Fair Labor Standards Act.** The FLSA, a comprehensive labor statute, details requirements that employers must follow in dealing fairly with their employees.

Along with the remedies available under each of these statutes, two additional antidiscrimination laws can be applied in school-related disputes.

**Section 1981 of the Civil Rights Act of 1866.** Section 1981 prohibits discrimination on the basis of national origin and race in forming contracts.

**Section 1983 of the Civil Rights Act of 1871.** Section 1983 of the Civil Rights Act of 1871 is a vehicle for seeking damages for violations of federal constitutional and statutory rights. Section 1983 makes it unlawful for individuals who act with apparent authority on behalf of a state or the federal government to deprive any citizen of the United States or other person within the jurisdiction of the United States of any rights, privileges, or immunities guaranteed by the Constitution and laws.

### **Conclusion**

As important as the statutes discussed in this column are, keep in mind that school systems are regulated by a wide assortment of overlapping federal and state statutes. Education leaders would be wise to update their knowledge of the law regularly.

## References

Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.*  
*Agostini v. Felton*, 521 U.S. 203 (1997).  
 Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*  
*Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982).  
*Brown v. Board of Education*, 347 U.S. 483 (1954).  
*Cedar Rapids Community School District v. Garrett F.*, 526 U.S. 66 (1999).  
*Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).  
 Equal Pay Act of 1963, 29 U.S.C. § 206(b).  
 Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*  
 Fair Pay Act, 42 U.S.C. § 2000e-5(3)(A).  
 Family and Medical Leave Act, 29 U.S.C. § 2611 *et seq.*  
 Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

*Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992).  
*Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998).  
*Honig v. Doe*, 484 U.S. 305 (1988).  
 Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.*  
*Murphy v. Arlington Central School District Board of Education*, 548 U.S. 291 (2006).  
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 No Child Left Behind Act, 20 U.S.C. §§ 6301 *et seq.*  
 Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k).  
*Schaffer ex rel. Schaffer v. Weast*, 564 U.S. 49 (2005).  
 Section 504 of Rehabilitation Act of 1973, 29 U.S.C. § 794.  
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 Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983.

Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. §§ 11431 *et seq.*  
 Strengthening and Improvement of Elementary and Secondary Schools, 20 U.S.C.A. §§ 6301 *et seq.*  
 Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.  
 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e.  
 Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681.  
*Winkelman v. Parma City School District*, 550 U.S. 516 (2007).

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