

Duke University

Durham
North Carolina
27708-0959

EDUCATION 333S (Spring 2023)

SYLLABUS

LEGAL ISSUES IN EDUCATION

Instructor: Sue Wasiolek
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Class Meeting Time and Location: Wednesday, 10:15 a.m. - 12:45 p.m., 212 West Duke

Office Hours: I will be available on Thursday evenings for a drop-in Zoom from 7-8 PM (<https://duke.zoom.us/j/96111629710>, Meeting ID: 961 1162 9710, Passcode: 918161 One tap mobile +13092053325,,96111629710# US). If no one logs in by 7:15 pm, I will close the Zoom link. In addition, you should contact me if you are interested in a virtual or in-person individual appointment.

Course Description: This course is designed to introduce students to various legal issues facing the educational system in this country. Included for consideration and discussion will be such topics as first amendment rights (religious freedom and free speech); Title IX; due process, both procedural and substantive; liability of educational institutions and educators (negligence); contractual rights and obligations; and, student, staff, faculty and parental rights and privacy. Whenever possible, legal distinctions will be made between elementary/secondary schools and institutions of higher education as well as between private and public settings. Although a social justice lens is highly respected and regarded and certainly powerful with legal issues, such an approach will be utilized whenever possible but will not happen with all cases.

Course Materials: There is no textbook; please consult the syllabus for cases to read each week.

Course Requirements: Each student is required to:

- 1). Submit a brief (5% of your grade) for the case* that has been assigned to you and be prepared to lead the discussion of that case in class. The required format and contents of this assignment will be reviewed in class. The brief is due on the day the case is discussed in class and should include a section that outlines the implications of the case for K-12 and/or higher education today;
- 2). Lead the class discussion on the case+ that has been assigned to you (you are NOT to submit a brief);
- 3). Submit a one-to-two page (double-spaced) reflection by **May 3** writing your thoughts/impressions about one of the Amendments, cases or legal concepts we discussed in

class during the semester and its impact (as you perceive it) on K-12 and/or higher education (5% of your grade);

4). Write a persuasive, comprehensive appellate brief to include all legal arguments (45% of your grade). Pairs of students will be assigned the role of plaintiff or defendant in a relevant, education law case. Cases will be provided to students on **February 1**. You are invited to submit an outline and a first draft. The final brief is due on the last day of class (**April 26**). In addition to the brief, each pair is required to make an oral presentation of his/her research/brief to the class; **OR**,

Write a comprehensive summary and analysis (10 to 15 double-spaced pages, **due on April 26**) of a current legal issue or case (45% of your grade), outlining the current status of the law as defined by the courts. In addition, each student is required to make an oral presentation of his/her research (approximately 10-15 minutes) to the class. Topics must be approved by the instructor;

5). Complete two take-home quizzes (30% of your grade), responding to a hypothetical situation;

6). By the Monday prior to class each week, identify and send out an article about a legal issue that has been featured recently in the news/education publication (5% of your grade). Each student will be responsible on one of these days (assigned on this syllabus) to select and lead the discussion about the article that will be discussed; and,

7). Attend class. Since class participation is an integral part of this course (10% of your grade), attendance is in your best interest

Embedded Writing Consultant: We're lucky this semester to be paired with an Embedded Writing Consultant (EWC), who will be available to provide the same type of collaborative, non-evaluative writing consultations that you can get in the Writing Studio, with the benefit of being assigned to work exclusively with our class. This EWC is familiar with the assignment requirements particular to this class, but is not involved in the grading process. I'll be talking more with you about the particular ways in which you'll be interacting with our EWC as our semester gets underway. You will be required to meet with the EWC at least once.

Reader's Project: Stay tuned for information about how Duke alums can be helpful to you in this class.

COURSE OUTLINE

January 18

Introductions; Course Overview: Content and Requirements;
History/Nature of Educational Law; Judicial Structure and How to Find the Law;
Syllabus v. Case; How to Brief a Case; Visits by the Writing Studio and the
Reader's Project staff (tentative)

Institutional and Professional Liability/Negligence

Mullins v. Pine Manor Junior College, 449 N.E.2d 331 (Mass. 1983)

Bradshaw v. Rawlings, 612 F.2d 135 (3d Cir. 1979)

Titus v. Lindberg, 49 N.J. 66, 228 A.2d 65 (1967)

January 25

**Duke Law Library tour with Jane Bahnson; we will meet in Room 3000
at the Law School.**

February 1

Negligence (cont.) and Contracts Law (Cases assigned for appellate brief)

*Elliot v. Duke Univ., 66 N.C. App. 590, 311 S.E.2d 632, rev. den.,
311 N.C. 254, 321 S.E.2d 132 (1984)

*Ross v. Creighton Univ., 740 F. Supp. 1319 (N.D. Ill. 1990)

Ross v. Creighton Univ. 957 F.2d 410 (7th Cir. 1992)

See also: <https://prezi.com/hhlylcpqie9e/ross-v-creighton-university/> and
<https://www.chicagotribune.com/news/ct-xpm-1992-04-28-9202070837-story.html>

The Constitution and Educational Law; State Action –

NCAA v. Tarkanian, 488 U.S. 179 (1988)

*Tynecki v. Tufts, 875 F. Supp. 26 (D. Mass. 1994)

*Rendell-Baker v. Kohn, 457 U.S. 830 (1982)

February 8

The Constitution and Educational Law; Equal Protection (race and ethnicity)

(Paper topics approved)(Take home quiz assigned)

*Plessy v. Ferguson, 163 U.S. 537 (1896)

*Sweatt v. Painter, 339 U.S. 629 (1950)

*McLaurin v. Oklahoma State Regents 339 U.S. 637 (1950)

*Brown v. Bd. of Educ., 347 U.S. (1954),

See also: Brown v. Bd. of Educ., 349 U.S. 294 (1955)

*Plyer v. Doe, 457 U.S. 202 (1982)

*San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1 (1973)

Race Conscious Admissions

Regents v. Bakke

Grutter v. Bollinger

Gratz v. Bollinger

Fisher v. Univ. of Texas

February 15

The Constitution and Educational Law; Equal Protection (**Take home quiz due**)
(*gender, sexual preference and handicapping conditions*)

*[Mississippi Univ. for Women v. Hogan](#), 458 U.S. 718 (1982)

[Cohen v. Brown](#), 879 F. Supp. 185 (D.R.I.1995)

See also: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>

*[Southeastern Community College v. Davis](#), 442 U.S. 397 (1979)

*[Brd. of Educ. v. Rowley](#), 458 U.S. 176 (1982)

See also: <https://iris.peabody.vanderbilt.edu/module/iep01/cresource/q1/p02/>

*[Honig v. Doe](#), 484 U.S. 305 (1988)

*[Irving Indep. Schools v. Tatro](#), 468 U.S. 883 (1984)

*[School Bd. of Nassau Co. v. Arline](#), 480 U.S. 273 (1987)

*[Davis v. Univ. of N.C.](#), 263 F.3d 95 (4th Cir. 2001)

February 22

First Amendment Rights: Free exercise of Religion and the Establishment of Religion

*[Wisconsin v. Yoder](#), 406 U.S. 205 (1972)

*[Lee v. Weisman](#), 505 U.S.577 (1992)

+[Board of Educ. of Westside Community v. Mergens](#), 496 U.S. 226 (1990)

+[Rosenberger v. Univ. of Virginia](#), 515 U.S. 819 (1995)

+[Bob Jones v. U.S.](#), 461 U.S. 574 (1983)

First Amendment Rights: Freedom of Expression

Guest Speaker: [Professor Crystal Grant, Director, Duke Children's Law Clinic](#)

+[Tinker v. Des Moines Indep. Community School District](#), 393 U.S. 503 (1969)

+[Hazelwood School District v. Kuhlmeier](#), 484 U.S. 260 (1988)

March 8

NO CLASS – work on final projects

March 15

SPRING BREAK

March 29

First Amendment Rights: Freedom of Expression (cont.)

(**Take home quiz assigned**)

+[Bethel School District v. Fraser](#), 478 U.S. 675 (1986)

+[Papish v. Board of Curators](#), 410 U.S. 667 (1973)

[Iota Xi Chapter of Sigma Chi v. George Mason Univ.](#), 993 F.2d 386 (4th Cir. 1993)

+[Lovelace v. Southeastern Massachusetts Univ.](#), 793 F.2d 419 (1st Cir. 1986)

+[Mozert v. Hawkins Co. Bd. of Educ.](#), 827 F.2d 1058 (6th Cir. 1987)

Due process; student discipline

+[Dixon v. Alabama State Bd. of Educ.](#), 294 F.2d 151 (5th Cir. 1961)

+[Goss v. Lopez](#), 419 U.S. 565 (1975)

+[Perry v. Sinderman](#), 408 U.S. 593 (1972)

+[Board of Regents v. Roth](#), 408 U.S. 564 (1972)

+[Regents v. Ewing](#), 474 U.S. 214 (1985)

April 5

Privacy (Take home quiz due)

Guest Speaker: Durham Superior Court Judge Michael O’Foghludha

+[O’Halloran v. Univ. of Washington](#), 679 F. Supp. 997 (W.D. Wash. 1988)

+[New Jersey v. T.L.O.](#), 469 U.S. 325 (1985)

+[Veronia School Disticy v. Acton](#), 515 U.S. 646 (1995)

+[State v. Burrough](#), 926 S.W.2d 243 (Tenn. 1996)

+[Barrett v. Claycomb](#), 705 F.3d 315 (8th Cir. 2013)

+[U.S. v. Heckencamp](#), 482 F.3d 1142 (9th Cir. 2007)

Intellectual Property, UBIT

[Speck v. N.C. Dairy Foundation](#), 319 S.E.2d 139 (N.C. 1984)

[Stanford v. Roche](#), 563 U.S. 776 (2011)

April 12

Presentations

April 19

Presentations

April 26

Presentations (**Appellate Brief/Comprehensive papers due**)

May 3

Reflection Due

Reference Materials

Books:

Barr, Student Services and the Law, Jossey-Bass Publishers (1988).

Edwards and Nordin, Higher Education and the Law, Institute for Educational Management at Harvard University (1979).

Kaplin and Lee, The Law of Higher Education, Jossey-Bass Publishers (3rd ed. 1995).

LaMorte, School Law, Allyn and Bacon (5th ed. 1996).

Olivas, The Law and Higher Education, Carolina Academic Press (1989).

O'Reilly and Green, School Law for the 1990s: A Handbook, Greenwood Press (1992).

Yudof, Kirp and Levin, Educational Policy and the Law, West Publishing (1992).

Other References and Resources:

Chronicle of Higher Education

College Administrator and the Courts

The College Counsel

College Law Bulletin

College Law Digest

Education Law in North Carolina

Education Law Reporter

Journal of College and University Law

Journal of Law and Education

Lex Collegii

NACUA College Law Digest

School Law Bulletin

Yearbook of Higher Education Law

Possible Research Topics

Institutional Liability for Student Conduct

Affirmative Action

Implications of the Americans with Disabilities Act

Faculty/Teacher Discrimination

Campus Crime and Institutional Liability

Drug Testing

Hate Speech Codes

Harassment Policies

Free Speech Rights of Faculty/Teachers

In Loco Parentis

Amorous Relationships between Faculty and Students

Gender Equity in College Athletics

Alcohol on College Campuses

AIDS on Campus/in Schools

Coaching Contracts

Religion on Campus/in Schools

Search and Seizure Law

Commercial Activity on College Campuses

Internet Law and Educational Institutions

Infectious/Contagious Diseases

Unrelated Business Income tax

Other University Policies and Resources

Duke Community Standard

All students, whether residing on campus or learning remotely, must adhere to the Duke Community Standard(DCS): Duke University is a community dedicated to scholarship, leadership, and service and to the principles of honesty, fairness, and accountability. Citizens of this community commit to reflect upon these principles in all academic and non-academic endeavors, and to protect and promote a culture of integrity.

To uphold the Duke Community Standard:

Students affirm their commitment to uphold the values of the Duke University community by signing a pledge that states:

I will not lie, cheat, or steal in my academic endeavors;

I will conduct myself honorably in all my endeavors;

I will act if the Standard is compromised.

Regardless of course delivery format, it is the responsibility of all students to understand and follow Duke policies regarding academic integrity, including doing one's own work, following proper citation of sources, and adhering to guidance around group work projects. Ignoring these requirements is a violation of the Duke Community Standard. If you have any questions about how to follow these requirements, please contact Jeanna McCullers, Director of the Office of Student Conduct.

Mental Health and Wellness Resources

If your mental health concerns and/or stressful events negatively affect your daily emotional state, academic performance, or ability to participate in your daily activities, many resources are available to you, including ones listed below. Duke encourages all students to access these resources, particularly as we navigate the transition and emotions associated with this time.

- DukeReach**. Provides comprehensive outreach services to identify and support students in managing all aspects of wellbeing. If you have concerns about a student's behavior or health visit the website for resources and assistance.

<http://studentaffairs.duke.edu/dukereach>

- Counseling and Psychological Services (CAPS)**. CAPS services include individual, group, and couples counseling services, health coaching, psychiatric services, and workshops and discussions.(919) 660-1000

- Blue Devils Care**. A convenient and cost-effective way for Duke students to receive 24/7 mental health support through TalkNow. bluedevilscares.duke.edu

Managing daily stress and self-care are also important to well-being. Duke offers several resources for students to both seek assistance on coursework and improve overall wellness, some of which are listed below. Please visit <https://studentaffairs.duke.edu/duwell/holistic-wellnessto> learn more about

- The Academic Resource Center**: (919) 684-5917, theARC@duke.edu, or arc.duke.edu,

- DuWell: (919) 681-8421, duwell@studentaffairs.duke.edu, or <https://studentaffairs.duke.edu/duwell>), and
- WellTrack: <https://app.welltrack.com/>

Accessibility

In addition to accessibility issues experienced during the typical academic year, I recognize that remote learning may present additional challenges (*please note that the plan is for our class to meet in-person*). Students may be experiencing unreliable wi-fi, lack of access to quiet study spaces, varied time-zones, or additional responsibilities while studying at home. If you are experiencing these or other difficulties, please contact me to discuss possible accommodations.

Technology Accommodations

Students with demonstrated high financial need who may have limited access to computers and stable internet may request assistance in the form of loaner laptops and WIFI hotspots. For new Spring 2021 technology assistance requests, please go here. Please note that supplies are limited. For updates, please visit <https://keeplearning.duke.edu/undergraduate-students/>

Academic Accommodations

The Student Disability Access Office (SDAO) will continue to be available to ensure that students are able to engage with their courses and related assignments. Students should be in touch with the Student Disability Access Office to request or update accommodations under these circumstances. Zoom has the ability to provide live closed captioning. If you are not seeing this, and but would like to see this feature, please reach out to your instructor for assistance.

Accommodations for Remote Students

If students cannot participate in synchronous or in-person course components (due to permanent time zone differences or temporary quarantine, for example), students should contact the instructor and academic dean to request an accommodation that will allow them to participate remotely. Please note that the experience may not be identical to that of local students.

Inclement Weather and Attendance Policies

Inclement Weather Policy

In the event of inclement weather or other connectivity-related events that prohibit class attendance, either in the location of the instructor or in the location of the student, I will notify you how we will make up missed course content and work. Asynchronous catch-up methods will likely apply.

Possible Flexible Attendance Policy

Responsibility for class attendance rests with individual students. Since regular and punctual class attendance is expected, students must accept the consequences of failure to attend. However, in recognition of possible extra personal and academic stress this semester, I will grant an additional excused absence, provided you discuss the absence with me and agree to

make up missed work. More details on Trinity attendance policies are available [here](#). More details on Pratt attendance policies are available [here](#).

Technical Support and Video Recording Rules

Assistance with Zoom or Sakai

For technical help with Sakai or Zoom, contact the Duke OIT Service Desk at <https://oit.duke.edu/help>. You can also access the self-service help documentation for Zoom and for Sakai. The ARC (Academic Resource Center) has a student-friendly learning online guide and Zoom instructions Look on the sidebar on the left.

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