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# The Right to Equal Educational Access

An Inquiry Pack to Accompany [LegalTimelines.org](https://www.legaltimelines.org)

**Inquiry Question:** Should an amendment explicitly guaranteeing a constitutional right to equal access to education be adopted?

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## Introduction: Right to Equal Access to Education

The right to an education is protected by constitutions in 83% of countries around the world, according to the World Policy Center.<sup>1</sup> A clearly stated right to secondary education (beyond elementary school) is guaranteed in 46% of those constitutions. The United Nation’s Universal Declaration of Human Rights, of which the United States is a signatory, in Article 26 declares that:

*Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*

*Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.*

*Parents have a prior right to choose the kind of education that shall be given to their children.*

However, the word “education” does not appear in the body of the U.S. Constitution or in any of the amendments. Therefore, education is not an expressly protected constitutional right in the United States. The Tenth Amendment states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” In the United States, public education is largely the responsibility of state and local governments, which oversee, fund and regulate it.

The 14<sup>th</sup> Amendment’s Equal Protection Clause guarantees equal protection of the law. Courts have sometimes used the 14<sup>th</sup> Amendment to protect the rights of students to equal access to education, even though the federal (national) Constitution does not expressly provide a right to equal access to education.

Every time the right to education has been challenged at the U.S. Supreme Court, the justices reach the same conclusion they did in *San Antonio Independent School District v. Rodriguez* (1973), when the Court stated that education “is not among the rights afforded explicit protection under our Federal Constitution.” Three other cases, all decided in the 1980s, reached that same conclusion.

Therefore, state constitutions—as well as state and federal statutes—largely determine which rights, if any, children have to an education. Some state constitutions explicitly (clearly) recognize education to be a fundamental right, entitling all students to the same quality of education regardless of neighborhood or income. Other state constitutions require the state to provide education services but do not explicitly grant a right to students to receive an education. Others barely address education at all. The American Bar Association concluded that, “[a]s a result, American education has developed into a hodge-podge quilt of different rights, access, and quality standards that depend entirely upon where children live.”<sup>2</sup>

While the U.S. Constitution does not protect education rights and state constitutional protections for education vary from state to state, there are laws at both the federal and state levels that also provide protection of educational rights.

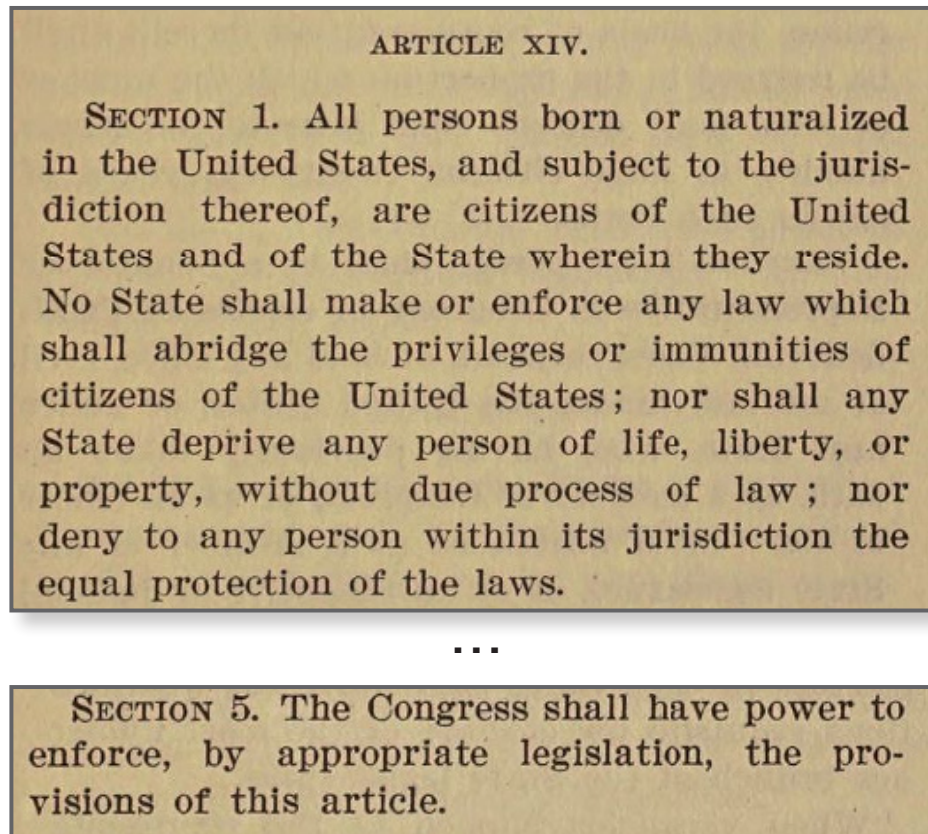
The right to equal access to quality education includes being protected from discrimination on the basis of race (see *the Brown and Beyond Inquiry Pack*), but it does not end there. It also includes protection against discrimination based on gender, sexual orientation, socio-economic status, citizenship status, disability, pregnancy, HIV status, and others.

To ensure students have equal access to education, some policymakers advocate for a new constitutional amendment that explicitly protects the right to equal access to quality education. Opponents argue that the state constitutions, the 10<sup>th</sup> Amendment, the Equal Protection Clause of the 14<sup>th</sup> Amendment, and federal and state legislation sufficiently protect a student's right to an education.

## 14<sup>th</sup> Amendment Equal Protection Clause

After the Civil War, in 1868, the 14<sup>th</sup> Amendment was ratified to guarantee citizenship to enslaved people and establish birthright citizenship (all people born in the United States are automatically citizens). The 14<sup>th</sup> Amendment also guaranteed equal protection of the laws to all people and extended the fundamental freedoms by prohibiting states from passing or enforcing laws that conflicted with those established in the Constitution. (To learn more, see the [Incorporation Doctrine Inquiry Pack](#).)

**Source A:** The 14<sup>th</sup> Amendment to the United States Constitution<sup>3</sup>



**Source A Information:** This source shows Section 1 and Section 5 of the 14<sup>th</sup> Amendment to the U.S. Constitution. The images were excerpted from a printed version of the full Constitution of the United States of America, printed in 1920 by the Government Printing Office in Washington, DC. (See source at [Library of Congress](#).)

### Questions to Consider for Source A:

- 1. Observe:** What words do you notice first in this source?
- 2. Reflect:** What guarantees and protections are established in Section 1? What might it mean for a state to deny someone the “equal protection of the laws”? How might Section 5 allow the federal government to guarantee equal educational access to people within states?
- 3. Question:** Write at least one question you have about this source.

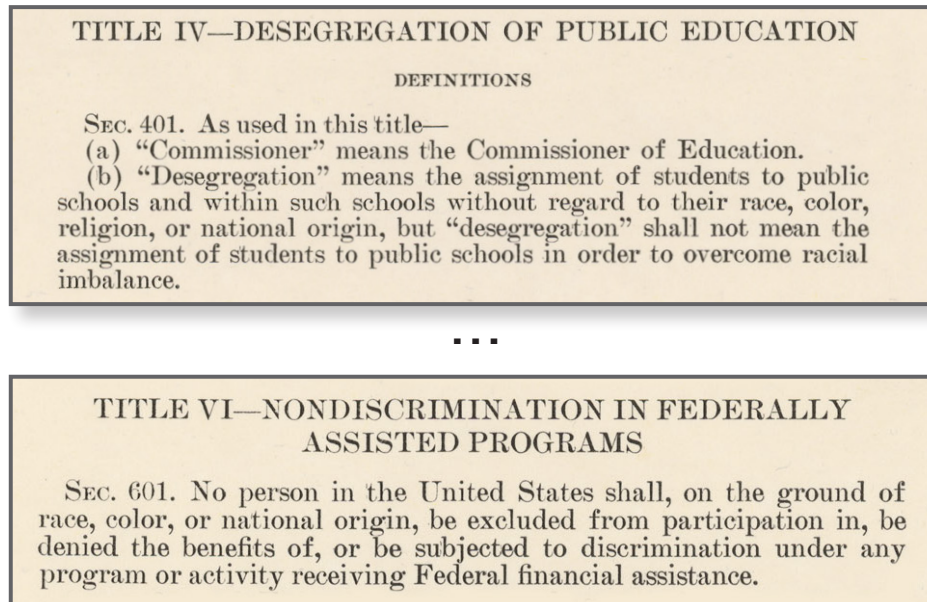


## Civil Rights Act of 1964

Desegregation had been established by Supreme Court decisions and executive orders, but not before by congressional legislation (laws passed by Congress). Congress passed the Civil Rights Act and President Lyndon B. Johnson signed it into law on July 2, 1964. Title IV of the Civil Rights Act of 1964 established that discrimination in schools on the basis of race, color, religion, sex, or national origin violates federal law. Title VI of the act also prohibited (forbid) schools that receive federal financial assistance (virtually all public schools and universities receive money from the federal government) from discriminating against students based on race, color, or national origin.

The act also enforced the constitutional right to vote, gave federal courts the power to hear cases dealing with this law, authorized (gave power to) the attorney general to institute suits (to start lawsuits) to protect constitutional rights in public facilities and public education, extended the Commission on Civil Rights, prevented discrimination in federally assisted programs, and established a Commission on Equal Employment Opportunity.<sup>4</sup>

**Source B:** Civil Rights Act of 1964 (excerpts of Title IV and Title VI)<sup>5</sup>



**Source B Information:** This source shows excerpts from the Civil Rights Act of 1964. Title IV addresses the desegregation of public education, and Title VI requires that federally assisted programs not discriminate against students because of their race, color, or national origin. The Civil Rights Act was enacted by the 88<sup>th</sup> Congress and became effective on July 2, 1964. ([See source at National Archives.](#))

### Questions to Consider for Source B:

- 1. Observe:** What do you notice first about this source?
- 2. Reflect:** What is the definition of desegregation in the Civil Rights Act of 1964? What groups of people are protected by this legislation? Why might Congress have also defined what desegregation is not? What types of organization might be required to desegregate because they receive federal funds?
- 3. Question:** Write at least one question you have about this source.

## Title IX: Equal Educational Access for Women

After years of demonstrations by women demanding equal access to education, Title IX of the Education Amendments of 1972 was signed on June 23, 1972. Known simply as Title IX, it protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.

Title IX states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” For instance, private universities that receive federal funding must also abide by Title IX.

**Source C:** “Women’s liberation march” (1970)<sup>6</sup>



**Source Information C:** This photo, taken by Warren K. Leffler on August 26, 1970, shows a women’s liberation march from Farragut Square to Lafayette Park in Washington, DC. ([See source at Library of Congress.](#))

### Transcript of Signs Pictured in Source C:

[Left =] “WOMEN DEMAND EQUALITY”

[Small bottom left sign =] “I’M A SECOND CLASS CITIZEN”

[Right =] “GWU WOMENS LIBERATION/STUDENTS EMPLOYEES FACULTY WIVES NEIGHBORS” (GWU stands for George Washington University.)

[Bottom right =] “FREE ABORTION ON DEMAND/WOMEN TOGETHER” and “WOMEN DEMAND EQUALITY”]

### Questions to Consider for Source C:

- 1. Observe:** What parts of the image do you notice first in this source?
- 2. Reflect:** What do you notice about the people pictured in the photo? What do their signs tell you about their agenda? Consider the Civil Rights Act of 1964 (Source B). Why might it have been necessary to add Title IX in 1972?
- 3. Question:** Write at least one question you have about this source.

## Equal Educational Access for English Language Learners

The Equal Educational Opportunities Act of 1974 (EEOA) prohibits segregation on the basis of race, color, and national origin. In addition, it requires schools to address language barriers that could impact a student's ability to participate equally in instruction and programming.

EEOA states: "No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by ... the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs."

The EEOA also requires schools to take steps to ensure that students with limited English language skills may still participate equally in all school programs. For instance, schools must help teach non-English-speaking students how to speak English.

**Source D:** Equal Educational Opportunities Act of 1974<sup>7</sup>

### **§ 1703. Denial of equal educational opportunity prohibited**

No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by—

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with part 4 of this subchapter, to remove the vestiges of a dual school system;

(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;

(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection (f) below;

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

**Source D Information:** This source is an excerpt from the Equal Educational Opportunities Act of 1974, which was signed into law by President Richard Nixon on August 21, 1974. ([See source at Govinfo.gov.](#))

**Questions to Consider for Source D:**

- 1. Observe:** What do you notice first about this source?
- 2. Reflect:** What types of denial of education opportunity are prohibited by this law? Which rights on this list are not protected by other documents you have analyzed?
- 3. Question:** Write at least one question you have about this source.



## Equal Educational Access for Students Regardless of Citizenship

A Texas state law prohibited the use of state funding for the education of immigrants who entered the country illegally. It also permitted schools to deny admission to students not legally admitted to the United States. The Texas law was challenged as a violation of the 14<sup>th</sup> Amendment's Equal Protection Clause because it prevented children who are living in the United States illegally from receiving a free, public education.

The U.S. Supreme Court ruled that Texas's law violated the Equal Protection Clause. It explained that students living in the United States without legal permission are protected by civil rights laws such as Titles IV and VI of the Civil Rights Act of 1964 that prohibit discrimination based on race and national origin.

**Source E:** Majority opinion in *Plyler v. Doe* (1982)<sup>8</sup>

PLYLER, SUPERINTENDENT, TYLER INDEPENDENT SCHOOL DISTRICT, ET AL. v. DOE, GUARDIAN, ET AL.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 80-1538. Argued December 1, 1981—Decided June 15, 1982\*

*Held:* A Texas statute which withholds from local school districts any state funds for the education of children who were not “legally admitted” into the United States, and which authorizes local school districts to deny enrollment to such children, violates the Equal Protection Clause of the Fourteenth Amendment. Pp. 210-230.

**Source E Information:** This source is an excerpt of the majority opinion in *Plyler v. Doe*, decided on June 15, 1982 and written for the Court by Justice William Brennan. ([See source at Library of Congress.](#))

### Questions to Consider for Source E:

- 1. Observe:** What do you notice first about this source?
- 2. Reflect:** How do you think the Supreme Court majority opinion would explain why the Texas law violated Equal Protection Clause? Why might the words “legally admitted” be in quotation marks?
- 3. Question:** Write at least one question you have about this source.

## Equal Educational Access for Students Experiencing Homelessness

The McKinney-Vento Homeless Assistance Act is a federal law that originally consisted of 15 programs providing a range of services to people experiencing homelessness. The programs included emergency shelter, transitional housing, job training, health care, and some permanent housing. It also created a program to support the enrollment and education of students experiencing homelessness by removing as many barriers to learning as possible. It provides students experiencing homelessness with transportation to and from school free of charge and permission to attend the school they attended when they first experienced homelessness, even if it is outside of the district where they currently reside. It also requires schools to register students even if they lack documents usually required by the school.

**Source F:** Stewart B. McKinney Homeless Assistance Act (1987)<sup>9</sup>

101 STAT. 482 PUBLIC LAW 100-77—JULY 22, 1987

Public Law 100-77  
100th Congress

An Act

July 22, 1987  
[H.R. 558]

To provide urgently needed assistance to protect and improve the lives and safety of the homeless, with special emphasis on elderly persons, handicapped persons, and families with children.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Stewart B. McKinney Homeless Assistance Act. Disadvantaged persons. 42 USC 11301 note.

**TITLE I—GENERAL PROVISIONS**

SECTION 101. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Stewart B. McKinney Homeless Assistance Act”.

• • •

SEC. 102. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

- (1) the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families, including elderly persons, handicapped persons, families with children, Native Americans, and veterans;
- (2) the problem of homelessness has become more severe and, in the absence of more effective efforts, is expected to become dramatically worse, endangering the lives and safety of the homeless;
- (3) the causes of homelessness are many and complex, and homeless individuals have diverse needs;
- (4) there is no single, simple solution to the problem of homelessness because of the different subpopulations of the homeless, the different causes of and reasons for homelessness, and the different needs of homeless individuals;
- (5) due to the record increase in homelessness, States, units of local government, and private voluntary organizations have been unable to meet the basic human needs of all the homeless and, in the absence of greater Federal assistance, will be unable to protect the lives and safety of all the homeless in need of assistance; and
- (6) the Federal Government has a clear responsibility and an existing capacity to fulfill a more effective and responsible role to meet the basic human needs and to engender respect for the human dignity of the homeless.

**Source F Information:** This source is an excerpt from the Stewart B. McKinney Homeless Assistance Act, which was signed into law by President Ronald Reagan on July 22, 1987. In 2000, the legislation was renamed the McKinney-Vento Homeless Assistance Act by President Bill Clinton. ([See source at Congress.gov.](#))

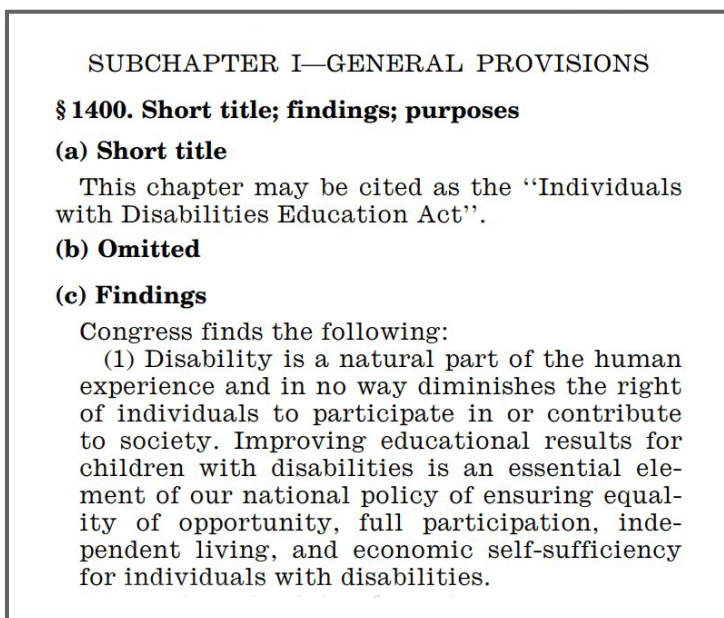
### Questions to Consider for Source F:

- 1. Observe:** What do you notice first about this source?
- 2. Reflect:** What findings led Congress to believe this act was necessary? What is Congress' purpose in passing this act? Why is it important to ensure students experiencing homelessness have equal access to quality education?
- 3. Question:** Write at least one question you have about this source.

## Equal Educational Access for Students with Disabilities

President George H.W. Bush signed the Individuals with Disabilities Education Act (IDEA) into law in 1975. IDEA guarantees students with disabilities a “free appropriate public education,” providing them with the same opportunity for education as other public school students. This law mandates “Individualized Education Programs” (IEPs or plans specific to each student’s disability) and the “least restrictive environment” (in the same classroom as mainstreamed students when possible) for qualifying special education students. The act has been reauthorized and amended several times. In 2015, the reauthorized act was renamed the Every Student Succeeds Act.

**Source G:** Individuals with Disabilities Education Act (2011 amendment)<sup>10</sup>



**Source G Information:** This source is an excerpt from the 2011 update of the Individuals with Disabilities Act (IDEA). The act was originally signed into law by President George H.W. Bush on October 30, 1990. In September of 2011, the U.S. Department of Education made major changes to the regulations supporting the law, triggering the update that is pictured in this source. ([See source at Govinfo.gov.](#))

### Questions to Consider for Source G:

- 1. Observe:** What do you notice first about this source?
- 2. Reflect:** What findings led Congress to feel this act was necessary? What is Congress’ purpose in passing this act? Why is it important to ensure students with disabilities have equal access to quality education?
- 3. Question:** Write at least one question you have about this source.



## Inquiry Question

### Should an amendment explicitly guaranteeing a constitutional right to equal access to education be adopted?

Read the proposed Amendment, H.J. Res. 69.<sup>11</sup> Consider the events on the timeline and the sources provided in this inquiry packet. Conduct outside research on current issues about access to education. Decide whether you would support or oppose this proposed amendment, and give your reasons why. If you oppose the resolution, consider how you might amend it so that you would support it. ([See source at Congress.gov.](#))

116TH CONGRESS  
1ST SESSION

## H. J. RES. 69

Proposing an amendment to the Constitution of the United States to require the United States and the States to jointly ensure a high-quality education to all persons within the United States.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2019

Mr. DESAULNIER submitted the following joint resolution; which was referred to the Committee on the Judiciary

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## JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to require the United States and the States to jointly ensure a high-quality education to all persons within the United States.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:*

“ARTICLE —

“SECTION 1. The United States, the States, Indian Tribes, and territories shall jointly ensure a high-quality education to all persons within the United States.

“SECTION 2. The Congress shall have power to enforce and implement this article by appropriate legislation.”

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## Extension Inquiry Question

### Do students have the right to an adequate civic education?

In *Cook v. McKee*, a group of Rhode Island students sued the state arguing the civics education they received in their public schools left them unprepared to participate in democracy, to vote and sit on juries. They did not allege that they were denied any education in civics, because Rhode Island does mandate (require) that some civic education be taught. But the students said the way Rhode Island approached civics was inadequate for preparing students because schools failed to host discussions on controversial subjects, coach students in media literacy, or offer enough opportunities to write for a student newspaper or serve on student council.

They further argued that the inadequate civics education disproportionately affects racial minorities and students in low-income homes, creating a gap that leaves them less empowered.

Rhode Island argued that it did teach civics, but that it focused curriculum more on math and science.

But in January of 2022, the First Circuit Court of Appeals upheld a lower court dismissal of the students' suit, concluding "an adequate civics education is not a fundamental constitutional right." Furthermore, it explained that a lack of civic education, does not prevent a student from participating in a functioning democracy.

Consider the events on the timeline and the sources provided in this inquiry packet. Conduct outside research on *Cook v. McKee*. You will see that the parties came to an agreement in this case, and it did not proceed to the Supreme Court. However, determine whether you would have found for (agreed with) the students or Rhode Island if you were on the Supreme Court and this case came before you. Explain your reasoning.

## Notes

- <sup>1</sup> “How Constitutions Around the World Address the Rights to Equality, Education, and Health,” World Policy Center, January 2020, <https://www.worldpolicycenter.org/how-constitutions-around-the-world-address-the-rights-to-equality-education-and-health>.
- <sup>2</sup> Trish Brennan-Gac, “Educational Rights in the States,” American Bar Association, April 1, 2014, [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/2014\\_vol\\_40/vol\\_40\\_no\\_2\\_civil\\_rights/educational\\_rights\\_states/#](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_2_civil_rights/educational_rights_states/#).
- <sup>3</sup> United States, *The Constitution of the United States of America*, Print, Washington: U.S. Government Printing Office, 1920. From Library of Congress General Collections, <https://www.loc.gov/item/20013929/>.
- <sup>4</sup> “Legal Guidance on Students’ Rights,” National Education Association, March 2018, <https://www.nea.org/resource-library/legal-guidance-students-rights>.
- <sup>5</sup> “Civil Rights Act of 1964,” Pub. L. No. 88-352, July 2, 1964. From National Archives, General Records of the United States Government, 299891, <https://catalog.archives.gov/id/299891>.
- <sup>6</sup> Warren K. Leffler, “Women’s lib[eration] march from Farrugut Sq[ua]re to Lafayette [i.e., Lafayette] P[ar]k,” Photograph, August 26, 1970. From Library of Congress Prints and Photographs Division, <https://www.loc.gov/resource/ppms-ca.03425/>.
- <sup>7</sup> “Denial of equal educational opportunity prohibited,” Pub. L. No. 93-380, August 21, 1974. From GovInfo, <https://www.govinfo.gov/content/pkg/USCODE-2021-title20/pdf/USCODE-2021-title20-chap39-subchapl-part2-sec1703.pdf>.
- <sup>8</sup> *Plyler v. Doe*, 457 US 202 (1982). From Library of Congress U.S. Reports, <https://tile.loc.gov/storage-services/service/ll/usrep/usrep457/usrep457202/usrep457202.pdf>.
- <sup>9</sup> Stewart B. McKinney Homeless Assistance Act, Public Law 100-77, 100th Cong., (July 22, 1987), <https://www.congress.gov/100/statute/STATUTE-101/STATUTE-101-Pg482.pdf>.
- <sup>10</sup> Individuals with Disabilities Education, Public Law 101-476, 101st Cong., (October 30, 1990): 847, <https://www.govinfo.gov/content/pkg/USCODE-2010-title20/pdf/USCODE-2010-title20-chap33.pdf>.
- <sup>11</sup> *Proposing an amendment to the Constitution of the United States to require the United States and the States to jointly ensure a high-quality education to all persons within the United States*, H.J. Res. 69, 116th Cong., 1st sess., June 26, 2019, <https://www.congress.gov/bill/116th-congress/house-joint-resolution/69/text?r=2>.