

Getting Schooled on Education Law

The state of Tennessee enrolls approximately 998,000 students in 147 public school districts each year.ⁱ As federal law requires that every child receive a free and appropriate public education (“FAPE”), any lawyer who desires to maintain an education law practice must be prepared to face a diverse range of issues on a daily, if not hourly, basis. For example, lawyers who represent school systems can face issues related to student records, student discipline, contract review, student privacy, teacher discipline/termination, and federal investigations. Those lawyers who represent parents and students face many of the same issues from the other side, including negligence, a failure to provide FAPE, and constitutional rights violations. Any lawyer practicing education law must be prepared to pivot quickly and come up with creative and practical solutions for their clients.

1. Remember Who Your Client Is

Tenn. Code Ann. § 49-2-203 authorizes a board of education to employ legal counsel to advise or represent the board.ⁱⁱ Thus, whether the board decides to employ the local municipality or county’s attorneys or hire outside counsel, it is the board who is the client. Oftentimes the board will appoint the Director of Schools to work directly with legal counsel to resolve day-to-day issues. The lawyer must always remember, however, that the board of education is his/her client, not the employees of the school system. Typically lawyers representing parents and students will find themselves working with the parent to resolve problems related to the student. Remember, however, to always consider whether one or both of the parents have the right to make educational decisions for the child. Moreover, Tennessee law provides that a student’s educational rights transfer to the student upon the age of majority, unless the child has otherwise been adjudicated incompetent under Tennessee law.ⁱⁱⁱ It is always important to remember who your client is to ensure that you are providing the best advice for that entity or individual.

2. Remember the Bounds of Confidentiality

While attorneys are required to maintain client confidentiality and protect privileged materials, the Federal Educational Rights and Privacy Act of 1974 (“FERPA”) protects the privacy of educational records and the contents thereof.^{iv} Parents of eligible students and eligible students who have reached the age of majority have the right to inspect and review the student’s educational records. Attorneys representing school systems must understand what items and records are considered “educational records” under the law and under what circumstances and to whom these records can be disclosed. Attorneys representing parents and students must likewise understand how to request these records and what these records do and do not contain.

3. Remember Which Law Applies

Perhaps one of the most challenging aspects of practicing education law is ensuring that you have consulted every applicable law, procedure, policy, guideline, and rule. The US Department

of Education is responsible for establishing policies on the distribution of federal funding, conducting research, prohibiting discrimination, and ensuring equal access to education.^v While consulting guidance of the US DOE is important, the majority of the day-to-day issues faced by education lawyers are governed at the state and local level. The essential items in every education lawyer's tool kit are: Title 49 of the Tennessee Code; the Tennessee State Board of Education's Rules, Policies, and Guidance^{vi}; and your local board of education's policies and administrative procedures.

4. Remember the Rules of the Tribunal

While many civil litigators are comfortable with the state and federal rules of procedure, education lawyers must be prepared to find themselves in a variety of settings. For example, at the school level, lawyers' roles during Disciplinary Hearing Authority ("DHA") hearings and Individual Education Plan ("IEP") meetings are limited in nature. At the district level, lawyers can find themselves filing and/or responding to complaints with the Office for Civil Rights or the State Department of Education Division of Special Education, hearings with Administrative Law Judges, and/or appeals to various state courts. Regardless, each of these situations comes with different deadlines, procedural rules, expectations, and consequences.

5. Remember What You Don't Know

While the general practitioner is slowly becoming a thing of the past, it is still important to recognize when you are out of your element and comfort zone. Education law involves the intersection of many complex state and federal laws implicating a student's fundamental right to a free and appropriate public education. Understanding the intricacies of each law will help the education lawyer find the most effective route to a quick and effective resolution for his/her client, whether school system or parent/student. Data suggests that approximately 13% of all students are eligible for special education services.^{vii} The Individuals with Disabilities Education Act ("IDEA") mandates that children ages 3-21 with disabilities be provided FAPE in the public school setting.^{viii} Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based upon disability.^{ix} This civil rights statute requires school systems to meet the needs of students with disabilities as adequately as the needs of their non-disabled peers. Each of these laws comes with a complex web of regulatory statutes, state rules, state regulations, and a variety of legal mechanisms by which these rights can be enforced. It is imperative that any education lawyer adequately "school" themselves on these special education laws to determine whether they are equipped to handle these types of disputes, administrative proceedings, and/or federal lawsuits.

ⁱ Tennessee Department of Education, <https://www.tn.gov/education/about-tdoe.html>.

ⁱⁱ Tenn. Code Ann. § 49-2-203.

ⁱⁱⁱ Tenn. Dept. of Edu. R. & Regs. 0520-01-09-.21.

^{iv} 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

^v U.S. Department of Education, <https://www2.ed.gov/about/landing.jhtml>.

^{vi} Tennessee State Board of Education, <https://www.tn.gov/sbe/rules--policies-and-guidance.html>.

^{vii} National Center for Education Statistics, <https://nces.ed.gov/fastfacts/display.asp?id=64>.

^{viii} 20 U.S.C. § 1400, *et seq.*

^{ix} 29 U.S.C. § 701, *et seq.*