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A DIGEST OF SUPREME COURT DECISIONS AFFECTING EDUCATION, 4TH ED.

PERRY A. ZIRKEL, SHARON N. RICHARDSON,
& STEVEN S. GOLDBERG
PHI DELTA KAPPA EDUCATIONAL FOUNDATION, 2001
\$32.95, 326 pages

Reviewed by Sarah M. Watson

Perry Zirkel, Sharon Richardson, and Steven Goldberg in *A Digest of Supreme Court Decisions Affecting Education* have provided school personnel and researchers of school law with an approachable, comprehensive collection of summaries of those cases decided by the Court as of June 2001 which impact the functioning of schools, both public and private. The cases are divided into seven general areas of concentration, such as *Student Rights and Responsibilities*, *Employee Rights and Responsibilities*, or *Discrimination*, and the complete index allows the reader easy location of more specific topics of interest. Each entry includes the case citation, the facts of the case, the holding, and the basis for the Court's decision in concise format and in language that is accessibly nonlegal for the benefit of most school administrators and teachers. In addition, each case provides a key to identify each of four types of litigants: private school, public school, higher education, or non-school. Finally, the authors have included a glossary of legal terminology to aid the reader in deciphering the information provided which, on occasion, must lapse into more technical explanation.

The collection as a whole provides a valuable service to the student of law as well as to educators because it establishes in clear language the groundwork for continuously evolving issues such as school funding, vouchers, sexual harassment, and drug testing. Explanation of precedent and references to earlier decisions in subsequent cases makes clear the pattern of change and the reasoning behind decisions in which application of an earlier decision is made under slightly varying circumstances. For example, regarding the issue of church-state relationships and the funding of schools, the Lemon test (p. 34) established in *Lemon v. Kurtzman* (1971) is cited as the standard by which later cases will be measured to determine excessive state entanglement with religion when state funds are provided to students or

programs in private school settings. Initially, *Lemon* dealt with Pennsylvania and Rhode Island statutes that provided funds to supplement salaries for non-public school teachers with the purpose of “aiding the quality of secular education in the non-public schools” (p. 33). The Court in *Lemon* found these statutes to be unconstitutional, hence providing a benchmark for subsequent cases involving other issues such as state funding for maintenance and repair of non-public school facilities (*Committee for Public Education and Religious Liberty v. Nyquist*, 1973), state subsidized loan of secular textbooks to non-public schools (*Meek v. Pittinger*, 1975), and the allowing of deductions on state taxes for tuition, books, and expenses incurred by parents of non-public school students (*Mueller v. Allen*, 1983). Justification is even provided for those cases in which the Court chose to avoid the tripartite *Lemon* test in favor of other principles, for example, when assessing the constitutionality of continuing to provide the services of a sign-language interpreter in a private school for a student who had initially utilized the service in a public school (*Zobrest v. Catalina Foothills School District*, 1993).

Because the cases are examined chronologically, however, locating the benchmarks that set the standard for subsequent treatment of issues of interest to educators is often difficult. While the topic of freedom of speech is referenced in the index on multiple pages and under 15 different sub-categories, identifying *Tinker v. Des Moines Independent Community School District* (1969) as the standard by which many cases would be measured becomes a difficult and even convoluted process because chronologically, *Tinker* is nestled between a 1943 case wherein public school students were expelled for failing to participate in a compulsory flag-salute program and a 1972 case treating an ordinance which targeted a lone picketer who routinely demonstrated racial discrimination outside a public high school. While all of these deal with expressions of opinions protected by the First Amendment, locating *Tinker*, the first to establish that “neither students nor teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” (*Tinker*, 1969, p. 509) as a case involving student behavior on school grounds and the question of administrators forecasting disruption, would be a time consuming process. *Tinker* itself is found listed under the sub-category of *armbands* under the general topic of *freedom of speech*. Hence, while the text is undeniably comprehensive, it is better used as a research tool than as a practical guide for administrators and other school personnel seeking to find quick precedent for addressing some looming situation in their individual circumstance.

In addition, for educators in both public and private schools, some commentary regarding the sources of the law for public and private schools as well as the application of law as it relates to private schools would be help-

ful to avoid confusion or misapplication of precedent. Even a cursory treatment of contract law, as it applies to students, parents, and employees in private schools, would go far to clarify rights and responsibilities as they relate to the members of private school communities.

For those educators or students of legal issues in education who have more than an introductory acquaintance with legal principles as they relate to schools and school communities, however, the book provides a quick reference which not only makes clear the path by which we have arrived at current applications of the law, but provides also some hint as to the direction in which future trends may proceed. For example, the text includes not only the standard created by the Supreme Court in 1999 for establishing school liability for damages under Title IX of the Education Amendments of 1972 in cases of student-to-student harassment in *Davis v. Monroe County Board of Education* (1999), but also ties the decision to an earlier case in the private sector, *Oncale v. Sundowner Offshore Services, Inc.* (1998), which held that same-sex harassment was also actionable under Title VII of the Civil Rights Act of 1964. There seems little doubt that the Court will soon be called upon to treat the issue of same-sex harassment in a school environment as well.

Until that time, educators will find in this fourth edition a more than ample background in and current application of the decisions of the Supreme Court as they affect every facet of education. An understandable and ready reference, it is precisely the type of approachable treatment of the law that is an invaluable companion to every school administrator and student of the law.

REFERENCES

- Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756 (1973).
 Davis v. Monroe County Board of Education, 526 U.S. 629 (1999).
 Lemon v. Kurtzman; Earley v. Dicenso, 403 U.S. 602 (1971).
 Meek v. Pittinger, 421 U.S. 349 (1975).
 Mueller v. Allen, 463 U.S. 388 (1983).
 Oncale v. Sundowner Off Shore Services, Inc., 523 U.S. 75 (1998).
 Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).
 Zobrest v. Catalina Foothills School District, 509 U.S. 1 (1993).

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