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United States Supreme Court decisions that have shaped K--12 education in America 1972--2004

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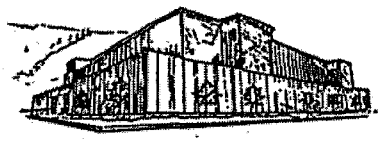

UNITED STATES SUPREME COURT DECISIONS THAT HAVE SHAPED K-12 EDUCATION IN AMERICA 1972-2004

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United States Supreme Court Decisions that have Shaped K-12 Education in America, 1972-2004

Co-chair: David Aronofsky, J.D., Ph.D. and Roberta D. Evans, Ed.D.

This mixed method descriptive study examined emerging trends in U. S. Supreme Court K-12 education cases between 1972 and 2004. The multilevel research produced outcome analyses of lawsuits by students, employees and others; court case outcomes; majority opinion author; and court of emergence within the Federal Judicial Circuits. This research further sought to identify U.S. Supreme Court decisions by types of actions adjudicated during the 1972-2004 time period; case outcomes by lawsuit categorizations; and discernable historic trends.

The study consisted of 96 cases with 108 predominant issues. The quantitative longitudinal analyses revealed 61.5% of the total cases represented lawsuits by students. This was more than five times the number of lawsuits initiated by employees, representing 12.5% of the cases; and more than twice the number of lawsuits initiated by others, or 26.0%. The overall decisions conclusively indicated 52.8% of the 108 issues decided completely favored students, employees or others; and 33.0% completely favored school authorities. The most frequently litigated issues by or on behalf of students were under the discrimination, equal opportunity and sexual harassment; church and state; and special education subcategories.

A split-decade analysis revealed a "seesaw" trend in overall issues decided. The majority of issues decided favored students, employees or others between 1972-1974, 1975-1979, 1985-1989, and 1990-1994. The time periods favoring school authorities were 1980-1984, 1995-1999, and 2000-2004.

The qualitative analysis resulted in a three-dimensional coding analysis. This analysis included context coding (general case category), situational coding (reasoning summary), and thematic coding (emergent legal theme) for lawsuits by on behalf of students, employees, or others. The legal holding and rule for each issue or grouping of issues resulted in an emergent legal theme and the situational coding resulted in a summarization of the United States Supreme Court's major reasoning.

DEDICATION

I dedicate this dissertation to my beautiful children

whose decades of love and support in my educational journey

will forever be etched in my heart.

~ I Love You So Much ~

Alanna, Ashlie, and Johnathan

To have a child is to truly love, to truly live
A legacy of love, the world, the heavens, a life to give.

To love a child is God's greatest endowment
Priceless and unbridled, all the passion that is felt
Precious life so scared, so cherished, so mild
Forever remains portrayed upon the face of a child.

Jamie Thomas

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It is because of my children and their love, the special gifts of support and encouragement from my family and friends, and the many contributions and guidance from my committee members that I have been able to complete this step in my educational journey.

Alanna, Ashlie, and Johnathan I will always hold deep within my heart your love, all the time you gave, all the time you gave up, all the time you spent being there for me. You are the reason I am here. Thank you for being my beautiful children. You are the most precious gift I have ever received. Being your Mom has truly been my greatest gift in life. Thank you.

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CHAPTER ONE

"I consider knowledge to be the soul of the Republic,
and as the weak and the wicked are generally in alliance,
as much care should be taken to diminish the number of the former as of the latter.
Education is the way to do this,
and nothing should be left undone to afford all ranks of people
the means of obtaining a proper degree of it
at a cheap and easy rate."

John Jay, first Chief Justice of the United States Supreme Court
(1789-1795)

(J. Jay, 1785)

STATEMENT OF THE PROBLEM

Introduction

Today courts play a pivotal role in education by addressing a wide expanse of issues which significantly impact policy making and practices in elementary and secondary educational settings. According to Davidson and Algozzine (2002), "law permeates every facet of our schools" (p. 43). Furthermore, changing political and social ramifications reflected throughout our educational system have increased school administrator responsibilities "from managing programs for children to regulating educational services for students with disabilities" (p. 43).

Knowledge of education law is crucial to making policy recommendations, managing programs, instituting education reform, and developing sound educational practices offering new solutions to persistent problems. In order to meet professional obligations, Leith (1986) stated: "Mere knowledge of the outcome of a court case is not sufficient to enable the educational administrator to function effectively" (p. 6). Public school administrators must possess a basic understanding of school law to address the issues that surround education, be versed in important Supreme Court Justice rulings and

litigation trends, and have a familiarity with how these rulings influence public education. The ability to manage and lead educational organizations in these challenging times cannot be emphasized enough. It is important for administrators to understand the complexities of leadership; sources of knowledge; and implications of their leadership in the management of schools, students, and staff (Yukl, 2002). In addition, administrators must understand the development and application of district policies to stave off unwanted litigation.

The United States Supreme Court has decided a number of important elementary and secondary education cases with significant impact on schools, administrators, teachers, and students. This study analyzed what the United States Supreme Court has written with regard to elementary and secondary education; how the Court impacts K-12 education; and the resultant judicial ruling trends. In particular, this study analyzed United States Supreme Court decision outcomes through a review of the Court's elementary and secondary education decisions between the years 1972 and 2004. This represented the 32-year time period Chief Justice Rehnquist has served the Court. The analysis further examined the Court's written majority opinions in these cases; global historical trends in relation to case categorizations, issues and outcomes; and courts of emergence within the Federal Judicial Circuits.

Education in the United States would be very different without the landmark decisions of the Supreme Court (Zirkel, 2001; 2002). Even though scholars of the twentieth and twenty-first centuries have supported a variety of perspectives regarding education litigation, "very few articles examine the overall trends as compared to specific case, issue or topic. The few that do take a macro view, typically focus on the frequency or volume of education litigation" (Zirkel, 1998, p. 1). In sum, the immediate case law

seems to be emphasized at the expense of the big picture of trends generated by case decisions.

The need to examine legal trends and concurrent meanings noted by both Lupini (2000) and Zirkel (2001, 2002) inspired this descriptive research study. The cases sampled were drawn from the "Rehnquist years" spanning 1972 to 2004, reflecting the timeframe during which at least one of the current Justices has been seated on the U.S. Supreme Court. The following outcomes were pursued in this study: (a) a review of the United States Supreme Court school law decisions from 1972 through 2004 and corresponding judicial trends; (b) a determination of the relationship, if any, existing between these United States Supreme Court elementary and secondary education decisions and K-12 education practices; and (c) a historical overview of educational reform in America across these years, arguably the most change-filled in history.

A variety of changes, trends, and reforms in education have occurred since the turn of the last century. According to Brand and Johnson (2002), the emergence of that era was marked by a progressive political movement, with the United States becoming a global actor. As a result, the United States saw the development of education movements and criticisms of more traditional educational methodologies leading to profound and enduring changes in elementary and secondary education. The various legislative enactments, along with Supreme Court rulings, have made school administrators uneasy as they monitor U.S. Supreme Court decisions in an attempt to comply with the law (Brand & Johnson, 2002).

In 1978, Zirkel found school leaders lacked knowledge about the meaning of United States Supreme Court decisions affecting schools. He observed: "The list of topics dealt with in U.S. Supreme Court cases goes on and on extending to virtually all

aspects of school operation" (p. 521). In addition, Zirkel (1978) questioned whether school leaders were aware of the appropriate responses to these decisions, musing

> [C]ertainly they need to be, for none of us is excepted from the effect of the Court's rulings, and ignorance of the law is no excuse. Moreover, if school leaders have an accurate awareness of court decisions affecting them, we may eventually see a reduction in the role of the Supreme Court and lower courts now reluctantly play in school affairs. Neglecting these requirements and spirit of Supreme Court decisions is an open invitation to more litigation (p.521).

Zirkel (1978), then chairperson of the Phi Delta Kappan's Commission on the Impact of Court Decisions on Education, used twenty statements from a comprehensive checklist based on United State Supreme Court decisions affecting education to conduct a survey of school leaders. The abbreviated survey list was sent to a random sample of 400 Phi Delta Kappa members to determine the awareness level of school leaders. A review of the results revealed that "school leaders are generally not knowledgeable about the operational dictates of Supreme Court decisions affecting education" (p. 522).

Meggelin (1979) asserted what educators need is "meaningful input from their chief administrators and other knowledgeable educators in order to make informed decisions and establish policies for their districts" (pp. 6-7). The outcome of such input would likely result in less school litigation. When a legal entanglement is unavoidable, Meggelin (1979) observed:

> The contributions of the administrator to the legal strategy of his district may be the factor that permits the district to prevail in court or even be the psychological level the district uses to dissuade an aggrieved party from pursuing litigation against the district. If either of these desirable outcomes occurs only once in the

career of an administrator, that occasion could save a school district considerable sums of money and other less tangible loses. (pp. 10-11)

For administrators to meet professional obligations, LaMorte (2005) postulated "Those educators who 'fly by the seat of their pants' or who act on the basis of what they think the law 'should be' may be in difficulty if sufficient thought is not given to the legal implications and ramifications of their policies or conduct" (p. xxiii). Judicial activity has produced an expanse of school law over the past fifty years in areas such as "school desegregation, separation of church and state, freedom of expression, student rights, individuals with disabilities, and personnel issues" (LaMorte, 2005, p. xxiii), confirming the degree and extent of judicial involvement. School administrators must, therefore, possess a basic understanding of school law to address the issues that surround education, be versed in important United States Supreme Court rulings and litigation trends, and have a familiarity with how these rulings influence education.

In 1988, researchers Imber and Gayler began looking at litigation trends in various education areas, focusing on the nationwide concern over an explosion in education litigation. Imber and Gayler (1988) concluded there was an actual overall decline in education litigation, based on the number of reported education cases. Imber and Thompson (1991) conducted a study in response to the same continuing concern and growing body of information concerning an explosion of litigation in education. Partially contradicting this trend in 1991, Imber and Thompson found four case areas which challenged the declining pattern in 1988, finding an increase in (a) funding equity, (b) search and seizure, (c) special education and (d) negligence lawsuits. During the 1960's and 1970's, Imber and Thompson (1991) also found an increase in litigation, with lawsuits nearly doubling from 1960 to 1977, and then decreasing from 1977 to 1987.

Imber and Thompson (1991) concluded there was no overall current litigation crisis in education, a supposition supported by earlier researchers (Imber & Gayler, 1988) with the exception of the four areas surrounding funding, search and seizure, special education, and negligence.

This continuing decrease in the total number of reported state and federal court decisions into the 1990's was noted by Zirkel (1997, 1998) with the exception of special education and religion issues. Perhaps the most salient finding of Zirkel in 1998 was after school authorities lost a large proportion of cases in the late 1960's and early 1970's, school officials began to win from the mid-1970's through the mid-1980's. This signaled the Court's shift away from student-friendly rulings. The legal implications for further study, however, continue to include a need to investigate current trends in litigation decisions, their critical meanings to administrators in leading and managing school systems, and resultant costs to school districts.

Despite the increased litigation in the 1960's and 1970's followed by decreases in the 1980's and 1990's, litigation costs have had a significant impact on schools and personnel across the nation. According to Sack (2001), mounting educator concerns led to the creation of the Teacher Liability Protection Act of 2001. This Act was created to protect teachers, administrators, and other officials from annoying lawsuits. While school children are worrying about grades and social development, teachers are becoming more and more concerned over the threat of lawsuits. A survey conducted by the American Federation of Teachers showed liability protection ranks lawsuits among the top three union concerns of teachers (Carpenter, 2001).

Fearful teachers have been "purchasing liability insurance to protect themselves from financial ruin" for accused wrongdoings or court action (Portner, 2000, p. 1).

According to Portner, there has been a 25 percent increase in the purchase of insurance policies in the past five years. Many teacher unions are providing $1 million in liability insurance coverage, while others are offering much larger packages like the Texas State Teachers Association's $6 million in liability insurance (Carpenter, 2001).

In their study, *Administrators' Perception of Special Education Law*, Davidson and Algozzine (2002) suggested that new administrators, because of their lack of knowledge of special education law, may also have difficulty in providing leadership and effective management of special education programs. They further concluded from their survey of 230 principals in California: "The most recent and allegedly most well-prepared school administrators . . . not only perceived themselves as having a limited basic level of knowledge in special education law (47%), but also reported an even lower level of understanding of special education law (53.3%)" (p. 47). This lack of knowledge in special education law and even greater lack of understanding on the part of administrators may have a connection to the growing number of litigation cases found in the research of Imber and Gayler (1988) and Imber and Thompson (1991) and the lack of general education law knowledge found in the research of Zirkel (1998).

Similarly, other legal scholars have stressed the need for educational administrators to be well versed in education law. Katsiyannis, Ziang, and Frye (2002) stated that "keeping up with education is a challenge, but staying appraised of court decisions is of utmost importance" (p. 1). Shula (2001) addressed school reform and the desired need for knowledgeable administrators to provide management leadership and sound policy recommendations to school boards, stated: "Nationally, school reform has challenged boards of education to develop manuals with relevant policies which address curriculum changes and confrontations that occur in local communities" (p. 4). Shula

also stated: "Boards of education, acting in concert with their superintendents, have the power to make rules and regulations necessary for the management of schools and school personnel under their jurisdiction" (p. 6). In addition, Shula (2001) noted schools are protected from court involvement unless the purpose and mission of the board are "contrary to statute, arbitrary, unreasonable, or capricious . . ." or as long as they "follow the spirit of the laws and do not contravene constitutional and statutory requirements and prohibitions, or the federal constitution and Supreme Court interpretations" (p. 6).

Extending Shula's argument, Dunklee and Shoop (2002) believed that "the avoidance of education litigation requires more than just knowledge of the law" (p. 1). They contended "school administrators are expected to know the law," in essence, concluding that "Effective school administrators do not want to win lawsuits; they want to avoid them altogether" (p. 2).

Despite increasing concerns about U.S. Supreme Court education-related decisions, there is a void in the literature and in higher education training of administrators and teachers. Specifically, little of this literature examines the general shifts and the implications that have shaped K-12 education practices and policy making (Zirkel, 1998). Ironically, this void occurs at a time when, as Davidson and Algozzine (2002) pointed out: "Effective leadership depends upon the acquired knowledge and understanding that a principal has for laws, policies, and regulations governing the system as well as a responsiveness that meets the needs of the entire organization" (p. 47).

According to Dunklee and Shoop (2002), the disconnect lies between what is taught and what is later applied in the professional lives of administrators. They observed: "Nearly all school administrators have had a course in school law. However,

most school law courses end without helping the principal translate school law and policy into education procedures and practice" (p. 2). Hence, Dunklee and Shoop concluded: "The majority of legal actions brought against school districts and school administrators are not based on their education leadership or knowledge of curriculum but rather, on their failure to know the relevant law and to practice sound management based on an understanding of existing court decisions" (p. 2).

Over the past three decades, the changes in federal policies and guidelines in education have been significantly influenced by the rulings of the United States Supreme Court Justices. These rulings have increased the responsibilities of school administrators, school boards, teachers, education preparation programs, and programs in the field of legal education. How this influence is taught and understood, however, has been the subject of debate for some time. Zirkel and Vance (2004) complained that information concerning the teaching of education law is fairly isolated. Yet universities have been pressed to provide more education on the law. In fact, they observed: "Much of the early writings addressed the need for including education law in the pre- and in-service preparation of teachers" (p. 1), not merely in the preparation of administrators. Indeed, it may be necessary for a wider net to be cast for the target audience of education law instruction. In this era of historic educational reform and judicial activism in educational affairs, a review of education reform movements, United States Supreme Court decisions, and judicial trends seems both timely and pertinent for K-12 school administrators, teacher preparation programs, and members of local boards of education alike.

Although there has been an increasing interest in education law, research involving the training in education law for both teachers and administrators continues to be limited (Sullivan & Zirkel, 1998). State teacher certification requirements analyzed in

a 50-state survey by Gullatt and Tollett (1997) revealed only two states, Washington and Nevada, required a well-defined course in education law. According to this survey, only 16 states required discussion-oriented coursework of legal issues for future teachers, while 32 states had no mandate. The continual legal interplay between law and education raises resonant concerns among educators: "Who should control the education for children? What, by whom, and how should children be taught? Who is responsible for the safety of children while at school? And What are the established duties of educators?" (Gullatt & Tollett, 1997). With administrators, teachers, parents, interested groups, and both state and federal governments all needing a voice, no simple "process exits to decide which of these interests should prevail" (Gullatt & Tollett, 1997). Even though state certification requirements for administrators more often include education law, what is required stands in sharp contrast to what should be requisite (Sullivan & Zirkel, 1998).

The Interstate School Leaders Licensure Consortium (ISLLC) standards, established in 1994 under the guidance of the Council of Chief State School Officers (CCSSO), have guided the preparation of educational administrators offering both direct and indirect guidelines with regard to the study of law:

1. Standard 1: A school administrator is an educational leader who promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community.

   Knowledge, disposition or performance: information sources, data collection, and data analysis strategies.

2. Standard 2: A school administrator is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a

school culture and instructional program conducive to student learning and staff professional growth.

Knowledge, disposition or performance: safe and supportive learning environments.

3. Standard 3: A school administrator is an educational leader who promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment.

   Knowledge, disposition or performance: legal issues impacting school operations.

4. Standard 4: A school administrator is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources.

   Knowledge, disposition or performance: emerging issues and trends that potentially impact the school community.

5. Standard 5: A school administrator is an educational leader who promotes the success of all students by acting with integrity, fairness, and in an ethical manner.

   Knowledge, disposition or performance: the principles in the Bill of Rights and the right of every student to a free and quality education.

6. Standard 6: A school administrator is an educational leader who promotes the success of all students by understanding, responding to, and

> influencing the larger political, social, economic, legal, and cultural context.
>
> Knowledge, disposition or performance: using legal systems to Protect student rights and improve student opportunities. (Council of Chief State School Officers, 2004, p. 1)

The standards were designed to capture the essential role of school leaders and transform the profession of educational administration developing and implementing "model standards, assessments, professional development and procedures for school leaders" (CCSSO, 2004, p. 1). Among these guidelines are clear expectations for the content of school law classes for education administrators, with subcategories in five of the six standards speaking directly and indirectly to the need for sound legal knowledge of school leaders. The ability for universities to meet these standards is contingent to some degree upon their students' familiarity with the ways in which courts decide legal disputes.

The National Council for Accreditation of Teacher Education (NCATE), acknowledged by the United States Department of Education and the U.S. Secretary of Education, is the accrediting body for schools, colleges, and departments of education that "prepare teachers, administrators, and other professional school personnel" (National Council for Accreditation of Teacher Education, 2002, p. 6). NCATE revises its accreditation standards "to ensure the standards reflect current research and state-of-the-art practice in the teaching profession" (National Council for Accreditation of Teacher Education, 2002, p. 7). Important to note are the NCATE 2000 standards which have taken accountability to an important new level, requiring candidates to demonstrate acquired knowledge and skill development in measurable ways. Each institution, once

again, is required to provide clear evidence of the competency of their candidates (National Council for Accreditation of Teacher Education, 2002, p. 8). Furthermore, course syllabi are examined and interviews of university personnel are conducted to ensure compliance. Standards for legal education, then, are visible and important aspects of the accreditation process.

Purpose of the Study

The elementary and secondary school administrator should not only have access to a compilation of information about the United State Supreme Court rulings, but he or she should also be able to use this information effectively. Snapshots of contemporary cases are readily available for study, appearing as they do in *LexisNexis*, textbooks, law reviews, school law articles, and internet sites readily obtainable by school administrators. These same tools are those utilized by school district lawyers. However, basic knowledge of Supreme Court rulings is not sufficient to allow the K-12 school administrator to make competent decisions.

What administrators, boards of education, and school district attorneys need to strengthen their understanding of the law is a deeper analysis of trends. This research offers both an enhanced time and issue perspective, thereby providing a deeper understanding of legal issues. Indeed, translating trends into policies is superior to merely reacting to current state codes. It also offers educational administrators a meaningful framework for appreciating the court's philosophy and analytical decision-making framework. To better equip educational administrators to stave off both the fiscal and less tangible, yet costly, losses caused by distraction, time, and emotional investment in legal conflicts, the purpose of this study was to expand the information available to

K-12 administrators, school boards, education preparation programs, education law professors, and school district attorneys through an extensive trend analysis of judicial decisions in elementary and secondary education.

Definition of Terms

The terms utilized for the purposes of this study were derived primarily from legal analysis. Unless otherwise noted, the following definitions were taken from the Gilbert Law Dictionary (1997):

Affirm. To confirm, reassert, or agree with, especially when a higher court supports a lower court's decision.

Appellant. The appealing the a decision of one court to a higher court.

Appellee. The party against whom an appeal is made, usually the winner of a case in a lower court.

Case. A lawsuit; an action.

Case Law. Law based on judicial precedent rather than legislative enactment.

Certiorari. Most commonly used to refer to the United States Supreme Court. The writ acts as a discretionary device for the Court to choose the cases it wishes to hear.

Circuit Courts. District courts in the United States.

DC	District of Columbia
1st	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island
2nd	Connecticut, New York, Vermont
3rd	Delaware, New Jersey, Pennsylvania, Virgin Islands
4th	Maryland, North Carolina, South Carolina, Virginia, West Virginia
5th	District of the Canal Zone, Louisiana, Mississippi, Texas,

6th	Kentucky, Michigan, Ohio, Tennessee
7th	Illinois, Indiana, Wisconsin
8th	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
9th	Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii
10th	Colorado, Kansas, New Mexico, Okalahoma, Utah, Wyoming
11th	Alabama, Florida, Georgia
Federal	All federal judicial districts (Alexander & Alexander, 2005, p. 14).

Circuit Court of emergence. Circuit court or lower court from which a case emerged.

Damages. Money claimed by, or ordered to be paid to, a person as compensation for loss or injury.

De facto segregation. Segregation caused by demographic changes or housing Patterns (Alexander & Alexander, 2005).

De jure segregation. Segregation caused by governmentally publicized and enforced discrimination (Alexander & Alexander, 2005).

Due Process. A flexible term for the fair and orderly administration of justice. Essential to the concept is the right a person has to be notified of legal proceedings against him, the opportunity to be heard and defend themselves in an orderly proceeding, and the right to have counsel represent them.

Equal Protection. Employment practices which do not discriminate on the basis of gender, race, religion, or national origin.

Limited Open Forum. Public property the government has opened for

activities related to speech and expression (Alexander & Alexander, 2005, p. 382).

Majority opinion author. The author of each majority opinion or *per curiam* opinion was identified in this item (researcher defined).

Precedent. A previously decided case which is used as an example or authority for similar cases which subsequently arise.

Remand. To send a case from a higher court back to a lower court for a new hearing consistent with the higher court's decision.

Delimitations of the Study

The review and analyses of this study were delimited to those United States Supreme Court K-12 education cases directly affecting elementary and secondary education as indexed in *LexisNexis, West's Federal Practice Digest* (4^{th}), and *WestLaw*. Cases that did not directly involve elementary and secondary education were not included. Conversely, K-12 education cases decided prior to 1972 were only mentioned as they pertained to national trends in education litigation and as they supported more current decisions concerning K-12 education. Supreme Court cases that did not meet these criteria were not included.

The cases for this study began with the seating of current Chief Justice Rehnquist in 1972, the first Justice of the nine current Court Justices to take his judicial oath. Their cumulative record was analyzed from 1972 through 2004. Moreover, because Supreme Court law can be in continual flux, it cannot be predicted with certainty when a point of law will be modified or otherwise altered by the Court. For this reason, a functional termination date was implemented. Only cases reported prior to January 2005 were included.

Limitations of the Study

This study had four limitations. The first limitation was the exclusion of lower court decisions. The second limitation of this study was the functional termination date described above. The functional termination date may constitute a limitation insofar as administrators will not be able to access information occurring after this study unless an organization or individual supplements this study on an annual basis. A third limitation of this study was the researcher's exclusion of decisions such as stay denials, *certiorari* denials, off-school ground picketing, and voting rights. The final limitation of this study was the researcher's analysis of the legal data as an administrator and not as that of an attorney trained in school law.

Significance of the Study

There are several fundamental reasons why a study of this type was significant and timely in the field of educational administration. Essex (1999) articulated the first reason best when he asserted:

> Educational leaders and policymakers must be knowledgeable of the law that governs the operation and conduct of their organizations as the country grows more and more litigious. Increasingly, educational leaders will need to exercise discretion in making rational and legally defensible decisions that affect students and school personnel under their authority. They will need to guide the development and execution of sound and well-developed policies, rules, and regulations governing many aspects of their operations. Educational leaders must ensure that they possess the legal knowledge necessary to accomplish these important administrative tasks. (p. xvii)

This implicit role of administrators as both educational leader and educational manager to serve as the school's primary legal analyst requires enhanced competencies. Specifically, it is imperative that they are able to (a) deal effectively with the impact of United States Supreme Court decisions on education policies and practices; (b) make recommendations and carry out Board policies; (c) be proactive in dealing with the purported mounting body of litigation; and (d) have a working knowledge of school law predicated on judicial decisions.

Beyond the significance to individual administrators, however, this research also has tremendous potential for use by school districts and the trustee boards which oversee them. The value to school districts nationwide is seen both financially and in terms of productivity and expended energy. As Newcomer (1996) contended: "Dollars invested in legal expenses are funds unavailable for more productive use in districts struggling to allocate precious resources. Research that provides insight into court decisions, may assist school districts in assessing their commitment to expensive litigation" (p. 18).

Finally, this research holds the potential to play an important role in improving legal education for administrators in their university preparation programs. As such, this work is significant for professors of school law desirous of providing the most current information available to their graduate students. In addition, professors who understand the value of legal analyses offering long-term perspectives will find this research and its methodologies an important model for their students.

Summary

Courts play a profound role in shaping elementary and secondary educational issues, thereby impacting policy decisions and implementation. Changing political and social implications, litigation costs, and rising liability insurance coverage (Sack, 2001)

further complicate the successful management of programs, implementation of educational reform, and development of innovative solutions to recurrent dilemmas Leith, 1986; and (Davidson & Algozzine, 2002). Knowledge of education law, Supreme Court rulings, litigation trends, and a familiarity of how rulings influence K-12 education become increasingly important to the administration as does the making of policy recommendations and the institution of sound practices.

Researchers and legal scholars have long stressed the need for administrators, school boards, education preparation programs, and programs in the field of legal education to acquire an understanding of laws (Zirkel, 1978; Meggelin, 1979; Imber & Gayler, 1988; Imber & Thompson, 1991; Zirkel, 1998, 2001, 2002; Lupini, 2000; and Brand & Johnson, 2002). Additionally, these same researchers and scholars advocate the need for knowledge of policies and regulations governing education. Despite concerns, a void remains in the literature and in training programs examining the jurisprudence, general shifts, and implications shaping K-12 education practices and policies.

This study analyzed the trends, general shifts, and implications that have emerged in K-12 education rulings from 1972 to 2004. The examination of U.S. Supreme Court cases will provide a compendium of information for administrators, school boards, and collegiate preparation programs to address the evolving and concurrent issues in education.

CHAPTER TWO

REVIEW OF RELATED LITERATURE

Introduction

United States elementary and secondary education is governed by a diverse set of laws. Although K-12 education is left primarily to each individual state, with many policies and mandates coming from local school boards, city councils and the federal government, each has a hand in overseeing elementary and secondary schools. Even though education has been shaped by many United States Supreme Court decisions, not one of the decisions is based on the legal rationale that education is a fundamental right under the federal constitution. Most decisions, however, are rooted in the (a) freedom of religion, speech, and assembly mandates of the First Amendment; (b) search and seizure requirements of the Fourth Amendment; (c) the Fifth Amendment's provision that no person shall be deprived of life, liberty or property without due process of the law; and (d) the Due Process and Equal Protection Clauses of the Fourteenth Amendment, all of which have had a significant impact of education policy.

This diversity in governance has led to the enacting of laws established through a complex interplay among each of the governing entities—federal, state, and local government—each having a voice, although not necessarily in agreement. According to LaMorte (2005):

> Difficulties may develop when areas of educational governance overlap considerably in responsibility among the three levels of government and their corresponding branches—executive, legislative, and judicial. These difficulties are exacerbated not only by the unclear delineation of authority, but also in

> determining with certainty which authority is supreme when irreconcilable conflicts exist. (p. 1)

Perhaps the clearest way to understand this interplay is to look at our legal system, state and federal constitutions, and the primary sources of United States school laws: constitutional law, common law, statutory law, and administrative law.

The Legal System

Elementary and secondary education has been shaped by the social and cultural traditions of our nation, along with its universal requirement illuminated in the constitutions of the United States. These traditions have clearly supported the American form of government, the political philosophy, and the foundational nature of public education through its legal structure (Alexander & Alexander, 2005).

School law supports these traditions and includes all areas of educational jurisprudence in the management of elementary and secondary schools in the United States. As a field of study, school law is defined by a wide range of legal subject matter including the basic fields of contract, property, torts, constitutional and other areas of law directly affecting the educational and administrative processes of education. Alexander and Alexander (2005) recently noted: "Because a public school is a governmental agency, its conduct is circumscribed by precedents of public administrative law supplemented by those legal and historical traditions" surrounding each state established and locally administered educational institution (p. 1). The "legal and educational structural issues that define the powers to operate, control, and manage" schools, therefore, must be known (p. 1).

> [This federal medium] creates a unique educational system that is governed by laws of fifty states, with component parts amounting to several thousand local

> school district operating units. Through all of this organizational multiformity, and indeed complexity, runs the legal basis on which the entire system is founded. (p. 2)

The basic principles of legal control are those most often set forth in the written federal and individual state constitutions. These constitutions "serve as restraints to protect people from unwarranted denial of basic constitutional rights and freedoms" (Alexander & Alexander, 2005, p. 2). The power to create a public educational system, however, is assumed by state constitutions.

Importantly in the United States, all citizens—even children—are entitled to constitutional protections. As Dunklee and Shoop (2002) pointed out:

> When school districts and schools fail to provide a safe place—a place that not only observes the rights of individuals but also protects those rights—courts will intervene. Our nation's court system provides the structure that determines the exact relationship between the individual and the law in question. (p. 19)

Schools are places where a mindfulness of these guidelines must be at the fore. Consequently, school authorities and decision makers "involved in making and enforcing public school policy should ensure that their actions are lawful" (LaMorte, 2005, p. xxiii).

The prevailing principle of our legal system protects the rights of individuals and "guarantee freedom of religion, speech, press, assembly, and the right of each individual to call on the courts or government to correct injustices" (Dunklee & Shoop, 2002, p. 19). All laws in each state are rooted in the assumption that for each wrongful action there will be a consequence with people judged by the same behavioral standards.

> [Furthermore,] our government is based on the consent of the governed, and the Bill of Rights denies those in power any legal power to coerce that consent. Authority is to be controlled by public opinion, not public opinion by authority. This is the social contract theory of government . . . [with] a living and changing set of precepts that depend on the courts for interpretation. (Dunklee & Shoop, 2002, p. 20)

Constitutional Law

Constitutional law includes both state and federal constitutions with the United States Constitution serving as the highest law of the nation, providing the broadest framework for the United States way of life. The federal Constitution is silent on education and, according to Kelly (1998), this silence "leaves open to interpretation the role of the federal government in the governance of education" (p. 6). These interpretations are "the whispers in that silence" (p. 6). For example, Article I of the Constitution states: "The Congress shall have Power to . . . provide for . . . general Welfare of the United States," with the general welfare clause interpreted to include public education. The Tenth Amendment, "defines, by default, the state's responsibility for education by stating, 'The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reversed to the states respectively or to the people'" (Kelly, 1998, p. 6). Each state becomes responsible for public education and thus represents the highest law of that state as long as it does not conflict with the federal Constitution.

Common Law

Common law materializes over time rather than from specific statutes enacted by various governing bodies. Common law develops from legal principles through an

accumulation of court decisions originally recognized from community values and customs. Later these values and customs became general civic principles under the doctrine known as "*stare decisis*" which means to let a decision stand (Valente & Valente, 2005). Unless modified by statute (or by constitutional amendment), common law generally prevails in cases related to education (Kelly, 1998, p. 8).

The United States federal and state court systems function independently from one another in many respects, applying respective laws according to their contributions and statutes. Federal courts do hear cases involving states when those cases relate to federal statutes or the Constitution. State courts hear cases within the jurisdiction of the state or on district concerns. Other cases may result from federal and state court overlap where both the federal court and state court have the authority to rule.

There are three court levels arranged in hierarchies. The most common hierarchy in the state system begins at the trial court level. This is usually followed by intermediate appeals courts and finally the highest state appeals court. The terminology each state uses affects what states may call their high court, although some states only have one appeals court. Some states call their highest court a "court of appeals" while others refer to their highest state court as the "supreme court." States may call their other courts a "court of appeals," a "commonwealth court," a "superior court," or a "court of common pleas." The federal court system is similar in that it also begins with district courts, and then moves upward to the federal court of appeals, with the highest level being the United States Supreme Court for both state and federal courts (Kelly, 1998).

The United States Supreme Court is the highest court that interprets the U. S. Constitution and, as such, can have a significant effect on public education. During the 1960's alone, the Supreme Court's ubiquitous rule was "dubbed the 'black-robed school

board'" as it heard some 200 education cases between 1954 and 1970 from state or federal appellate courts, making landmark decisions that have changed the field and path of education even today" (Kelly, 1998, pp. 8-9).

The United States Supreme Court is not required to review all education cases, and generally accepts only those cases that at least four justices consider pertinent. The Court does have the final say, however, in the education matters it chooses to hear, which may lead to important legal precedents. Additionally, the United States Supreme Court has ruled that states may not "enact laws or undertake" actions that violate the constitutional rights of an individual. "Local school boards are agents of the state; thus school district employees are agents of the state when they are performing their school duties. Therefore, local boards cannot enact rules that infringe on an individual's constitutional rights" (Kelly, 1988, p. 10).

Cases may be brought before the U.S. Supreme Court by an appeal, *writ of certiorari,* or through the original court of jurisdiction. Most school law cases accepted by the U.S. Supreme Court are taken on *writs of certiorari* from a lower court. Cases may be taken where a state or federal statue is in question under the federal constitution or where a "title, right, privilege, or immunity is claimed under the Constitution" (Alexander & Alexander, 2005, p. 13). Most school education cases are accepted within this category, with *writs of certiorari* the most common means (Alexander & Alexander, 2005).

The *writ of certiorari* originated with the Judiciary Act of 1891, but the *writ* did not become a main vehicle for accessing the Court until the Judiciary Act of 1925. This statute, known as the "Judge's Bill," was enacted to support the extensive legal case requests of the Justices. The Act allowed discretionary appellate case selection, so the

Court could thereby decrease its caseload. In 1988 Congress enacted legislation to eliminate all mandatory appeals except those from three-court district courts. Almost all cases heard by the United States Supreme Court are from petitions for a *writ of certiorari* (Brenner, 2000).

In 1972, Justice Powell suggested the Justices create a certiorari pool with their law clerks evaluating potential certiorari cases to be heard. Eight of the nine current Justices have chosen to belong to the certiorari pool. Each law clerk responsible for a particular petition writes a memo for each Justice choosing to belong to the pool, summarizing the salient facts and issues of the case. In addition, they present pro and con arguments about whether the petition should be heard. Each individual Justice's law clerks make notes on the memo substantiating their reasons for consideration and denial. A "discuss list" is developed and the Chief Justice circulates this list amongst the Justices for additions. The Justices then meet in "secret conference" to decide on the final list. A case receiving four votes is granted *certiorari* (Brenner, 2000).

Certiorari cases are only granted for "compelling reasons" as set forth in Rule 10 of the Rules of the United States Supreme Court. Rule 10 provides for cases to be heard as follows (Brenner, 2000):

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual court of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(b) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. (¶6, p. 3)

Statutory and Administrative Law

Statutory laws are laws passed by state legislatures or the United States Congress and are subject to legislative change. This characteristic distinguishes constitutional law, intended to establish more broad and indefinite governmental authority until amended, from statutory law (Valente & Valente, 2005).

According to Valente and Valente (2005): "When school officials make decisions and adopt rules and regulations that are legally authorized, they are making law in the sense that those actions have the force of the law" (Valente & Valente, 2005, p. 10). Administrative rules or laws are regulated by agencies and given governmental authority through statutes. The span of this authority, however, is "not limited to powers expressly mentioned in the law" (Valente & Valente, 2005, p. 11).

School administrators, teachers, and students have certain "freedoms" that are constitutionally protected or are protected by statutory or common law. The central question, according to Kelly (1988), is whether teaching or administration requires educators to "shed certain rights at the schoolhouse door," paraphrasing *Tinker v. Des Moines* (Kelly, 1998, p. 11). The answer may be both "yes" and "no," depending upon the issue at hand. Each educator is guaranteed certain freedoms that are protected either

by the United States Constitution or through statutory or common law, to include the following:

1. Freedom of speech outside the school environment.
2. Freedom of speech inside the classroom.
3. Freedom from undue restrictions on personal appearance.
4. Freedom to lead their lives in privacy.
5. Freedom of association.
6. Freedom of religion.
7. Protection from arbitrary, capricious, or discriminatory actions or dismissal.
8. Due process. (Kelly, 1998, p. 11)

However, when courts decide matters related to these freedoms, they must balance the constitutional rights of individuals against the needs of the school to be managed effectively. Where disputes occur, "control of a particular school function or the legality of a particular school decision is challenged as unlawful, courts assess the respective legal claims of administrators, school employees, parents, students, or special-purpose organizations" (Valente & Valente, 2005, pp. 7-8). As such, school authorities "may impose reasonable restrictions that will limit some freedoms," according to Kelly (1998, p. 11), with many cases hinging on the manner in which an issue was handled or the agreed upon standards referred to as due process. This is especially evident in cases where there is a reprimand or dismissal considered. Yet as Leith (1986) pointed out: "Constitutional rights are not absolute" and must be "balanced against some other rights with which they may be in conflict" (p. 6).

Congressional involvement in education legislation began to emerge during the late 1950's and continues today. Although much of this involvement is "indirect," Congress remains powerful because it focuses on standards and funding for certain education initiatives. Kelly (1998) noted as an example, the passing of the National Defense Education Act (P.L. 85-864) with the aim of stimulating and improving mathematics, science, and foreign language instruction in direct response to the Soviet Union's launch of Sputnik in 1957. In the 1960's, civil rights proponents brought passage of a number of civil rights laws that affected education then and continue to do so to this day. These included the Economic Opportunity Act (P.L. 88-4562) and the first Elementary and Secondary Education Act in 1965 (ESEA, P.L. 89-109), which ". . . among other provisions, funded Head Start, desegregation plans and a range of compensatory education programs" (p. 7).

During the 1980's and 1990's, congressional focus was directed more at what was to be taught and by whom, with *Goals 2000* becoming the Educate America Act (P.L. 103-227) in 1994. More recently, Congress has focused on No Child Left Behind mandates, further encroaching on state legislatures and local school district governing boards.

Just as Sputnik served as a rallying point for criticism of the Life-Adjustment programs following World War II, the publication of the 1983 report, *A Nation at Risk*, incited a flourish of educational assessment and a legion of actions from state and federal agencies and professional organizations (Ogden, 2002). Twenty-two years ago, this controversial report challenged our country to improve its education system. This challenge catalyzed the standards and reform movements, and with them came the expectation that all students would benefit not only from being in school, but also by

reaching much higher levels of proficiency (Houston, 2003). Furthermore, *A Nation at Risk* helped ignite the nation's thinking with public perception changing regarding the role and importance of education (Hammer, 2003). Indeed, international comparisons left the performance of American youth wanting, and the report castigated schools for allowing this decline in achievement to have occurred.

There is little doubt this report hit its mark. Many authors, including Wong and Nicotera (2004), observed that although a single report is rarely adequate to redirect policy priorities, *A Nation at Risk* may have been an exception. The direct influence of this report was complicated by the release of dozens of other reports on "education, productivity, and standards during 1983 and 1984" (p. 1). Serving as a lightening rod, Wong and Nicotera (2004) contended *A Nation at Risk*'s focus upon what is described as declining school quality during the early 1980's offered "a necessary, and even provocative, comprehensive framework to reassess the role of the federal government" (p. 1). They further believe the National Commission on Excellence in Education (NCEE) challenged the federal government to take a role in the design and implementation of recommendations for content, standards and expectations, time, and teaching, "thus creating a scenario in which NAR could feasibly impact educational policy" (p. 1).

A Nation at Risk played an important part in reshaping the way the federal government designed its largest educational program in public education, Title I of the Elementary and Secondary Education Act (ESEA). Title I, based mainly on census counts of children from low income families, is intended to improve the quality of education in schools with high poverty and/or struggling students. As Wong and Nicotera (2004) documented:

> [The *A Nation at Risk*] perspective found its articulation in subsequent legislative actions on Title I: the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, the Improving America's Schools Act of 1994 (IASA), and the No Child Left Behind (NCLB) Act of 2001. In each of the authorizations of ESEA, the recommendations of NAR had an impact on Title I policy culminating with federal policy that reflects the call for quality and standards in education. (p. 1)

Examining it in the light of education law history, Johnson (2004) articulated that the No Child Left Behind Act, while calling for widespread change in education, is linked to a "long string of changes inspired by the 1954 United States Supreme Court ruling in *Brown v. Board of Education* [347 U.S. 483 (1954)]" (p. 1). Johnson further contended that "the Act will play a role in litigation over a variety of education law issues" (p. 1) in the future.

Groundwork for the No Child Left Behind Act, Johnson (2004) suggested, was laid in 1965 with the passage of the Elementary and Secondary Education Act, authorizing grants for elementary and secondary school programs for children of low-income families. The passage of the Elementary and Secondary Education Act was a "direct result of *Brown*" (¶2), with Congress amending the law a number of times since 1965 and developing Title I funding to support the academic needs of children from low-income families. The ESEA's passage eventually required high academic standards to be applied to students served under the law.

In 2002, NCLB significantly expanded the scope of Title I. Although many disagree with NCLB policies and foundational arguments, most agree with its "basic legislative purpose: 'To ensure that all children have a fair, equal and significant

opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic achievement standards and state academic assessments'" (Johnson, 2004, p. 1).

Findings of Legal Trend Analysis

For years, various educational leaders and legal scholars have decried increases in education litigation. Although that did not occur, Zirkel complained about the increase in lawsuits in 1984, noting that in the prior "few decades our society in general and our schools in particular have experienced an upsurge in litigation that has reached heretofore unparalleled levels" (p. 2). Cases involving the use of school facilities by religious groups, according to Lufler in 1991, continued to rise, while home instruction and student searches declined in number.

The work of Imber and Thompson (1991), constructing both a qualitative and quantitative picture of education-related litigation, "consistently discovered a rapidly increasing rate of litigation throughout the 20th century until about 1980" (p. 225) at which time they found a 20 percent decrease evident from 1977 to 1987. In 1999 Newcomer and Zirkel found this same general decline in education litigation well into the 1990's, with the pattern increasing dramatically in special education litigation.

By 2003, these findings proved at least partially true with Lupini and Zirkel (2003) contending: "In recent years, researchers have produced a relatively solid body of empirical findings, and their results tend to contradict the 'crisis' characterization of the overall trend" (p. 258), even though a survey of 5000 randomly selected principals by the American Tort Reform Association in 1999 revealed a perceived crisis (Zehr, 1999). According to Zehr (1999), this fear of litigation has motivated many principals to take extensive actions to prevent lawsuits from cutting programs to restricting teacher-student

contact. Zehr further noted 20 percent of the 523 responding principals were spending as much as five to 10 hours a week in meetings or documenting events to prevent litigation.

Most recently, Valente and Valente (2005) lamented substantial changes in statutory and case law, contending new legislation and judicial decisions have "displaced, overturned, or substantially altered the law" (p. iv). These changes, according to Valente and Valente (2005), represent new trends in the use and control of schools, "with correlative changes in the rights and liabilities of school managers, teachers, students, parents, and community groups" (p. iv).

In 2001, Sack emphasized the importance of knowing which trend characterizations are important for informed policies and practices by suggesting that the ostensibly dramatic increase in lawsuits, predominantly student, is connected to Congressional action seated recently in the enacting of Teacher Liability Protection Act of 2001 to protect educators from liability. As Lupini and Zirkel (2003) suggested, knowing which depiction of "overall trends in education litigation is correct is essential for informed policies and practices" (p. 258), supporting the need for administrators' pre-knowledge in their recommendations for policy development and practice implementation. Looney (2004) supports the suppositions of Sack (2001), Lupini and Zirkel (2003), contending if an administrator knows and understands their "legal rights and responsibilities, the law can be a source of guidance and protection" (p. 2). The greater the understanding of the law, "the easier it is to take steps to avoid a lawsuit altogether rather than react once a lawsuit has commenced" (p. 2).

Outcome Analyses

Recently, "researchers have produced a relatively solid body of empirical findings" that "tend to contradict the 'crisis' characterization of the overall trend" (Lupini

& Zirkel, 2003, p. 258). In 1998 Zirkel examined the outcomes of education litigation and overall Supreme Court trends at a macro level and stressed the need for further outcome analysis. He focused on the Fourteenth Amendment's Equal Protection Clause and the First Amendment's Establishment Clause. Limiting his United States Supreme Court sample to K-12 students, Zirkel looked at the "favorability of the judicial climate." In his findings, Zirkel (1998) postulated:

> Because lower courts will not only follow the law declared in these cases but also may be expected to reflect the general spirit of them . . ., this highest level of case law serves not only as a leading indicator of the relevant litigation generally, but also [a] spring-board for future, larger outcome analysis (p. 1).

The most astonishing result, according to Zirkel, was the "pendulum-shift in the Supreme Court's decisions" concerning elementary and secondary education students "away from a student-friendly orientation" (Zirkel, 1998, ¶11).

In a later work Lupini and Zirkel (2003) complained, beyond their own and Lufler's 1998 studies, other research comparing outcomes over time was insignificant. Additionally, Lupini and Zirkel (2003) expressed disappointment in the limited nature of many other works, contending outcome studies have too often focused on more specialized areas such as special education. Noteworthy examples include special education due process hearings in Illinois (Kammerlohr, Henderson & Rock, 1983); special education hearings research conducted by Rhen (1989) in the state of Pennsylvania; the relationship between selected special education due process hearings in Pennsylvania and their outcomes by Tarola (1991); a case-by-case analysis of due process hearing and review officers in special education by Newcomer (1996); a ten-year evaluation of special education placement trends from 1989 through 1999 by Handler

(2002); and an analysis of federal court decisions regarding early childhood special education students for school administrators by Bridgewater (2003).

Kammerlohr et al. (1983) analyzed 314 due process hearings held in Illinois with 95, or 30% of the decisions, appealed at the state level. The most significant trends noted in this study included hearings related to the following categories: behavior disorders (21.3%), learning disabled (13.7%), deaf and multiply handicapped (10.5% each)" (p. 418). According to Kammerlohr et al. (1983), this was one of the first studies "describing due process hearings covering an entire state" (p. 421).

The purpose of Rhen's study was to determine whether there were any discernable trends in the factors involving hearings, final decisions, and placement of students following a hearing from 1977 through June of 1986. Rhen's study reviewed 578 hearing officer appeal decisions and agreements, yielding frequencies and percentages concerning educational programs of children prior to a hearing, the ages and gender of children, disability classifications and issues raised at hearings. The study further yielded frequency and percentage distributions for types of school districts in which hearings were held; school district densities, wealth, urban or non-urban classifications; legal or other advocacy representation of the parties involved; background of hearing officers; outcomes of hearings and appeals; relationship factors to the outcome of the hearing and appeal to secretary of education; and factors relating to the student's placement. The hearing and appeal outcomes favored schools in 347 cases (60%) with parents prevailing in 90 of the cases (15.6%). The trend favoring schools (60%) rather that parents (15.6%) was evident throughout the ten-year analysis in both state-level courts and federal district appeal courts.

The Tarola (1991) outcome analysis study of special education due process hearings and appeals from 1973 to 1989 provided trend information concerning legal representation at hearings, types of issues, and hearing and appeal decisions. The sample consisted of 347 special education hearing officer decisions, including appeals to the Pennsylvania Department of Education. A trend analysis at the hearings officer level revealed an average of 64.0% of the cases heard were decided in favor of the school district, while an average of 16.1% of the cases favored parents. This trend was mirrored in appealed cases with school districts prevailing in an average of 48.1% of the cases heard and parents prevailing in 7.2% of the cases.

In 1996 Newcomer's study primarily determined the expressed deference in published special education cases as compared to the actual change in outcome between final administrative hearings and final court decisions. In analyzing 200 (48.3%) of the 414 published state and federal court decisions under the Individuals with Disabilities Education Act, Newcomer (1996) found final court decisions provided a standard of review in nearly two-thirds of the cases with variations of *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley* occurring most frequently. Consistent with previous research in special education, Newcomer noted school districts prevailed in more cases than parents.

More recently, Handler (2002) examined trends in special education disability placements at the state and national level. The data analyzed in this study represented percentages of students with disabilities receiving services rather than actual student numbers from 1989 through 2000. Handler (2002) found small increases in the placement of students with disabilities receiving services in general education classrooms. This finding was consistent with research of placements for students with

disabilities nationally (Whorton, Siders, Fowler, & Naylor, 2000; Katsiyannis, Zhang & Archwamety, 2002).

Other similarly narrower studies have focused on religion (Pryor, 1998); sexual harassment (Doss, 2003); or volunteer programs (Holman, 2002). Despite the desirable features of each study and its limitations, recommendations for additional outcomes research are replete with suggestions for a larger context. This would give a expanded perspective on the decisions set forth by the Supreme Court and would thereby "be systematic, comprehensive, and longitudinal in nature in order to remedy previous related studies" that go beyond frequencies and address outcomes on a "category-by-category" basis (Zirkel, 1998, p. 259). Zirkel further recommended that the longitudinal study include a descriptive or inferential statistical analysis; a "variety of activities that educators perform rather than focus on a specialized subject matter;" and incorporate a "well-defined classification system" with a "multicategory outcome scale that operationally distinguishes and defines all the various judicial results, including inconclusive decisions" (p. 259). In short, this type of research would truly provide a macro view.

Preventative Law

"An ounce of prevention is worth a pound of cure," the old saw warns, and this may be nowhere more accurate than in schools. Particularly with regard to legal action, school administrators have been told throughout their educational careers to anticipate problems and plan to avoid them. Zirkel (1984) stated the realization and need of educational administrators and attorneys for preventive law. Alexander and Alexander (2005) wrote: "Due to the breadth of information involved, it is necessary . . . to be

versed in certain fundamental concepts of the American legal system and to be able to apply this knowledge to situations [proactively] . . ." in the daily operations of schools (p. 1).

Failure to think and act proactively has long been criticized by legal analysts, who have noted many instances where school administrators have seemingly been blind-sided by lawsuits and, in hindsight, should have predicted the unfolding conflicts emerging before them. "Regardless of the root cause of problems that may lead to litigation, such events are too often dealt with ex post facto rather than through a well-planned, active program of risk anticipation and litigation prevention" argued Dunklee and Shoop (2002, p. 7). They posited that risk factors diminish when an organization has a "well-defined, proactive program of preventative law," and further noted:

> School districts should recognize liability as a high priority in daily operations. In many school districts, responsibility for preventing litigious actions or inaction and loss is relegated to middle- and low-level staff members. The longstanding misperception is that safety and loss programs involve minor personnel matters and relatively insignificant details. Yet when a major incident, accident, or loss occurs it requires significant top-level time and energy. (p. 7)

Principals, according to Dunklee and Shoop (2004), can substantially reduce their liability vulnerability through the assimilation and practice of preventive law and articulate six actions to support the preventative practice of administrators:

1. an understanding of how the law can and cannot be effectively used to reduce school problems;
2. proper application of procedures, informed decision-making, and foreseeability;

3. working with counsel to reduce litigation costs;
4. flexibility and more effective conflict resolution;
5. knowledge of legal precedent, constitutional compliance, and public information need, crisis management and monitoring; and
6. leadership in a preventive law. (p. 8)

During the previous century, changes in American culture resulted in a whole host of new conflicts in society, and many of these emerged in schools. These conflicts created new issues and with these new issues came new laws (Dunklee & Shoop, 2002). According to Wong and Nicotera (2004), the National Commission on Excellence in Education (NCEE) issued a statement similar to the contentions of Dunklee and Shoop (2002) calling for "effective principals to practice preventive law and risk management," noting it is paramount "they seek out current updates on laws that affect education. All too often, unfortunately, the need to know is considered ex post facto" (p. 13). Likewise, Dunklee and Shoop (2002) concluded:

> Effective principals do not wait for legal counsel to provide preservice—they take the time to read, listen, and actively apply what they know to their schools to avoid harm to students and others, and to short-circuit incidents that might lead to litigation. (p. 13)

Summary

Public education is overseen by a diverse set of laws with individual states, school boards, city councils, and the federal government all having a hand in its governance. This regulation has led to the enacting of laws and setting of precedents rooted in the constitutions of each state and historic traditions that serve to operate, control, and manage public schools.

The nation's legal system, delegated powers of state and federal constitutions, and the four sources of laws (constitutional, common, statutory, and administrative) are responsible for overseeing public schools and intervening when problems become unresolved. In particular, courts at various levels are charged with the duty to intervene when schools fail to provide a safe place that both observes and protects the rights of all individuals, including children. These prevailing principles guarantee the freedoms of religion, speech, press, assembly, and administrative or judicial redress to correct injustices.

State and federal court systems function independently with federal courts hearing cases as they relate to federal statutes or the Constitution, and state systems hearing cases within the jurisdiction of the state or on district concerns. Some cases overlap and a decision must be made whether the federal or the state court has authority to decide. The United States Supreme Court is the highest ruling court in the nation, making landmark decisions that have changed the course of education even today.

The involvement of the United States Congress in education has steadily grown since the late 1950's. Even though much of the involvement of Congress is not direct, Congressional power continues to be seen in the standards focus and funding initiatives of today. More recently, Congress has focused on national curriculum standards and testing with the No Child Left Behind Act, encroaching even more on the territory of state legislatures and local school districts.

Experts in education litigation trend analysis and legal scholars have expressed both a concern and a need for more litigation research in K-12 education. In particular, they recommend systematic, comprehensive, and longitudinal studies to garner a more extensive perspective on the Supreme Court decisions and their impact on elementary and

secondary education. Some experts assert there was a plaintiff-friendly litigation explosion. More recently, experts assert the Court is ruling more in favor of school authorities. An in-depth analysis of U.S. Supreme Court education decisions would serve as a proactive guide for school administrators, boards, education preparation programs, and legal education programs.

CHAPTER THREE

METHODS AND PROCEDURES

Introduction

This study utilized a mixed methodology to select and analyze United States Supreme Court cases directly affecting elementary and secondary education to enhance the collection of qualitative and quantitative data (Creswell, 1994; 1998). In particular, this study illuminated the time period current Justices have served to the present, beginning with the seating of Chief Justice Rehnquist in 1972 and ending in December of 2004. All United States Supreme Court K-12 education cases were researched through *LexisNexis*, *West's Federal Practice Digest* (4th) and *WestLaw*.

Research Design

A descriptive research design was used in this study, comparing data derived from an outcome analysis of U.S. Supreme Court elementary and secondary cases with a mixed methods approach to reduce inherent researcher bias in a single method. According to Creswell (2003), "any single method could neutralize or cancel the biases of other methods (p. 15). Creswell further noted "[t]riangulating data sources – a means for selecting convergence across qualitative and quantitative methods" (Jick, 1979, as cited in Creswell, 2003, p. 15), may expand, transform, or provide more telling information than a single approach. For these reasons, a mixed methodology approach was used in this study.

The variables specific to this study were the: (a) cases selected; (b) decision time period; (c) categorization of lawsuits by students, employees, and others; (d) court case outcomes; and (e) majority opinion author. This study also examined whether there may

be any discernable historic elementary and secondary education decision trends based on these factors.

Descriptive research was appropriate for this study, as Gay (1996) explained: "Descriptive research involves collecting data in order to test or answer questions concerning the current status of the subject of the study" (p. 14). Gay (1996) further expounded on the beneficial utility by noting a descriptive study provides for investigating educational problems typically "concerned with the assessment of attitudes, opinions, demographic information, conditions and procedures" (p. 249) towards individuals, organizations, events, or procedures. Descriptive research, according to Gay (1986) "may be any written or nonwritten record which exists and which may enhance the researcher's overall understanding of the situation under study" (p. 221).

Bogdan and Bilken (1998) concur with Gay (1986), stating the exact use and definition of terms "varies from user to user and from time to time" (p. 3). They further state that the nature of data collection takes the form of words with the written results of the research containing "quotations from the data to illustrate and substantiate the presentation" (p. 5). The data, according to Bogdan and Biklen (1998), "can be categorized as personal documents, official documents, and popular culture documents" (p. 133) the researcher analyzes "with all of their richness as closely as possible to the form in which they were recorded or transcribed" (p. 5). In these documents "researchers can get access to the 'official perspective'" (p. 133).

According to Bogdan and Bilken (1998), the collection of descriptive data by the qualitative researcher can be a "nit-picking" approach with the potential to find "a clue that might unlock a more comprehensive understanding of what is being studied" (p. 6). Description succeeds as a method of data gathering and analysis "when every detail is

considered" (p. 6) and when the researcher is concerned with how people confer meaning, the natural history of an activity or event, and how attitudes become translated into daily interactions.

Bogdan and Bilken (1998) contend qualitative researchers "tend to analyze their data inductively" by building abstractions in the gathering process and grouping or coding the data gathered. A theory "emerges from the bottom up (rather than from the top down), from many disparate pieces of collected evidence that are interconnected" and becomes grounded in the data (p. 6). A picture is constructed as the parts are examined, and the perspectives are captured from materials or official documents. As the data are read, certain words, phrases, patterns, ways of thinking or events repeat and stand out. These words or ways of thinking become "coding categories" to illuminate topic areas, regularities, and patterns for further sorting or coding of categories.

With regard to qualitative analysis, the procedures recommended by Bogdan and Biklen (1998) served as the framework for the data analysis of this study. For example, they used "setting/context" to describe codes "under which the most general information on the setting, topic, or subjects can be sorted . . .," noting the "particular coding label would depend upon your subject" (p. 172). In this investigation the context refers to each issue category of each case. Next, the Bogdan and Biklen (1998) format advances to a second level of coding referred to as "definition of the situation codes." Under these codes "the aim is to place units of data that tell you how the subjects define the setting or particular topics . . . and how they see themselves in relation to the setting or your topic" (p. 172). For the purpose of this investigation, the reasoning of each case clearly indicated the primary points leading to decisions, therefore, completing this level of coding. Finally, Bogdan and Biklen define "theme" as a "concept or theory that emerges

from your data" (Mills, 1959, p. 216 in Bogdan and Biklen, 1998), contending some may signal a trend, main conception or categorical distinction (p. 189). Themes can be derived from "statements about particular kinds of settings to universal statements about human beings, their behavior, and situations" (Spradley, 1980, as cited in Bogdan and Biklen, 1998). Consequently, with this research, the themes emerged through the Court's reasoning into main conceptions. It is this level of the analysis that results in guidance for administrators. Given the documents constituting the data points in this research, along with the variables mentioned earlier, this investigation falls well within the operational guidelines of descriptive methodology.

Population

The U.S. Supreme Court elementary and secondary education rulings from 1972-2004 constituted the population for this study. Ninety-six cases were decided during this timeframe and were the subject of this analysis. The cases were categorized according to the variables coded on the Litigation Documentation Form developed by William H. Lupini (2000).

The number of suits by students, employees, and others are as follows:

Lawsuits by Students	59
Lawsuits by Employees	12
Lawsuits by Others	25
Total	96

This information is presented in Table 1, located in Chapter Four, under Presentation of Data, *Qualitative Analysis.*

Research Questions

The guiding research question for this study stated what trends have emerged in the K-12 education rulings issued by the United States Supreme Court between 1972 and 2004?

Sub-questions

1. What types of actions reached the United States Supreme Court for adjudication?
2. What types of actions have been most litigated during the 1972 – 2004 time period?
3. What have the outcomes been in these landmark cases?
4. Have there been any discernable historical trends emerging from the outcome data?
5. What guidance for educational administrators can be inferred from these trends, if any are apparent?

To answer the guiding research question and sub-questions of this study, 96 United States Supreme Court elementary and secondary litigation cases from 1972 through 2004 were analyzed. The questions were influenced by the literature reviewed in Chapter Two: Review of Literature.

Instrumentation

The Litigation Documentation Form located in Appendix C was utilized for the quantitative analysis in this study. The form included the following areas:

1. name of the case
2. case number
3. time period of decision
4. issue categorization

5. suits by students
6. suits by employees
7. suits by others
8. outcome
9. author of majority opinion
10. court of emergence

Instrument Development Process

The developmental process of the instrumentation used in this study evolved from the litigation documentation pioneered by Imber and Thompson in 1991. It since has been gradually refined by Newcomer and Zirkel (1999), Lupini (2000), and Lupini and Zirkel (2003), and Wattam (2004). Specifically, this work utilized the Litigation Documentation Sheet/Form five-point scale developed by Newcomer and Zirkel (1999), then refined by Lupini (2000) who revised the middle section into three categories and expanded the outcome section to a seven-point scale. Further modification was made by Wattam (2004), who included outcomes for each case issue. Written permission was obtained from Lupini to utilize the instrument in its most refined form. An outcome analysis for each major case issue was included, consistent with the outcome analysis utilized in Wattam's (2004) research.

The Litigation Documentation Form modifications made by this researcher included: (a) assigning a research number to each case; (b) providing a decision note synopsis area; (c) renaming eight issue categorizations; (d) providing a checklist to track the majority opinion authors; and (e) providing a section noting the lawsuit court of emergence.

Litigation Documentation Form Variables

An explanation of each variable coded on the Litigation Documentation Form (Lupini, 2000) follows:

Case name and number. This item identified the name of cases and researcher-assigned number.

Time period. This item identified the year each case was decided. The sample for this study reported United States Supreme Court decisions from 1972-2004.

Issue categorization. This item coded the category of the party involved in the litigation with eight subcategories. Each subcategory explicated the issues of the suit. The subcategory headings were suits by students, suits by employees, and suits by others.

1. *Lawsuits by students.* Suits by students denote the first categorization. Each case represented litigation initiated by a student, the student's parent or guardian, other persons having lawful control of the student, public interest groups, or public officials on behalf of the student. The subcategories included (a) negligence; (b) control of behavior (expression, association, punishment, attendance, and search and seizure); (c) church and state activities; (d) school programs; (e) special education; (f) discrimination and equal opportunity issues; (g) fiscal; and (h) other issues. Although not ostensibly evident, the suits by students subcategory "church and state" included issues regarding attendance, curriculum, facilities use, funding, religious wording, and special education issues as related to religious schools. The subcategory "discrimination and equal opportunity" issues included desegregation lawsuits; the "fiscal" issues subcategory included student transportation suits and issues relating to public funds or treasury.

2. *Lawsuits by employees.* Suits by employees matched cases brought by employees or disputes by employee professional organizations. The subcategories in this section included (a) discrimination, equal opportunity and sexual harassment; (b) employment actions; (c) professional negotiations, (d) torts; and (e) other. Subcategories under the heading "discrimination" included race and national origin, sex, religion, and age. Subcategories under the heading "employment actions" included termination (tenured or nontenured), nonrenewal (only nontenured employees), transfer (position location change), reassignment/suspension (position change as well as time reduction), involuntary leaves of absence (mandatory, reduction in force, and recall rights), and disability benefits. The subcategory "torts" included negligence and defamation.

3. *Lawsuits by others.* The "suits by others" category included third parties as plaintiffs against a school authority. This category included suits by parents, school districts, taxpayers, school members and others bringing suit under the subcategory areas of contracts, fiscal, negligence, church and state, and other issues. The subcategory "other" included certification and employment, character defamation, hiring practices, athletic association rule enforcement, and state initiative dispute cases.

Outcome by issue. The determination of the outcome was coded on a seven-point outcome dimension as follows:

1. Conclusive Decision Completely Favoring Students, Employees or Others. This dimension refers to decision completely favoring students, employees or others.
2. Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others. This dimension refers to students, employees, or others winning a majority or substantial portion of the suit, but not entirely all of the relief sought from the Court.

3. Inconclusive Decision Favoring Students, Employees or Others. This dimension describes decisions where the student, employee or other party did not prevail, but was favored. In particular, cases where the evidence supported wrongdoing on the part of the non-prevailing party and the case was remanded for further evidentiary proceedings.
4. Conclusive or Inconclusive Split Decisions. This dimension included rulings that did not notably favor either party. Moreover, vacated and remanded cases when the U.S. Supreme Court could not determine from the lower court's opinion what conclusion would have been reached had they applied the proper test.
5. Inconclusive Decision Favoring School Authorities. This area of dimensionality included decisions favoring school authorities with no clear victory.
6. Conclusive Decision Largely, But not Completely Favoring School Authorities. More specifically this dimension included school authorities winning a major or substantial portion of the case, but not all of the relief sought from the Court. Cases where the evidence supported wrongdoing on the part of the student, employee or other party but were remanded for further proceedings consistent with the Court's ruling were included.
7. Conclusive Decision Completely Favoring School Authorities. This dimension reported cases clearly favoring school authorities, including those suits reversed and remanded with lower court error that would favor school authorities upon further proceedings consistent with the U.S. Supreme Court's holding.

Majority opinion author. The author of each majority opinion or *per curiam* opinion was identified in this item.

Court of emergence. The court of emergence within the federal judicial circuit was identified in this item.

Litigation Documentation Form Verification

The revised litigation documentation form utilized by Lupini in 2000 was tested twice to establish inter-rater reliability of the instrument. Lupini (2000) first conducted a "preliminary random selection and categorization of 80 reported court decisions which were chosen from *West's Education Law Reporter*" with a "second pilot phase of 25 randomly selected sample cases" to establish inter-rater reliability (p. 57). After modification, the piloted tests led to the development of criteria for case selection and categorization in an attempt to provide analysis consistency. After revisions, the smaller second piloted phase incorporated 25 cases for analysis under consultation with an attorney possessing expertise in education law. This piloted study established an 80 percent agreement level, focusing on disagreement and potential instrument modification and an analysis of each individual item categorization.

Wattam (2004) also checked validity of the litigation documentation form by conducting a pilot study. Wattam piloted "five randomly selected reported court cases." Each case was analyzed by an attorney with education expertise. This collaboration provided for a 97 percent inter-rater reliability "based on the independent coding by the researcher and the attorney" (p. 58). Such inter-rater reliability assessment provided this researcher the latitude to omit the same step in the analysis.

This researcher relied on the pilot verification processes conducted by Lupini (2000) and Wattam (2004) to establish item categorization and coding criteria as the basis for this study and to make item categorization and coding revisions. Further verification of case and issue analysis came about as a result of dissertation committee expertise.

Specifically, of the five committee members, three had legal expertise and three were experienced K-12 school administrators.

Procedures

The gathering of United States Supreme Court decisions in elementary and secondary education from 1972 – 2004 was the initial step of this study. This thirty-two year longitudinal study yielded case outcome, case issue, and litigation trend information. Case information came from the *LexisNexis* electronic database. All cases were United States Supreme Court cases from 1972 through 2004.

Treatment of Data

The *LexisNexis* and *WestLaw* electronic databases, along with the *West's Federal Practice Digest* (4th), were used to search United States Supreme Court elementary and secondary education litigation cases from 1972 through 2004. All cases were retrieved electronically from the *LexisNexis* database. The treatment of data included a comparison of the ninety-six adjudicated United States Supreme Court elementary and secondary education cases over thirty-two years from 1972 through 2004.

Data Analysis Procedures

After the data for this study were collected, cumulative frequency and percentage distributions were reported for the variables and displayed in quantitative tables for each category. The variables in this study included: cases selected; decision time period; categorization of lawsuits by students, employees, or others; court case outcomes; majority opinion author; and court of emergence. Frequencies reported the actual numbers that appear for each variable.

Conceptual Theme

Descriptive research includes data collection to answer questions concerning a study (Gay, 1996) that expands and transforms a single approach to help neutralize or cancel methodological bias (Creswell, 2003). In particular, descriptive research may provide abstractions of written results from official documents in table or narrative form which are built during the analysis process. A theme emerges from this analysis that becomes interconnected and grounded in the data. This inductive analysis is built in the data gathering process and then grouped or coded. The theory, emerging from the bottom up, provides a picture illuminating topic areas and coded categories (Bogdan & Biklen, 1998).

In this study the legal ruling, majority opinion, and Supreme Court's reasoning was analyzed and recorded. The legal rulings and opinions were examined incorporating a three-phase qualitative coding process to identify the context (issue category), situation (reasoning summary leading to the decisions), and theme (emergent legal theme). In the contextual phase, this researcher analyzed the cases and categorically arranged them into three areas: (a) lawsuits by students, (b) employees, or (c) others. The researcher further refined this selection process by subcategory. In the situational phase, the researcher analyzed the majority opinion reasoning for each case. From the contextual and situational analysis the legal theme emerged.

Summary

This was a descriptive research study utilizing a mixed methodology. The quantitative phase identified independent variables and their relationships to dependent variables. The independent variables were the cases and years selected for the study. The dependent variable was the United States Supreme Court elementary and secondary

education decision outcomes. The sample for this study was ninety-six United States Supreme Court cases from 1972 through 2004. The first phase of the study examined the United States Supreme Court trends which have emerged in elementary and secondary education rulings between 1972 and 2004. This phase included a quantitative analysis of the cases by (a) time period; (b) categorization of lawsuits by students, employees, and others; (c) court case outcome; majority opinion author; and court of emergence. The qualitative second phase of the study concurrently analyzed the legal ruling and majority opinion reasoning for each case. This phase incorporated three qualitative coding procedures; context, situation, and theme.

A Litigation Documentation Form was developed for the study based on the seven-point scale developed by Lupini (2000) with permission requested from the author. The form included the following areas: (a) name of the case; (b) number assigned to each case; (c) time period of the decision; (d) issue categories and subcategories; (e) issue outcome; (f) majority opinion author; and (g) circuit or district court area of emergence.

CHAPTER FOUR

RESULTS

The purpose of the this study was to analyze data related to United States Supreme Court decisions in K-12 education for a specified timeframe to augment the knowledge base of education law. Additionally this research sought to elucidate trends in legal issues facing the Court. More specifically, the guiding research question of this study was: What trends have emerged in K-12 education rulings issued by the United States Supreme Court between 1972 and 2004? The secondary guiding questions of this study were: (a) What types of actions reached the United States Supreme Court for adjudication? (b) What types of actions have been most litigated during the 1972 – 2004 time period? (c) What have the outcomes been in these landmark cases? (d) Have there been any discernable historical trends emerging from the outcome data? and (e) What guidance for educational administrators can be inferred from these trends?

The study was designed to utilize a mixed methodology, collecting both quantitative and qualitative data for the analyses. For the quantitative treatment, a descriptive research design was used to compare data derived from an outcome analysis of U.S. Supreme Court elementary and secondary education cases based on (a) cases selected; (b) decision time period; (c) categorization of lawsuits by students, employees, and others; (d) court case outcomes; (e) majority opinion author; (f) issue breakdown by state; and (g) circuit court distribution. In addition, the study sought to determine whether there were any discernable trends. For the qualitative treatment actual United State Supreme Court case decisions and majority opinions were reviewed to collect the data. Not included in the study were cases determined by the researcher to be unrelated

such as stay denials, *certiorari* denials, picketing near school grounds, and voting rights issues. The United States Supreme Court case data were gathered from *LexisNexis*.

Presentation of Data

Quantitative Analysis

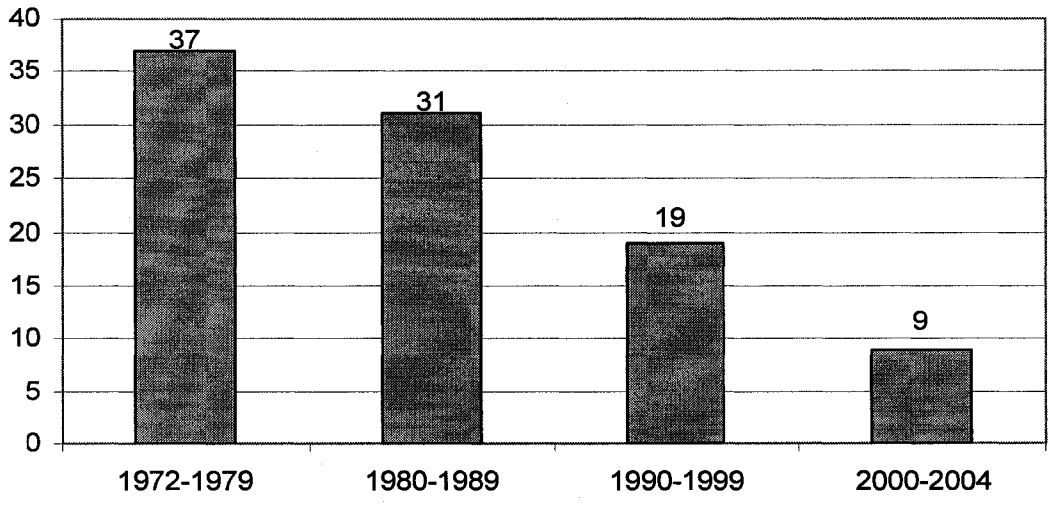
The quantitative data were analyzed using frequencies and percentages for (a) overall reported decisions; (b) overall issue distribution; (c) overall issue distribution by students, employees and others; (d) issue outcome findings by category; (e) issue distribution by decade; (f) issue distribution by split decade; (g) issue distribution by author of majority opinion; (h) issue distribution by circuit court; and (i) issue distribution by state.

The guiding research question asked: What trends have emerged in the K-12 education rulings issued by the United States Supreme Court between 1972 and 2004? Sub-questions 1 through 4 asked: What types of actions reached the United States Supreme Court for adjudication? What types of actions have been most litigated during the 1972-2004 time period? What have the outcomes been in these landmark cases? Are there any discernible trends emerging from the outcome data? Appropriate quantitative consideration of the primary research question, and sub-questions regarding the types of actions reaching the United States Supreme Court, actions most litigated, outcomes, and emerging trends required the construction of a data set consisting of several tables. These tables follow, illuminating the total cases adjudicated by decade and split decade; providing a delineation of cases decided categorically by students, employees, and others; and presenting an issue distribution by subcategory within each major category by students, employees, and others.

To provide a context for the study, Figure 1 depicts the number or frequency of cases as they reached the Supreme Court by decade from 1972 through 2004. The steady decline from 37 cases in the 1970's, 31 cases in the 1980's, 19 cases in the 1990's, and 9 cases in the first part of the 2000's represents a stark downturn in the number of cases.

Figure 1

Total Education Cases Litigated at the U.S. Supreme Court



As indicated earlier, the sample for this study included 96 U.S. Supreme Court decisions from 1972 through 2004. The case categories included: Suits by Students, Suits by Employees, and Suits by Others. The distribution of the cases is categorized in Table 1, illustrating the number of reported decisions throughout the time period of this study. Lawsuits by Students accounted for 61.5% of the total decisions or 59 decisions out of 96 total decisions. Lawsuits by Students ranked highest in the number of cases decided, while Lawsuits by Others ranked second with 25 decisions out of 96 total decisions or 26.0 % of the total decisions. Lawsuits by Employees ranked last with 12.5% of the total decisions with 12 decisions out of 96 total decisions.

Table 1

Reported Decisions of the Court

Category	Number of Cases	Percentage
Lawsuits by Students	59	61.5 %
Lawsuits by Employees	12	12.5 %
Lawsuits by Others	25	26.0 %
Total	96	100.0 %

Proportional differences in the distribution of the 96 cases are readily apparent in Figure 2 and Figure 3 which follow.

Figure 2

Total United States Supreme Court Cases by Category

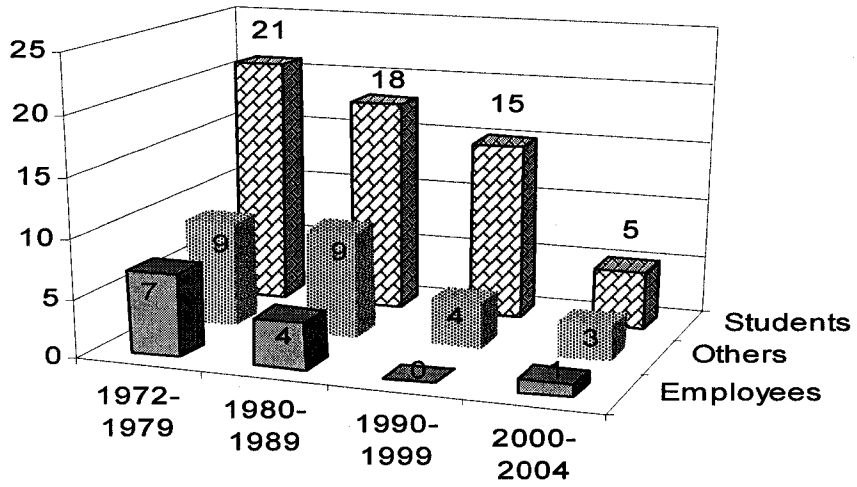


Figure 3

Total United States Supreme Court Cases by Category

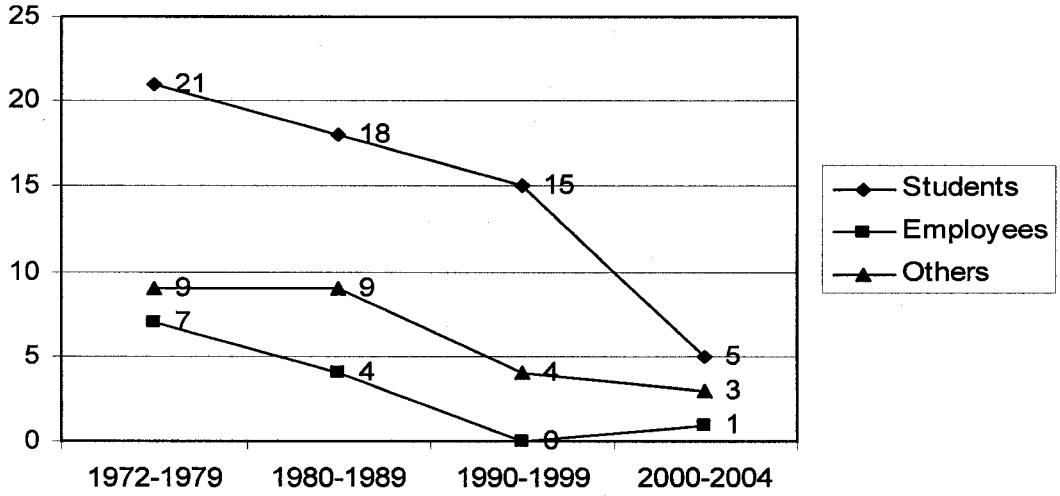


Table 2 illustrates the issue distribution of the 108 issues by decade for the time period 1972-2004. There were 44 issues, or 40.7%, adjudicated from 1972 to 1979, an eight-year period during the 1970's. The time period from 1980 to 1989 reflected 34 issues adjudicated, or 31.5%, during the 1980's. Twenty issues, or 18.5%, were adjudicated from 1990 to 1999, during the 1990's. During the time period from 2000 to 2004, a five-year timeframe, 10 issues were adjudicated representing 9.3% of the issues. This table signifies a consistent decrease in the number of issues adjudicated throughout the time period from 1972 until 2004.

Table 2

Issue Distribution by Decade

Decades	Number of Issues Adjudicated	Percentage
1972-1979	44	(40.7%)
1980-1989	34	(31.5%)
1990-1999	20	(18.5%)
2000-2004	10	(9.3%)
Total	108	(100.0%)

Figure 4 illustrates the comparative differences evident in the distribution of the 108 issues.

Figure 4

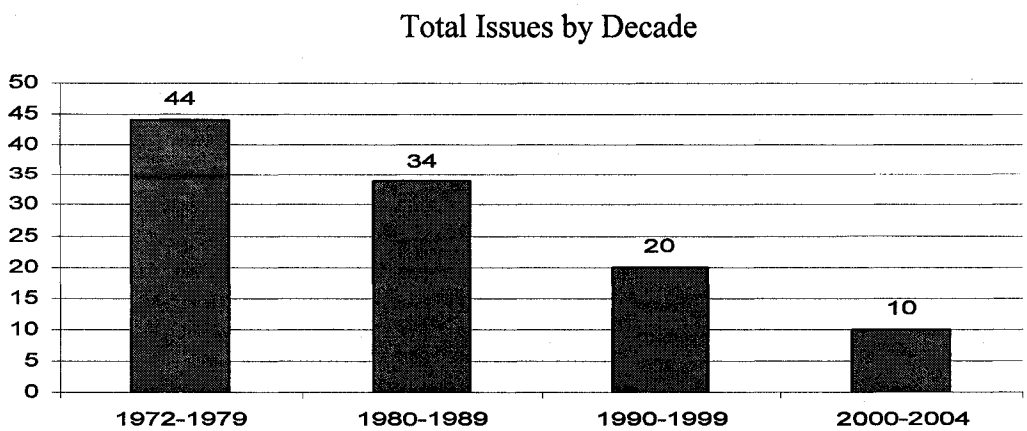


Table 3 presents an issue distribution by split decade. The greatest distribution is seen from 1975-1979 with 26 issues, or 24.1%, of the total issues adjudicated. This distribution is followed by 19 issues, or 17.6%, from 1985-1989 and 18 issues, or 16.7%, from 1972-1974. The fewest number of issues adjudicated resulted in 8 issues, or 7.4%, from 1995-1999.

Table 3

Issue Distribution by Split Decade

Decades	Number of Issues Adjudicated	Percentage
1972-1974	18	(16.7%)
1975-1979	26	(24.1%)
1980-1984	15	(13.9%)
1985-1989	19	(17.6%)
1990-1994	12	(11.1%)
1995-1999	8	(7.4%)
2000-2004	10	(9.3%)
Total	108	(100.0%)

Figure 5 provides a split decade representation of the proportional differences apparent in the distribution of the 108 issues.

Figure 5

Total Issues by Split Decade

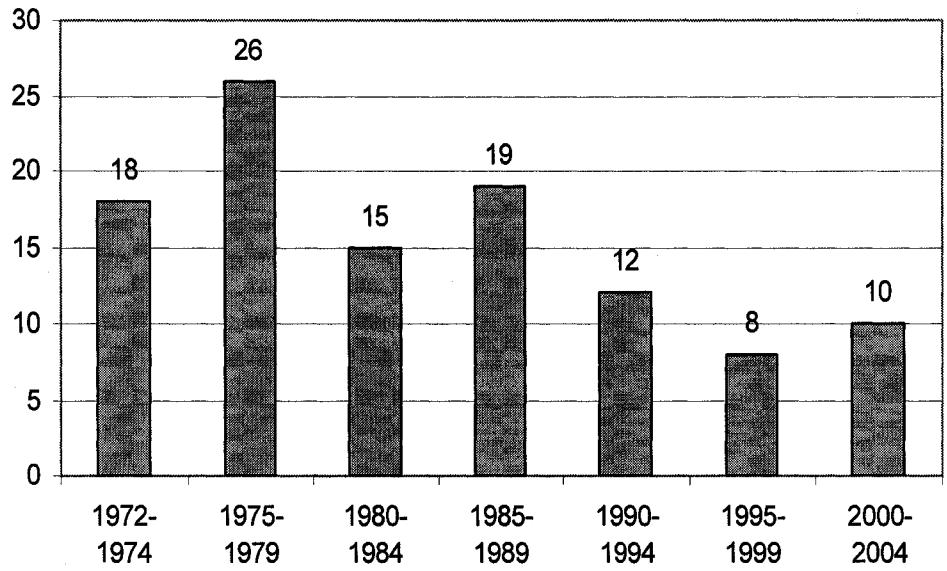


Table 4 illustrates the total 108 issue outcomes from 1972-2004 by frequency and percentage as coded on the Litigation Documentation Form seven-point scale. Lawsuits by Students revealed the most frequent concentration of issues. The Discrimination and Equal Opportunity subcategory resulted in 26 issues, or 24.1%, of the total number of issues. The Church and State subcategory produced fewer than half the number of issues with 12 issues, or 11.1%, of the issues, and the Special Education subcategory following with 11 issues, or 10.2%, of the total number of issues.

Lawsuits by Others revealed the second most frequent concentration of issues. The subcategory entitled Church and State contained 15 of the issues, or 13.9%, of the of the 108 issues heard. The fewest issues were revealed in the category, Lawsuits by Employees, with 8 "Termination" issues or 7.4% of the total number of issues.

Table 4

Issue Distribution of U.S. Supreme Court Decisions

	Number Adjudicated	Percentage of Total
Lawsuits by Students		
Negligence	0	(0.0%)
Behavior		
Expression	2	(1.9%)
Association	0	(0.0%)
Discipline	6	(5.6%)
Attendance	2	(1.9%)
Search and Seizure	4	(3.7%)
Church and State	12	(11.1%)
School Program	2	(1.9%)
Special Education	11	(10.2%)
Discrimination, Equal Opportunity & Sexual Harassment	26	(24.1%)
Fiscal	1	(0.9%)
Other	0	(0.0%)
Lawsuits by Employees		
Discrimination & Equal Opportunity		
Race & National Origin	0	(0.0%)
Gender	1	(0.9%)
Church and State	1	(0.9%)
Age	0	(0.0%)
Employment Actions		
Termination	8	(7.4%)
Nonrenewal	0	(0.0%)
Transfer	0	(0.0%)
Reassignment/Suspension	0	(0.0%)
Involuntary Leave of Absence	3	(2.8%)
Disability Benefits	0	(0.0%)
Collective Bargaining and Negotiations	3	(2.8%)
Tort		
Negligence	0	(0.0%)
Defamation	0	(0.0%)
Other	1	(0.9%)
Lawsuits by Others		
Contracts	0	(0.0%)
Fiscal	5	(4.6%)
Negligence	0	(0.0%)
Church and State	15	(13.9%)
Other	5	(4.6%)
Total	108	(100.0%)

Table 5 summarizes the issues by decade for Lawsuits by Students. The 1970's represents the greatest number of lawsuits with 15 issues, or 65.2%, in the Discrimination, Equal Opportunity and Sexual Harassment subcategory, while the 1980's revealed 3 issues, or 14.3%, the 1990's resulted in 8 issues, or 50.0%, and the time period from 2000-2004 yielded no issues.

Table 5

U.S. Supreme Court Issue Outcomes by Decade – Lawsuits by Students

	1972-1979		1980-1989		1990-1999		2000-2004	
	No.	%	No.	%	No.	%	No.	%
Negligence	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Behavior								
Expression	0	(0.0%)	2	(9.5%)	0	(0.0%)	0	(0.0%)
Association	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Discipline	4	(17.4%)	1	(4.8%)	1	(6.3%)	0	(0.0%)
Attendance	0	(0.0%)	2	(9.5%)	0	(0.0%)	0	(0.0%)
Search and Seizure	0	(0.0%)	1	(4.8%)	2	(12.5%)	1	(16.7%)
Church and State	3	(13.0%)	3	(14.3%)	2	(12.5%)	4	(66.7%)
School Program	0	(0.0%)	1	(4.8%)	0	(0.0%)	1	(16.7%)
Special Education	0	(0.0%)	8	(38.1%)	3	(18.8%)	0	(0.0%)
Discrimination, Equal Opportunity & Sexual Harassment	15	(65.2%)	3	(14.3%)	8	(50.0%)	0	(0.0%)
Fiscal	1	(4.3%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Other	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Total (66 Issues)	23	(100.0%)	21	(100.0%)	16	(100.0%)	6	(100.0%)

Table 6 represents the issue breakdown by decade for Lawsuits by Employees. The subcategory "termination" had 58.3% of the issues, or 7 issues, decided from 1972-1979. The time period from 1990 through 2004 revealed no issues decided in the "termination" category. The subcategory "collective bargaining" had 2 issues, or 16.7%, decided during the time period from 1972-1979; and no issues decided in during the 1990's or from 2000 through 2004. The single issue heard during the time period from 2000-2004 was in the subcategory "gender," representing 100% of the issues decided in the new century under the category Lawsuits by Employees.

Table 6

U.S. Supreme Court Issue Outcomes by Decade – Lawsuits by Employees

	1972-1979		1980-1989		1990-1999		2000-2004	
	No.	%	No.	%	No.	%	No.	%
Discrimination								
Race	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Gender	0	(0.0%)	0	(0.0%)	0	(0.0%)	1	(100.0%)
Church and State	0	(0.0%)	1	(25.0%)	0	(0.0%)	0	(0.0%)
Age	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Other Employment Actions								
Termination	7	(58.3%)	1	(25.0%)	0	(0.0%)	0	(0.0%)
Nonrenewal	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Transfer	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Reassignment/ Suspension	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Involuntary Leave of Absence	3	(25.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Disability Benefits	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Collective Bargaining and Negotiations	2	(16.7%)	1	(25.0%)	0	(0.0%)	0	(0.0%)
Tort								
Negligence	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Defamation	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Other	0	(0.0%)	1	(25.0%)	0	(0.0%)	0	(0.0%)
Total (17 Issues)	12	(100.0%)	4	(100.0%)	0	(100.0%)	1	(100.0%)

Table 7 illustrates issues by decade for the category Lawsuits by Others. The subcategory "church and state" represents the largest subcategory through the time period from 1972 through 2004. The time period from 1972-1979 6 issues were decided, or 66.7%, of the issues. The 1980's has 4 issues, or 44.1%, of the issues decided, the 1990's had 3 issues, or 75.0%, of the issues, and the time period from 2000 through 2004 had 2 issues, or 66.7%, of the issues decided.

Table 7

U.S. Supreme Court Issue Outcomes by Decade – Lawsuits by Others

	1972-1979		1980-1989		1990-1999		2000-2004	
	No.	%	No.	%	No.	%	No.	%
Contracts	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Fiscal	1	(11.1%)	4	(44.1%)	0	(0.0%)	0	(0.0%)
Negligence	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Church and State	6	(66.7%)	4	(44.1%)	3	(75.0%)	2	(66.7%)
Other	2	(22.2%)	1	(11.1%)	1	(25.0%)	1	(33.3%)
Total (25 Issues)	9	(100.0%)	9	(100.0%)	4	(100.0%)	3	(100.0%)

Table 8 provides a summarization the overall issues decided by the U.S. Supreme Court for the year 1972-2004. The table shows 57 issues, or 52.8%, of the total issues were conclusive decisions completely favoring students, employees, and others; while 36 issues, or 33.3%, were decided conclusively favoring school authorities.

Table 8

Overall Issue Outcomes of the U.S. Supreme Court

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	36	(33.3%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	5	(4.6%)
Conclusive or Inconclusive Split Decision	1	(0.9%)
Inconclusive Decision Favoring Students, Employees or Others	6	(5.6%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	3	(2.8%)
Conclusive Decision Completely Favoring Students, Employees or Others	57	(52.8%)
Total	108	(100.0%)

Figure 6 illustrates the proportional distribution of the total 108 education issues at U.S. Supreme Court between 1972 and 2004.

Figure 6

Total Education Litigation Issues at the U.S. Supreme Court

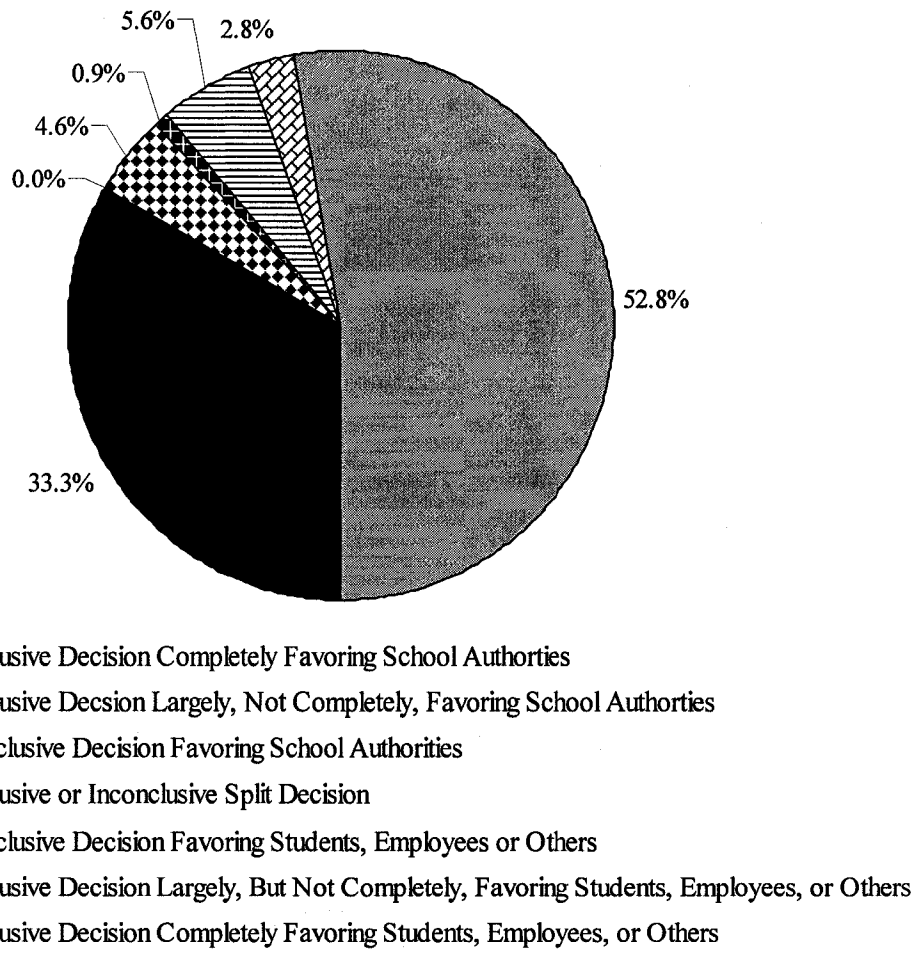


Table 9 summarizes frequency and percentage data for the U.S. Supreme Court overall issue outcomes by decade. The 44 issues decided from 1972-1979 resulted in 25 of the issues, or 56.8%, completely favored students, employees or others, and 11 issues, or 25.0%, completely favored school authorities. During the time period from 1980 until 1989, 19 issues, or 55.9%, completely favored students, employees, or others; with 13 issues, or 38.2%, completely favoring school authorities. The time period from 1990 through 1999 indicated ten issues, or 50.0%, completely favored students, employees or other; while five issues, or 25.0%, completely favored school authorities. The largest percentage category, issues from 2000 through 2004, reflected seven issues, or 70.0%, completely favoring school authorities and 3 issues, or 30.0%, completed favored students, employees or others.

Table 9

U.S. Supreme Court Overall Issue Outcome by Decade

	1972-1979		1980-1989		1990-1999		2000-2004	
	No.	%	No.	%	No.	%	No.	%
Conclusive Decision Completely Favoring School Authorities	11	(25.0%)	13	(38.2%)	5	(25.0%)	7	(70.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Inconclusive Decision Favoring School Authorities	2	(4.5%)	0	(0.0%)	3	(15.0%)	0	(0.0%)
Conclusive or Inconclusive Split Decision	1	(2.3%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	3	(6.8%)	2	(5.9%)	1	(5.0%)	0	(0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	2	(4.5%)	0	(0.0%)	1	(5.0%)	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	25	(56.8%)	19	(55.9%)	10	(50.0%)	3	(30.0%)
Total (108 Issues)	44	(100.0%)	34	(100.0%)	20	(100.0%)	10	(100.0%)

Table 10 summarizes the overall issues decided by split decade. Of the 108 issues decided, 13 issues, or 72.2%, resulted in conclusive decisions completely favoring students, employees and others from 1972-1974; while 13 issues, or 68.4%, represented the time period from 1985-1989; and 12 issues or 46.2%, conclusively favored students, employees, or others from 1975-1979. The time period from 1980 until 1984 presented the largest number of issues completely favoring school authorities with 9 issues, or 60.0% of the issues; while the five-year time period from 1990 until 1994 resulted in the lowest number of issues with one issue, or 8.3%, of the issues completely favoring school authorities.

Table 10

U.S. Supreme Court Overall Issue Outcome by Split Decade

	1972-1974		1975-1979		1980-1984		1985-1989	
	No.	%	No.	%	No.	%	No.	%
Conclusive Decision Completely Favoring School Authorities	3	(16.7%)	8	(30.8%)	9	(60.0%)	4	(21.1%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)	0	(0.0%)	0	(0.0%)	0	(0.0%)
Inconclusive Decision Favoring School Authorities	1	(5.6%)	1	(3.8%)	0	(0.0%)	0	(0.0%)
Conclusive or Inconclusive Split Decision	0	(0.0%)	1	(3.8%)	0	(0.0%)	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0	(0.0%)	3	(11.5%)	0	(0.0%)	2	(10.5%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	1	(5.6%)	1	(3.8%)	0	(0.0%)	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	13	(72.2%)	12	(46.2%)	6	(40.0%)	13	(68.4%)

Table 10

U.S. Supreme Court Overall Issue Outcome by Split Decade (Continued)

	1990-1994		1995-1999		2000-2004	
	No.	%	No.	%	No.	%
Conclusive Decision Completely Favoring School Authorities	1	(8.3%)	4	(50.0%)	7	(70.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)	0	(0.0%)	0	(0.0%)
Inconclusive Decision Favoring School Authorities	2	(6.7%)	1	(12.5%)	0	(0.0%)
Conclusive or Inconclusive Split Decision	0	(0.0%)	0	(0.0%)	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	1	(8.3%)	0	(0.0%)	0	(0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	1	(8.3%)	0	(0.0%)	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	7	(58.3%)	3	(37.5.%)	3	(30.0%)
Total (108 Issues)						

Table 11 illustrates the trends for overall issue outcomes by students. The highest number of issues during the time period was 36 issues completely favoring students, employees or others, or 54.5%, of the student issues. Twenty-two issues, or 33.3% of the issues, completely favored school authorities.

Table 11

Overall Issue Outcomes of Lawsuits by Students

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	22	(33.3%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	3	(4.5%)
Conclusive or Inconclusive Split Decision	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	2	(3.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	3	(4.5%)
Conclusive Decision Completely Favoring Students, Employees or Others	36	(54.5%)
Total	66	(100.0%)

Table 12 summarizes the trends in lawsuits by students for the Subcategory entitled search and seizure. Three of the issues, or 75%, completely favored school authorities while 3, or 25%, of the issues completely favored students, employees or others.

Table 12

Issue Outcomes of Lawsuits by Students – Search and Seizure

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	3	(75.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	0	(0.0%)
Conclusive or Inconclusive Split Decision	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	1	(25.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	0	(0.0%)
Total	4	(100.0%)

Table 13 represented the trends in church and state lawsuits by students. During the specified time period, 10 or 83.3% of the issues completely favored students, employees or others and 2 issues, or 16.7%, complete favored school authorities.

Table 13

Issue Outcomes of Lawsuits by Students – Church and State

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	2	(16.7%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	0	(0.0%)
Conclusive or Inconclusive Split Decision	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	10	(83.3%)
Total	12	(100.0%)

Table 14 represents the outcome trends for equal opportunity lawsuits by students. Issues completely favoring students, employee or others included 14 issues, or 53.8%, and 6 issues, or 23.1%, complete favored school authorities.

Table 14

Issue Outcomes of Lawsuits by Students – Discrimination, Equal Opportunity and Sexual Harassment

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	6	(23.1%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	3	(11.5%)
Conclusive or Inconclusive Split Decision	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	3	(11.5%)
Conclusive Decision Completely Favoring Students, Employees or Others	14	(53.8%)
Total	26	(100.0%)

Table 15 delineates the overall outcome trends for lawsuits by employees. In the 17 issues before the U.S. Supreme Court, 8 of the issues, or 47.1%, completely favored students, employees, or others. Five of the issues, or 29.4%, completely favored school authorities.

Table 15

Overall Issue Outcomes of Lawsuits by Employees

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	5	(29.4%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	1	(5.9%)
Conclusive or Inconclusive Split Decision	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	3	(17.6%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	8	(47.1%)
Total	17	(100.0%)

Table 16 summarizes issue outcome trends for eight lawsuits by employees in the subcategory entitled termination. Five, or 62.5%, of the lawsuits were decided completely favoring students, employees or others; and only two lawsuits, or 25%, were decided completely favoring school authorities.

Table 16

Issue Outcomes of Lawsuits by Employees – Termination

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	2	(25.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	1	(12.5%)
Conclusive or Inconclusive Split Decision	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	5	(62.5%)
Total	8	(100.0%)

Table 17 reflects the outcome trends for the component issue results for overall lawsuits by others during the time period specified. In the largest category 13 issues, or 52.0%, were decided completely favoring students, employees or others; while nine issues, or 36.0%, were decided completely favoring school authorities.

Table 17

Overall Issue Outcomes of Lawsuits by Others

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	9	(36.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	1	(4.0%)
Conclusive or Inconclusive Split Decision	1	(4.0%)
Inconclusive Decision Favoring Students, Employees or Others	1	(4.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	13	(52.0%)
Total	25	(100.0%)

Table 18 presents trend information on issue outcome frequency results for lawsuits by others in the subcategory entitled "church and state." The percentage distributions yield similar frequencies between outcomes with eight issues completely favoring students, employees or others and six issues completely favoring school authorities. The percentages for the two groups differed with 53.3% completely favoring students, employees or others; and 40.0% completely favoring school authorities.

Table 18

Issue Outcomes of Lawsuits by Others – Church and State

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	6	(40.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	0	(0.0%)
Conclusive or Inconclusive Split Decision	1	(6.7%)
Inconclusive Decision Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	8	(53.3%)
Total	15	(100.0%)

Table 19 depicts the trend for one outcome result, or 100% of the issues, for the "fiscal" subcategory lawsuits by others with conclusive decisions completely favoring students, employees and others.

Table 19

Issue Outcomes of Lawsuits by Others – Fiscal

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	0	(0.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	0	(0.0%)
Conclusive or Inconclusive Split Decision	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	5	(100.0%)
Total	5	(100.0%)

Table 20 presents trend information for outcome results for the subcategory "other" under lawsuits by others. In the issues adjudicated by the Justices, three, or 60.0%, of the issues were decided completely favoring school authorities, while one issue, or 20.0%, was decided in the grouping inclusively favoring school authorities, and on issue in the grouping conclusive or inconclusive split decision.

Table 20

Issue Outcomes of Lawsuits by Others – Other

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	3	(60.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	1	(20.0%)
Conclusive or Inconclusive Split Decision	1	(20.0%)
Inconclusive Decision Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	0	(0.0%)
Total	5	(100.0%)

Table 21 illustrates the tenure of the U.S. Supreme Court Justices from 1972-2004. Justice Rehnquist began his tenure with the United State Supreme Court in 1972, followed by Justice Stevens in 1975, Justice O'Connor in 1981, Justice Scalia in 1986, Justice Kennedy in 1988, Justice Souter in 1990, Justice Thomas in 1991, Justice Ginsberg in 1993, and Justice Breyer in 1994.

Table 21

Tenure by U.S. Supreme Court Justice

Justice	Tenure at the U.S. Supreme Court
Justice Blackmun	1970 -1994
Justice Brennan	1956 -1990
Justice Breyer	**1994 - Present**
Justice Berger	1969 -1986
Justice Douglas	1939 -1975
Justice Ginsberg	**1993 - Present**
Justice Kennedy	**1988 - Present**
Justice Marshall	1967 -1991
Justice O'Connor	**1981 - Present**
Justice Powell	1972 - 1987
Justice Rehnquist	**1972 - Present**
Justice Scalia	**1986 - Present**
Justice Souter	**1990 - Present**
Justice Stevens	**1975 - Present**
Justice Stewart	1958 - 1981
Justice Thomas	**1991 - Present**
Justice White	1962 -1993

Current sitting Justices

Table 22 represents the trend data for the number of majority opinion issues each U.S. Supreme Court Justice authored during the time they served between 1972 and 2004 for the cases covered by this study. Justice Rehnquist wrote the greatest number of majority opinions of the currently sitting Justices with 14 or 14.6% of the majority opinions during the specified time period. Justice O'Connor followed with 9 or 9.4% of the majority opinions and Justice Breyer provided no written majority opinions of the currently sitting Justices.

Table 22

Majority Opinion by U.S. Supreme Court Justice

Justice	Number of Cases	Percentage of Total
Justice Blackmun	8	(8.3%)
Justice Brennan	9	(9.4%)
Justice Breyer	**0**	**(0.0%)**
Justice Berger	10	(10.4%)
Justice Douglas	1	(1.0%)
Justice Ginsberg	**0**	**(0.0%)**
Justice Kennedy	**3**	**(3.1%)**
Justice Marshall	0	(0.0%)
Justice O'Connor	**9**	**(9.4%)**
Justice Powell	8	(8.3%)
Justice Rehnquist	**14**	**(14.6%)**
Justice Scalia	**1**	**(1.0%)**
Justice Souter	**2**	**(2.1%)**
Justice Stevens	**5**	**(5.2%)**
Justice Stewart	8	(8.3%)
Justice Thomas	**3**	**(3.2%)**
Justice White	11	(11.5%)
Per Curiam	4	(4.2%)
Total Cases	96	(100.0%)

Current sitting Justices

Table 23 is a summation of the trend data for the number of issues decided per State. The largest number of issues decided by the U.S. Supreme Court came from Ohio with 15, or 13.9%, of the total issues followed by New York with 14 issues, or 13.0%, of the total issues decided. The fewest number of issues decided came from Alaska, Arkansas, Arizona, Colorado, Connecticut, Iowa, Minnesota, Nebraska, North Carolina, Nevada, Oregon, South Carolina, and Tennessee with only 1 issue, or 0.9%, of the total issues decided.

Table 23

Issue Distribution by State

State	Number	%	State	Number	%
Alaska	1	(0.9%)	Nebraska	1	(0.9%)
Alabama	2	(1.9%)	North Carolina	1	(0.9%)
Arkansas	1	(0.9%)	North Dakota	2	(1.9%)
Arizona	1	(1.9%)	New Jersey*	3	(2.8%)
California	6	(5.6%)	Nevada	1	(0.9%)
Colorado	1	(0.9%)	New York	14	(13.0%)
Connecticut	1	(0.9%)	Ohio**	15	(13.9%)
Florida	4	(3.7%)	Oklahoma	4	(3.7%)
Georgia	3	(2.8%)	Oregon	1	(0.9%)
Iowa	1	(0.9%)	Pennsylvania	3	(2.8%)
Kentucky	2	(1.9%)	Rhode Island	2	(1.9%)
Louisiana	2	(1.9%)	South Carolina	1	(0.9%)
Massachusetts	2	(1.9%)	Tennessee	1	(0.9%)
Michigan	5	(4.6%)	Texas	8	(7.4%)
Minnesota	1	(0.9%)	Virginia**	3	(2.8%)
Missouri	7	(6.5%)	Washington	2	(1.9%)
Mississippi	3	(2.8%)	Wisconsin	3	(2.8%)
Total Issues				108	(100.0%)

*Includes one joined New Jersey and Pennsylvania issue
**Includes three joined Ohio and Virginia issues

Table 24 illustrates the trend distribution of issues per circuit court and courts of emergence from the United States Courts of Appeals and the United States District Courts. The largest number of issues decided came from the 6th Circuit Court with 24 issues, or 22.2%, of the overall issues decided followed by the 2nd Circuit Court with 16 issues, or 14.8%, of the overall issues decided and 15 issues, or 13.9%, of the total issues decided from the 5th Circuit Court. The fewest number of issues decided resulted from the 7th Circuit Court with three issues, or 2.8%, of the issues decided and from the 1st Circuit Court with 4 issues, or 3.7%, of the total issues decided.

Table 24

Issue Distribution by Court of Emergence within Federal Judicial Circuits

Circuit Court	Number	Percentage
1st	4	(3.7%)
2nd	16	(14.8%)
3rd	6	(5.6%)
4th	5	(4.6%)
5th	15	(13.9%)
6th	24	(22.2%)
7th	3	(2.8%)
8th	13	(12.0%)
9th	11	(10.2%)
10th	5	(4.6%)
11th	6	(5.6%)
Total Issues	108	(100.0%)

Figure 7 provides a listing of the federal judicial circuit courts and the states in each geographical area.

Figure 7

Federal Judicial Circuits and Geographical Areas

Circuit Court	Geographical Area
District of Columbia	District of Columbia
1st	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island
2nd	Connecticut, New York, Vermont
3rd	Delaware, New Jersey, Pennsylvania, Virgin Islands
4th	Maryland, North Carolina, South Carolina, Virginia, West Virginia
5th	District of the Canal Zone, Louisiana, Mississippi, Texas,
6th	Kentucky, Michigan, Ohio, Tennessee
7th	Illinois, Indiana, Wisconsin
8th	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
9th	Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii
10th	Colorado, Kansas, New Mexico, Okalahoma, Utah, Wyoming
11th	Alabama, Florida, Georgia
Federal	All federal judicial districts (Alexander & Alexander, 2005, p. 14)

Qualitative Analysis

The qualitative treatment analyzed the actual United State Supreme Court case decisions and majority opinions. For purposes of this study, qualitative data were reported in narrative form using three levels of coding recommended by Bogden and Biklen (1998). The first level in the analysis is called the context coding level. This level categorizes cases and provides the case name. The second level, or situational coding level, presents the primary points leading to the United States Supreme Court decisions. From the third level, a holistic theme or "concept" emerges, which "may signal a trend, main conception or categorical distinction" (Bogden & Biklen, 1998, p. 189).

The guiding research asked: What trends have emerged in the K-12 education rulings issued by the United States Supreme Court between 1972 and 2004? Sub-question 1 through 4 asked: What types of actions reached the United States Supreme Court for adjudication?; What types of actions have been most litigated during the 1972-2004 time period?; What have the outcomes been in these landmark cases?; and Have there been any discernable historic trends emerging from the outcome data?

Relevant consideration of the guiding research question and first four sub-questions noting the types of actions reaching the United States Supreme Court, cases most litigated, and discernable trends, also required the development of a data set consisting of tables. The tables which follow explicate the reasons and decisions of the United States Supreme Court. The main conceptualizations for each table follow in the section entitled "emergent legal theme."

Table 25 summarizes student expression issues by examining school-sponsored expression activities in two primary areas, lewd and vulgar speech at a school assembly

and the content regulation of a high school newspaper involving articles on pregnancy and divorce.

In *Bethel Sch. Dist. v. Fraser* (1986), the Court ruled a student's lewd and obscene speech was not protected by the First Amendment right to free speech. The determination of what speech is inappropriate in an educational setting rests with the school authorities acting *in loco parentis* to protect students. Prohibiting the use of offensive speech does not violate the First Amendment because: (1) such speech is not related to any political viewpoint, (2) such speech would undermine the basic educational mission of the school, (3) a two-day suspension does not rise to the level of a criminal sanction, and (4) a school's disciplinary code of conduct and teacher warning provides sufficient notice of possible sanctions to a student.

In *Hazelwood v. Kuhlmeier* (1988), it was decided schools have the authority to regulate the content of a school-sponsored newspaper when related to legitimate pedagogical concerns. Requiring the deletion of pregnancy and divorce articles by a principal does not violate the freedom of expression and diverse viewpoint rules of journalism. A principal's anonymity and rights to privacy concerns of pregnant students, their boyfriends, respective families and younger student readerships constituted a legitimate school concern.

Table 25 illustrates these two cases and is followed by a summary of the factors associated with the emergent legal theme.

Table 25

Lawsuits by Students – Behavior – Expression

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Bethel Sch. Dist. v. Fraser (1986)	Students' lewd and obscene speech is not protected by the First Amendment right to free speech.	A school district may suspend a student for giving a lewd and vulgar speech at a school assembly.
Hazelwood v. Kuhlmeier (1988)	School regulation of a student newspaper does not violate the First Amendment.	Educator control over school-sponsored publications, theatrical productions and other expressive activities are permitted when they relate to a legitimate pedagogical concern on school premises.

Emergent Legal Theme

In this area of the law, the legal theme emerging from the qualitative analysis is that student behavior is a function of the First Amendment right to free speech.

- Lewd and vulgar speech may warrant school suspension.
- When a legitimate school concern, regulation of school-sponsored expressive activities is permitted.

Table 26, represents student discipline issues involving corporal punishment and school board immunity from liability damages.

In *Ingraham v. Wright* (1977), the Court concluded disciplinary paddling of public school children, even if severe, does not constitute cruel and unusual punishment under the Eighth Amendment. Prior notice of corporal punishment is not required by the Due Process Clause of the Fourteenth Amendment. However, many states have moderated corporal punishment in public schools and have established guidelines for parental notification, approval, or punishment in the presence of an adult witness for its use where it is allowed.

In *Wood v. Strickland* (1975), school officials are entitled to immunity for damages under the Civil Rights Act [42 U.S.C. 1983], unless they act with disregard of a student's constitutional rights.

Information in Table 26 pertains to corporal punishment and board immunity followed by the related emergent legal theme.

Table 26

Lawsuits by Students – Discipline – Corporal Punishment and Board Immunity

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Corporal Punishment		
Ingraham v. Wright (1977)	Corporal Punishment does not violate the Eighth Amendment. Due Process Clause of the Fourteenth Amendment does not require parental notification.	The Eighth Amendment was designed to protect convicted criminals from inhumane punishment and was not intended for public school children. Parental approval of corporal punishment is not required under the constitution.
Board Immunity *Wood v. Strickland* (1975)	A school board may be held liable for damages under Section 1983 of the Civil Rights Act of 1871.	School board members are not immune from liability damages if they knew or reasonably should have known a disciplinary action would violate the rights of a student or they acted with malice, lack of good faith, or the intent to disregard a student's constitutional rights.

General Legal Theme

These cases clearly establish the discipline procedures students must be afforded in due process and board immunity in liability actions.

- Students must be given an opportunity to express their viewpoint.
- Parents must be given notice or hearing opportunity.
- A school board must have a written policy regarding suspension infractions in order to suspend.

Table 27 represents an analysis of student due process rights in a misconduct suspension action and a suspension for the possession of an intoxicating beverage at a school activity.

In *Goss v. Lopez* (1975), the Court noted in Ohio an informal process is all that is required for shorter suspensions up to ten days. Longer suspensions or expulsions for the remainder of a school term or permanently may require a more formal process.

In *Board of Educ. of Rogers, Ark. V. McCluskey* (1982), the Court stated a school policy requiring the suspension of a student for drug use implicitly means a student can be suspended for the use of alcohol. While the policy explicitly mentions suspensions for drug use on school premises, alcohol use is implicitly considered a drug under the policy.

Table 27

Lawsuits by Students – Discipline – Due Process

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Due Process		
Goss v. Lopez (1975)	An Ohio statute permitting suspensions up to ten days without notice or a hearing violate the Due Process Clause of the Fourteenth Amendment.	Students must be given an opportunity to discuss their behavior from their viewpoint.
Bd. of Educ. of Rogers, Ark. v. McCluskey (1982)	A school board alcohol suspension policy does not violate substantive Due Process under the Fourteenth Amendment.	The District Court and Court of Appeals erred under the Civil Rights Act of 1871, 42 U.S.C. Section 1983 in replacing the school board's intoxicating beverage policy with their own interpretation. The school board correctly interpreted their policy of alcohol as a form of drug use requiring mandatory suspension.

Emergent Legal Theme

Discipline and due process are a function of the Fourteenth Amendment.

- Under Ohio law, suspended students must be accorded an opportunity to discuss their viewpoint.
- A court may not replace a school board's suspension policy with their own interpretation.

Table 28 represents an analysis of the Gun-Free School Zone Act and the Commerce Clause in a suit involving a student's possession of a firearm.

The Court reasoned in *United States v. Lopez* (1995) education is touched most notably by the Commerce Clause through safety, transportation, and labor regulations. The Commerce Clause provides regulation for three broad areas: (1) use of channels of interstate commerce and any immoral and injurious activity; (2) threat that may come from intrastate actions; and (3) actions that may affect interstate commerce. Any regulation the Commerce Clause may have of the Gun-Free School Zone Act of 1990 (U.S.C., Section 922) would come under the third area or interstate commerce.

Table 28

Lawsuits by Students – Behavior – Firearm Possession

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
United States v. Lopez (1995)	Gun-Free School Zone Act of 1990 violates the Commerce Clause.	The possession of a firearm in a school zone has no relationship to an economic activity.

Emergent Legal Theme

This case explicitly establishes the possession of a gun in a school zone is not a function of the Commerce Clause. Therefore, Congress cannot exercise jurisdiction over public schools.

Table 29 represents an analysis of student residency requirements for alien and non-alien students.

The Court in *Plyler v. Doe* (1982) reasoned the Fifth Amendment protects aliens from discrimination and the Fourteenth Amendment directs a State to provide equal protection to all individuals regardless of whether they have legal or illegal entrance into the United States. It is under these constitutional guarantees alien parents may seek a tuition-free public education for their children. Any savings achieved by denying children an education would be inconsequential compared to the costs of unemployment, welfare, or crime later.

In *Martinez v. Bynum* (1983) a Texas statute requires residency for public school admission. A student is allowed to attend public school free only if they intend to remain in the district indefinitely or if the student is not living in the district for the sole purpose of attending school.

Table 29

Lawsuits by Students – School Attendance

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Plyler v. Doe (1982)	Illegal alien children denied a public education violates the Equal Protection Clause of the Fourteenth Amendment.	The denial of a free public education to alien children violates the constitution because it does not further a legitimate State interest and may promote the development of a subgroup of uneducated students in the United States.
Martinez v. Bynum (1983)	Residency for public school admission does not violate the Fourteenth Amendment Equal Protection Clause.	Residency requirements for children provide assurances educational services intended for state residents will be utilized by state residents, and are generally required by schools.

Emergent Legal Theme

These cases visibly show denial of a free and appropriate public education is a function of the Fourteenth Amendment.

- Students cannot be denied a free and appropriate public education.
- School districts may require residency for admission to school.

As shown in Table 30, these four cases involved lawsuits by students regarding search and seizure and board immunity. In general, these cases determined that a search of students by school authorities is permissible if it is reasonable and not excessively intrusive. In determining reasonableness, one must decide whether the action justifies a search and whether the search is reasonably related to the action.

Table 30

Lawsuits by Students – Behavior – Search and Seizure and Board Immunity

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Search and Seizure		
New Jersey v. T.L.O. (1985)	Student searches by school authorities do not violate the Fourth Amendment.	Student searches by public school authorities are allowed if they are reasonable and not excessively invasive.
Vernonia Sch. Dist v. Acton (1995)	School district's random urinalysis drug testing policy of athletes does not violate the Fourth or Fourteenth Amendments.	Suspicionless drug testing of school athletes is permitted when there is a special need or justifiable reason for concern in the public school such as a history of drug use or abuse.
Bd. of Educ. of Indep. Sch. Dist. of Pottawatomie v. Earls (2002)	School district's drug testing of all students participating in competitive extracurricular activities does not violate the Fourth Amendment.	Drug testing is allowed when the policy reasonably serves a school district's interest in identifying, deterring, or averting drug use by students.
Board Immunity		
Howlett v. Rose (1990)	A state sovereign-immunity defense is not available to a school board in suits filed under the Civil Rights Act of 1871, 42 USCS 1983.	A school board may not be immune from liability in a state court when immunity is not available in a federal forum.

Emergent Legal Theme

These cases noticeably indicate student searches are a function of the Fourth and Fourteenth Amendments.

- Student searches are allowed if reasonable and not overly invasive.

- Drug testing is permissible when there is reasonable concern of drug use or a prevention need.
- Not all lawsuits allow school board immunity.

Table 31 presents an analysis of Wisconsin's compulsory attendance law and the religious beliefs of the Amish people.

In *Wisconsin v. Yoder* (1972), the Court reasoned accommodating the objections of the Amish in giving up one or two years of compulsory education would not impair the physical or mental health of the child, nor result in any inability to be self-supporting, detract from responsible citizenship, diminish from the interests of society or interests of the state in compulsory education, or prevent children with a desire from attending public school.

Table 31

Lawsuits by Students – Church and State – Attendance

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Wisconsin v. Yoder (1972)	Wisconsin's compulsory attendance law of Amish children violates the First Amendment right to free exercise of religion.	Compulsory public high school education of Amish children disregards the basic tenants and practices of the Amish people.

Emergent Legal Theme

The First Amendment right to the free exercise of religion applies to compulsory attendance.

- Compulsory attendance is not mandated for high school students when religious training does not moderate the welfare of society or the state.

Table 32 depicts an examination of church and state lawsuits by students involving curriculum and the Pledge of Allegiance.

In *Edwards v. Agullard* (1987), the Court reasoned, under the *Lemon v. Kurtzman* (403 US 602) rule, if a law is adopted with a religious purpose, the law violates the Constitution by promoting a particular religious ideology.

In *Elk Grove Sch. Dist. v. Newdow* (2004), the noncustodial, atheist father of an elementary student who brought suit challenging the words "under God" in the Pledge of Allegiance lacked standing to bring the lawsuit. The Court reasoned, the father did not have the right under California law to prevent the student from being exposed to religious ideas the mother endorsed or challenged related to school influences when the parents disagreed.

Table 32

Lawsuits by Students – Church and State—Curriculum and Pledge of Allegiance

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Curriculum		
Edwards v. Aguillard (1987)	Equal treatment of evolution and creation science violates the Establishment Clause of the First Amendment.	The Louisiana statute was adopted with a religious purpose and did not promote the academic freedom.
Pledge of Allegiance		
Elk Grove Sch. Dist. v. Newdow (2004)	Parent unable to challenge the words "under God" in the Pledge of Allegiance.	The father of an elementary student lacked standing to bring the lawsuit.

Emergent Legal Theme

The emergent legal themes in these two cases are a law enacted with a religious purpose violates the First Amendment and a litigant must have standing to bring a lawsuit.

Table 33 presents an analysis of church and state lawsuits by students denied use of school facilities for meetings.

In *Bd. of Educ. Westside Cmty. v. Mergens* (1990), a majority of the members of the Court were able to agree the Equal Access Act prohibited the denial of a Christian club to meet. Although the Court was unable to agree on an opinion regarding whether there was an Establishment Clause violation, six of the Justices were able to agree that the Equal Access Act did not violate the Establishment Clause. The Equal Access Act does not allow public secondary schools receiving federal assistance to deny student groups equal meeting access based on religious, political or other views.

The Court reasoned in *Good News Club v. Milford* (2001) the policy violated the Constitution when it allowed any group to use the school facility that promoted character or moral development of children and banned the religious club from meeting which taught moral values from a religious viewpoint.

Table 33

Lawsuits by Students – Church and State – Facilities Use

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Bd. of Educ. Westside Cmty. v. Mergens (1990)*	Students have the right to organize their own religious, political, or other groups in a public school under the Equal Access Act.	A public school receiving federal funds is required to maintain a limited open forum under the Equal Access Act 98 Stat. 1302 (20 USCS 4071-4074)
Good News Club v. Milford (2001)	Facility use denial of a Sectarian club meeting after school violates the Free Speech Clause of the First Amendment.	A school district's policy restricting the use of school facilities for meetings by an individual or organization for religious purposes was considered viewpoint discrimination.

**Note.* Not a precedent; Justices unable to agree on reasoning points.

Emergent Legal Theme

Public schools may not restrict the use of their facilities for religious, political or other purposes under the Equal Access Act or First Amendment.

- Schools receiving federal assistance must allow student religious groups to meet during noninstructional time.
- School policies may not allow some groups to meet and restrict others based on religion.

Table 34 illustrates an analysis of fiscal issues relating to non-public and non-religious elementary and secondary schools for maintenance and repair, textbooks, instructional materials, equipment, tuition reimbursement, Title I services, and tax deductions for parents.

Table 34

Lawsuits by Students – Church and State – Fiscal

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Comm. For Publ Educ. v. Nyquist (1973)	A State statute providing maintenance, repair, tuition reimbursement, and tax relief to religious schools violated the Establishment Clause of the First Amendment.	The New York statute was insufficiently restricted to assure it would not have the effect of advancing sectarian activities in religious schools.
Wheeler v. Barrera (1974)	School authorities violated Missouri statute by failing to provide comparable Title I services to nonpublic school children.	Missouri public schools eligible for benefits under Title I of the Elementary and Secondary Education Act of 1985 must provide comparable services to children in nonpublic schools. On-site instruction is not required, but a state must make a genuine effort to provide comparable alternative services that offset any lack of on-site service. Each state governs whether private school instruction is permissible on private school premises.
Mueller v. Allen (1983)	Tax deductions for parochial education does not violate the Establishment Clause of the First Amendment or the Fourteenth Amendment.	Minnesota tax laws grant deductions to parents of children attending sectarian schools for tuition, textbooks (if used in subject areas commonly taught in public elementary and secondary schools), and transportation expenses.

Emergent Legal Theme

These cases noticeably show state statutes providing aid to religious schools violate the Establishment Clause of the First Amendment during the 1970's.

- States may adopt laws that provide maintenance, repair, tuition reimbursement, or tax relief.
- Missouri public schools must provide comparable Title I services to nonpublic schools.

Table 35 summarizes a state statute allowing a moment of silence for voluntary meditation or prayer, a school district policy allowing prayer at graduation, and a school district policy providing for prayer at extracurricular activities.

In *Wallace v. Jaffree* (1985), the Court reasoned the Alabama statutes were adopted for the sole purpose of returning prayer to schools.

The Court reasoned in *Lee v. Wiseman* (1992), the government may not aid the "free exercise of religion" or "supersede the fundamental limitations imposed by the Establishment Clause" or "coerce anyone to support or participate in religion or its exercise, or otherwise act . . ." (¶12, LexisNexis) in a way that does so. Prayer at graduation violates the Constitution because ". . . young graduates who object are induced to conform" (¶35,LexisNexis).

The Court held a school district's policy allowing prayer at graduation and before home football games was invalid in *Sante Fe Indep. Sch Dist. v. Doe* (2000) because the (a) speech was considered public speech; (b) student speaker elections did not support or protect minority views and encouraged religious divisiveness in a public school setting; (c) graduation and pre-game prayer had the effect of coercing those in attendance to

participate in a religious activity; and (d) the policy even without participation violated the Establishment Clause.

Table 35

Lawsuits by Students – Church and State – Prayer

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Wallace v. Jaffree (1985)	Minute of silence for voluntary meditation or prayer violates the Establishment Clause of the First Amendment.	The Alabama statues enacted from 1978 to 1982 were motivated for the purpose of establishing or advancing religion.
Lee v. W iseman (1992)	Prayer at graduation violates the Establishment Clause of the First Amendment.	A public school may not promote excessive entanglement of religion or force anyone to support or participate in a religious act.
Sante Fe Indep. Sch.Dist. v. Doe (2000)	Prayer at graduation and extra curricular activities violates the Establishment Clause of the First Amendment.	Prayer at graduation or extra curricular activities is considered public speech and does not support or protect minority views.

Emergent Legal Theme

These cases visibly illustrate that promoting prayer in a public school or at a school-sponsored activity violates the First Amendment.

- Students may not be compelled to participate in or be exposed to the promotion of religion.

Table 36 provides an analysis of suits by students relating to peer grading of papers and a school board's removal of library books.

In *Bd. of Island Trees Union Free Sch. Dist. v. Pico* (1982), the Court was unable to agree on an opinion, however, five Justices agreed a school board could not remove library books simply because they did not like the ideas contained in the books.

In *Owasso Indep. Sch. Dist. v. Falvo* (2002), records under Family Educational Rights and Privacy Act (FERPA) are those items stored in a filing cabinet in a school records room or on a secured permanent database. When a graded item becomes a school record, any involvement with the record on the part of a student from that point on would be considered a violation of FERPA.

Table 36

Lawsuits by Students – School Programs

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Bd. of Island Trees Union Free Sch. Dist. v. Pico (1982)*	School board removal of library books violates the First Amendment.	A school board may not remove library books because they do not like the ideas or opinions presented in the books.
Owasso Indep. Sch. Dist. v. Falvo (2002)	Peer grading does not violate FERPA during initial stage before teacher collects and records students' grades.	Peer graded papers are not considered educational records under the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USCS 123g) during the first stage of grading because the student is not acting on behalf of the school or for the school within the meaning of FERPA.

**Note.* Not a precedent; Justices unable to agree on reasoning points.

Emergent Legal Theme

The two emergent themes relating to school programs are discretionary removal of library books implicates the First Amendment and peer grading is a function of the Family Educational Rights and Privacy Act (FERPA).

- Library book removal may not be at a school board's like or dislike of a book.
- Peer-graded papers are not considered an educational record under FERPA.

Table 37 provides an analysis of attorney fee awards and special education support services for children with disabilities entitled to a free and appropriate public education.

The Court in *Bd. of Hendrick Hudson Central Sch. Dist. v. Rowley* (1982), did not require a public school to provide a sign language interpreter for a deaf student. The Court reasoned a deaf student performing better than the average student in their class, easily advancing from grade to grade, and well adjusted, yet not performing academically as well as they might if they were not handicapped, does not qualify for sign-language services under FAPE (free and appropriate public education).

In I*rving v. Tatro* (1984), the Court held catheterization of a student under Education of the Handicapped Act (EHA) is considered a "supportive service" and must be provided by a school district.

In *Cedar Rapids Cmty. Sch. Dist. v. Garrett F.* (1999), the Court ruled children with disabilities must be accorded a free and appropriate public education (FAPE) including special education and related services under the Individuals with Disabilities Act Education Act (IDEA), 84 Stat. 175. The Court further held a related service for handicapped children, by definition, is one that can be performed by a nurse or another

qualified individual, whereas a medical service is one that must be performed by a licensed physician for evaluation or diagnostic purposes.

Table 37

Lawsuits by Students – FAPE – Attorney Fees and Related Services

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Bd. of Hendrick Hudson Central Sch. Dist. v. Rowley (1982)	All handicapped children must be provided a Free Appropriate Public Education (FAPE) under the Education for All Handicapped Children Act (EAHCA) of 1975.	The EAHCA does not intend to maximize the potential of handicapped children. The Act requires individualized instruction with appropriate support services to enable a child to benefit educationally at public expense.
Smith v. Robinson (1984)	Attorney fees may not be awarded under the Education of the Handicapped Act Section 1988 of the Civil Rights Act of 1871 or Section 504 of the Rehabilitation Act.	Attorney fees may not be awarded against a school district under the Education of the Handicapped Act (EHA) when the Act already provides for a remedy for a free and appropriate public education.
Irving v. Tatro (1984)	Catheterization is considered a "related service" under the Education of the Handicapped Act. Attorney fee relief is not available under 504 of the Civil Right Act when relief is available under Education for the Handicapped Act.	States receiving federal funds under the Education of the Handicapped Act (EHA) must provide handicapped children a free and appropriate education, including special education and related services.
Cedar Rapids Cmty. Sch. Dist. v. Garrett F. (1999)	Nursing services are considered "related services" under IDEA.	Nursing services are considered related services and must be provided by school districts under IDEA.

Emergent Legal Theme

Under the Free Appropriate Public Education clause of the Education for All Handicapped Children Act of 1975, all handicapped children are to be provided free individualized instruction with support services to allow them to benefit educationally.

- Public schools must provide handicapped students with related services.
- Attorney fees are not recoverable under EHA or 504 of the Civil Rights Act when a remedy exists under FAPE.

Table 38 presents an analysis of student suits involving private school placements of special needs students and the requirements of a free and appropriate public education.

In *School Comm. of Town of Burlington V. Mass. Dept. of Educ. (*1985), the Court reasoned the Education of the Handicapped Act (EHA) requires state and local education agencies participating under the EHA to provide assurances they will follow procedural safeguards for a free and appropriate public education of children in the least restricted program based on a child's needs. These safeguards include a parent's right to participate in the development of an individualized education plan (IEP) for their child, the right to disagree with a placement, and the right to seek redress. The Court held, under EHA, a parent may enroll their child in a private school and recover tuition costs and related expenses if the alternate placement is determined to be appropriate rather than the proposed individualized education plan (IEP) developed by the public school.

In *Florence County Sch. Dist. Four v. Carter* (1993), the Court ruled parents are entitled to reimbursement only if a federal court concludes both that the public placement violated IDEA and the private school placement was proper under the Act. To avoid parent reimbursement for their independent private school placement, the state or a school district must provide an appropriate free public education or an appropriate private

setting of the school district's or state's choice. The Court noted, once a court rules the public placement violates IDEA, it has a breadth of discretion in granting the relief it deems appropriate.

In *Zobrest v. Catalina Foothills Sch. Dist.* (1993), any financial benefit a religious school may receive under IDEA is considered the private choice on the part of the parent and not an entanglement between church and state. The Establishment Clause does not prevent a school district from providing a sign-language interpreter at a parochial high school for a deaf child, the Court reasoned, because the primary effect of such services does not advance religion any more than receiving general government-sponsored benefits such as police and fire protection or repair of public sidewalks.

Table 38

Lawsuits by Students – FAPE – Private School Placement

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
School Comm. of Town of Burlington v. Mass. Dept. of Educ. (1985)	Private school reimbursement for tuition and related expenses are available under Education of the Handicapped Act.	The Education of the Handicapped Act (20 USCS 140 et seq.) does not prevent reimbursement to parents who reject a proposed public school IEP and place their child in a private school without local school district approval.
Florence County Sch. Dist. Four v. Carter (1993)	Private school reimbursement is permitted under IDEA	Parents, under the Individuals with Disabilities in Education Act (IDEA), may receive reimbursement when the public school placement violates IDEA and if the private school placement is appropriate.
Zobrest v. Catalina Foothills Sch. Dist. (1993)	Providing services under IDEA to a student attending a religious school does not violate the Establishment Clause of the First Amendment.	IDEA has a secular purpose to provide for the education of all handicapped children. Any financial benefit a religious school may receive is considered the private choice of the parent.

Emergent Legal Theme

A Free and Appropriate Public Education (FAPE) has a secular purpose and must be accorded all handicapped children.

- Private school reimbursement is available under the Education of the Handicapped Act and IDEA.

Table 39 illustrates the stay put provision and student suspension in a special education student's dangerous conduct suit.

In *Honig v. Doe* (1988), the Court decided school authorities may not independently prohibit an emotionally disabled student with violent behavior(s) from attending school when one or more disabilities caused the dangerous, disability-related behavior(s). School authorities may, however, suspend a disabled student for up to 10 days if they pose an immediate safety threat to themselves or others. The Court noted an individualized educational plan (IEP) is the vehicle mandated by Education of the Handicapped Act (EHA) for providing educational services designed to meet the unique needs of a disabled student. The IEP is prepared at a meeting where the parent, school authority, student's teacher and other appropriate individuals set forth a plan with goals and objectives aimed at improving the performance and, if appropriate, behavior of a student.

Table 39

Lawsuits by Students – FAPE – Stay Put Provision

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Honig v. Doe (1988)	Stay-put provision prohibits school authorities from independently suspending disabled students from school for more than 10 days for disability-related dangerous conduct.	A suspension beyond 10 days constitutes a student's "change in placement" prohibited under Education for the Handicapped Act (EHA) and Congress' free and appropriate public education emphasizing special education and related services in the least restrictive environment for disabled students.

Emergent Legal Theme

The stay put provision in the Education for the Handicapped Act allows suspensions of handicapped students up to 10 days.

- Suspensions in excess of 10 days are considered a change in placement.

Table 40 analyzes suits by students alleging discrimination;, exclusion of private school attendance based on race; transportation fees for families with inadequate income; and Title IX issues prohibiting the exclusion from participation, denial of benefit or subjection to discrimination under any program or activity receiving Federal financial assistance.

The San Francisco United School District and the California Education Code required English to be the basic language of instruction. In addition, students graduating from the twelfth grade were required to be proficient in English. Under these standards, in *Lau v. Nichols* (1974), Chinese-speaking children were unable to acquire basic skills to meet the proficiency standards required without English remediation instruction.

Parents of black children who were excluded from private school admission based on race brought suit in the *Runyon v. McCrary* (1976) case. In addition to discrimination issues, attorney fees were sought.

A North Dakota statute permitting less populated school districts to consolidate into larger districts and authorizing non-reorganized school districts to choose whether to assess transportation fees for busing students was brought before the Court in *Kadrmas v. Dickinson Pub. Sch.* (1988). The Court held requiring a family to pay bus fees in accordance with statute provisions does not violate the Constitution regardless of their financial status. A school board may, however, waive a user fee if a student or their parent or guardian is unable to pay.

In *Franklin v. Gwinnett County Pub. Sch. Dist.*(1992), the Court stated Congress did not intend to limit the ability of a court to order monetary awards as relief. Additionally, the Court noted Congress' Spending Clause limits an award for an

unintentional violation when a school has not been given notice that it may be liable for damages, but does not limit an award for intentional discrimination.

A public school student in Texas had a sexual relationship with one of their teachers. The school district did not have prior knowledge of the sexual relationship. No report of the relationship was made to a school authority in *Gebser v. Lago Vista Indep. Sch. Dist.* (1998); however, parent complaints regarding inappropriate sexual comments by the teacher in class were addressed. After police arrested the teacher for having sexual intercourse with the student, the teacher was dismissed.

A fifth grade student allegedly the victim of repeated sexual harassment by a classmate was the focus in *Davis v. Monroe* (1999). According to the complaint, school authorities were notified, but did not take any disciplinary action to prevent further occurrences.

Table 40

Lawsuits by Students – Discrimination, Equal Opportunity and Sexual Harassment

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Norwood v. Harrison (1973)	State textbook loan to student attending a racially discriminatory private school violates the First Amendment of the Constitution.	It is a state's responsibility to not provide aid to a school that engages in racially discriminatory practices or has racially restrictive admission policies.
Lau v. Nichols (1974)	Public school system's failure to provide Chinese-speaking students with English instruction violates the Civil Rights Acts of 1964.	Section 601 of the Civil Rights Acts of 1964 (42 USCA, Section 2000d) prohibits discrimination based on race, color, or national origin in a school that receives Federal financial assistance.
Runyon v. McCrary (1976)	Private school admission based on race violates the Civil Rights Act. of 1866 and 1870, 42 U.S.C. Section 1981.	The Civil Rights Act of 1866 and 1870, 42 U.S.C. Section 1981 prohibits discrimination of students from admission to private schools based on race. Damage claims are allowable for attorney fees and awards for embarrassment, humiliation, and mental anguish on behalf of parents and children.
Kadrmas v. Dickinson Pub. Sch. (1988)	State statute requiring a school bus fee does not violate the Equal Protection Clause.	A school bus fee does not interfere with a fundamental right or discriminate against a certain group or person when the student's parent/guardian does not agree or are unable to pay user fees.
Sexual Harassment		
Franklin v. Gwinnett County Pub. Sch. Dist. (1992)	Damages are available under Title IX.	A school district may be held liable for monetary damages under Title IX of the Educational Amendments of 1972 (20 USCS 1681-1688) for a teacher's sexual harassment of a student.

Table 40

Lawsuits by Students – Discrimination, Equal Opportunity and Sexual Harassment (continued)

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Gebser v. Lago Vista Indep. Sch. Dist. (1998) *Davis v. Monroe* (1999)	School district may be held liable for the sexual harassment of a student by a teacher or a peer.	A school district may be held liable under Title IX of the Educational Amendments of 1972 (20 USCS 1681 - 1688) for the sexual harassment or abuse of a student by a teacher or by a peer only if a school authority with the ability to rectify the situation had knowledge of the action, failed to take appropriate corrective action, or responded with deliberate indifference towards the aggrieved party.

Emergent Legal Theme

Schools that discriminate against students based on race or allow students to be harassed may be in violation of the Civil Rights Act of 1964, the Civil Rights Act of 1866 and 1870, Title IX of the Educational Amendments of 1972, or the Equal Protection Clause.

- Students cannot be denied appropriate instruction or school admission based on race, color or national origin.
- Schools may be held liable for student harassment by a teacher or a peer.
- Racial discriminatory practices of private schools preclude state support.

Table 41 presents an analysis of segregation suits by students where a separate school district or dual public school system has been created by a state or local official.

The Court held in *United States v. Scotland Neck Bd. of Educ.* (1972) and *Wright v. Council of Emporia* (1972) state or local officials whose actions have the effect of creating *de jure* segregation violate the Constitution.

In *Keys v. Sch. Dist. Denver, Colo.* (1973), a school board may be ordered to implement a system-wide desegregation plan. If the school board is able to prove the segregation occurring in a district is an isolate case, the school board may be ordered to remedy the dual system in that school only.

School boards in *Crawford v. Los Angeles Bd. of Educ.* (1982) do not have a duty to implement remedies when a racial imbalance occurs as the result of people moving in and out of a district or to do more than the Fourteenth Amendment requires.

Table 41

Lawsuits by Students – Discrimination and Equal Opportunity – Desegregation

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
United States v. Scotland Neck Bd. of Educ. (1972) *Wright v. Council of Emporia* (1972)	A state statute or city decree enacted with the effect of maintaining, inhibiting, or creating school segregation, violates the Equal Protection Clause of the Fourteenth Amendment.	A state statute authorizing a city to create a separate school district, as a means of avoiding "white flight" of students into private school, impedes desegregation and the process of dismantling a dual system.
Keys v. Sch. Dist. Denver, Colo. (1973)	A dual public school system violates the Equal Protection Clause of the Fourteenth Amendment.	When a school board is found to have a policy maintaining deliberate racial or ethnic segregation in one or more schools in a district, the burden is on the school board to prove this practice is not occurring in other schools in the system.
Crawford v. Los Angeles Bd. of Educ. (1982)	Mandatory pupil assignments and busing is not required under the Fourteenth Amendment.	When no violation has been proven or exists, state courts are not required to order mandatory student assignments and busing.

Emergent Legal Theme

The emergent legal theme in this area of the law was school segregation is a function of the Equal Protection Clause of the Fourteenth Amendment.

- School districts cannot deliberately create, promote, or sustain a segregated school or school system.
- Once a school intentionally engages in segregation, the burden of proof remains with the school district to show segregation no longer exists in order to be excused from a desegregation plan.

Table 42 illustrates an analysis of desegregation remedies, cost sharing, exclusive use of recreational facilities, attendance zoning, tax levying to fund remedies, perpetual remedy supervision, partial remedy withdrawal requirements, and district court rulings exceeding authority.

Before the boundaries of a district can be changed or a decree entered to eliminate existing segregation, in *Milliken v. Bradley* (1974), the Court must determine if a constitutional violation exists. In this case, there was no evidence the original boundaries of the Detroit School District or other districts in the State of Michigan were created with the intent to segregate races. School boundaries were established a hundred years prior to this suit. At that time, the Michigan Constitution and state law required unitary schools systems.

In *Milliken v. Bradley* (1977), the Court noted equal sharing of costs by the State and school districts places the financial responsibility appropriately on the entities that created the violations. Additionally, the Court stated there was no universal plan that may be applied to complex segregation problems for every situation.

The Court reasoned in *Gilmore v. City of Montgomery* (1974), the exclusion of black students by racially segregated or racially discriminatory admission policies of private schools, nonschool groups, clubs, or other organizations from the use of a park or public facility violates the freedom of an individual to associate as they choose. The Court noted, the Equal Protection Clause of the Fourteenth Amendment does not prohibit the invasion of individual rights, but does bar State or school action when an individual is discriminated against. Further, the Court stated there is no test to determine the significance of discrimination on the part of a State or school based on the level of their involvement. Each situation must be decided on a case-by-case basis.

In *Dayton Bd. of Educ. v. Brinkman* (1977), if a school is engaging in discriminatory practices, the District Court must determine what types of discrimination are occurring, the effect, and the significance the discrimination is having on the school system. A remedy can then be designed to mitigate the difference. If there has been an impact throughout a system, a system-wide remedy may be implemented.

A system-wide desegregation remedy is appropriate, in *Dayton Bd. of Educ. v. Brinkman* (1979) and *Columbus Bd. of Educ. v. Penick* (1979), when a school board operates a dual school system with a system-wide effect.

The Court, in *Missouri v. Jenkins* (1990), noted authorizing and directing a school district to provide for its own remedies protects the functioning of the school district. This places the burden of solving and financing the segregation problems it created on the school district.

In *Bd. of Educ. of Oklahoma City v. Dowell* (1991), a District Court must look at all areas of school operations including student, faculty, and staff assignments; transportation; facilities; and extracurricular activities before considering relief or terminating an order.

The Court noted in *Freeman v. Pitts* (1992), the main purpose of a District Court is to mitigate any occurrence of segregation and to restore a school district's operational authority when considering partial withdrawal of supervision.

In *Missouri v. Jenkins* (1995), the Court's reasoning included three principles lower courts must follow when determining a school district desegregation remedy. The remedy should: (a) be in keeping with nature and scope of the constitutional violation; (b) include remediation to restore the discriminatory effect on the victims of the discrimination to the level they would have achieved had the discrimination not been

present; and (c) allow state and local authorities to oversee their own affairs in keeping with the mandates of the Fourteenth Amendment. Additionally, test score improvement or decline is not necessarily an indicator of a quality education program. There are numerous factors that affect student achievement that are beyond the control of a school district. As long as the influencing factors are not the cause of segregation, they will not affect whether a district has achieve partial unitary status.

Table 42

Lawsuits by Students – Discrimination and Equal Opportunity – Desegregation Remedies

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Milliken v. Bradley (1974) *Milliken v. Bradley* (1977)	Multi-district remedy for a single district segregation problem may be an improper remedy. Equal cost sharing between a state and school district for compensatory and remedial programs does not violate the Tenth or Eleventh Amendments.	A multi-district, area-wide remedy to a single-district segregation is only appropriate when: (1) A dual system exists; (2) school boundary lines have a racial segregation purpose; (3) segregation is supported within other districts; or (4) the remedy would impede desegregation Compensatory or remedial programs are essential for previously segregated and discriminated against children to ensure they receive a quality and equitable education.
Gilmore v. City of Montgomery (1974)	Discrimination of students based on race may violate a District Court's order.	The exclusion of black students by racially segregated private schools is prohibited when an individual is discriminated against.
Pasadena City Bd. of Educ. v. Spangler (1976)	Annual readjustment of attendance zones when a school system is racially neutral may exceed a District Court's authority.	A District Court's order for annual rearrangement of attendance zones exceeds their authority: (1) when a school district's desegregation plan did not call for yearly review; (2) when there is no evidence of reoccurring intentional segregation actions; (3) when enrollment fluctuations result from demographic changes; and (4) where there is no expectation of a consistent demographic system.

Table 42

Lawsuits by Students – Discrimination and Equal Opportunity – Remedies (continued)

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Dayton Bd. of Educ. v. Brinkman (1977) (1979) *Columbus Bd. of Educ. v. Penick* (1979)	System-wide remedy may not violate the Equal Protection Clause of the Fourteenth Amendment.	Before a Court may order a system-wide desegregation remedy, they must first determine whether a school board is currently discriminating against minority students, teachers, or staff.
Missouri v. Jenkins (1990)*	A Federal Court can require a school district to levy taxes beyond state statutory limits in order to fund a desegregation remedy.	A District Court may not impose a state property tax increase before exhausting a school district's ability to raise funds through a local permissible levy.
Bd. of Educ. of Oklahoma City v. Dowell (1991)	The Equal Protection Clause of the Fourteenth Amendment does not require perpetual regulation of a previously *de jur* segregated school.	Evidence that a school board has complied with a desegregation decree in good faith and has maintained unitary status may allow a school district relief.
Freeman v. Pitts (1992)	Federal District Court has the authority to order partial withdrawal of its supervision.	Partial withdrawal of supervision may occur where: (1) compliance has occurred in the area of partial withdrawal; (2) judicial control is necessary in other areas; and (3) the district has demonstrated compliance with the remedy.
Missouri v. Jenkins (1995)	Federal District Court requiring salary increases and remedial education programs in a school desegregation plan may exceed their authority.	A Federal District Court ordering testing or salary increases for teachers of remedial programs with the goal of attracting or maintaining high quality educational staff goes beyond what is required to correct a segregation problem, exceeding constitutional authority.

**Note.* Not a precedent; Justices unable to agree on reasoning points.

Emergent Legal Theme

Desegregation remedies are decided on a case-by-case basis.

- Multi-district or system-wide remedies only apply to segregated schools.
- Compensatory and remedial programs are required when school children are discriminated against.
- Annual attendance zone rearrangement is not required.
- School districts can be required to levy taxes beyond statutory limits to fund desegregation remedies.
- Courts have the authority to order partial withdrawal of court-ordered supervision.

Table 43 represents an analysis of desegregation suits by students where a prevailing party may be awarded reasonable attorney fees.

In *Bradley v. Richmond Sch.* Bd (1974) and *Missouri v. Jenkins* (1989), the Court stated attorney and legal service fees may be calculated at current market rates for reasonable delayed-payment compensation. The calculation for reasonableness is determined through a market comparison of reasonable billing practices.

Further, reasonable attorney fees are not limited to compensation for work only performed by an attorney. A fee may include that of secretaries, messengers, librarians, janitors, and others whose work directly contributes to the work of the attorney for which a client is billed.

Table 43

Lawsuits by Students – Discrimination and Equal Opportunity – Desegregation – Attorney Fees

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Bradley v. Richmond Sch. Bd. (1974)	Attorney fees may be awarded under Section 718 of the Emergency School Aid Act of 1972 (20 USCS 1617).	The prevailing party in a school desegregation case may be awarded reasonable attorney fees for services rendered when (1) unreasonable delays caused substantial expenditures for the prevailing party in securing their constitutional rights, or (2) when substantial attorney expenditures were incurred with little likelihood of a monetary damage award.
Missouri v. Jenkins (1989)	Legal service fees may be awarded under the Civil Rights Attorney's Fees Awards Act of 1976 (42 USCS 1988).	Enhanced fee awards for reasonable attorney, paralegal, law clerk, and legal assistant are available to the prevailing party in an action under certain civil rights statutes.

Emergent Legal Theme

The emergent legal theme in these desegregation cases was attorney fees may be awarded under Section 718 of the Emergency School Aid Act of 1972 or the Civil Rights Attorney's Fees Awards Act of 1976.

- Prevailing parties may be awarded delayed-payment compensation for legal services rendered.
- Fee awards include fees for attorneys, paralegals, law clerks, and legal assistants.

Table 44 summarizes a school funding suit on behalf of students to address inadequacies in the Texas school finance system.

In *San Antonio Sch. Dist. v. Rodriguez* (1973) a Texas public school finance lawsuit was initiated by poor minority parents residing in low property tax base school districts. The Court noted a system of school finance discriminates against persons with an inadequate income only if a district with a low tax base is found to: (a) operate in a manner that is disadvantageous to students; (b) lacks resources and deprives children of an education; or (c) has a history of intentional unequal treatment or an extraordinary situation commanding protection such as large numbers of disabilities or political helplessness.

Table 44

Lawsuits by Students – Fiscal

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
San Antonio Sch. Dist. v. Rodriguez (1973)	The Texas funding system does not discriminate against poor minorities or violate the Equal Protection Clause of the Fourteenth Amendment.	Education is not a fundamental right under the United States Constitution.

Emergent Legal Theme

The emergent legal theme in this case was education is not a protected right under the United States Constitution.

- State legislatures are responsible for securing school funding by setting fiscal education policy and having the power to tax property.
- State and local districts have the specialized knowledge and experience to set educational policy.

Table 45 examines the regulation of strike violations, mandatory continuing education requirements, employee free speech rights, and employment property and due process rights.

In *Hortonville Dist. v. Hortonville Educ. Assn.* (1976), teachers were dismissed by a Wisconsin school board for participation in a strike banned by Wisconsin State law. Teachers in this case contended the school board was biased in their dismissal and brought suit.

In *Mt. Healthy City Bd. of Educ. v. Doyle* (1977), if a school board's decision to nonrenew a teacher was based substantially on a protected First Amendment right such as free speech, the decision to dismiss may not hold. In order to dismiss a teacher, a board must be able to show a preponderance of evidence that it would have reached the same decision in the absence of the protected speech. A school board is not entitled to immunity from a lawsuit under federal law when the state prohibits immunity and considers the functioning of the board to be more like that of a city or county than a branch of the state.

The free speech rights of public employees, in *Givhan v. Western Line Sch. Dist.* (1979), are not absolute. Whether an employee's speech is protected must be balanced against the interests of the employee, as a citizen, in commenting on matters of public concern and the interests of the State, as an employer, in governing the efficient service of its employees.

In *Harrah Indep. Sch. Dist. v. Martin* (1979) and *Cleveland v. Loudermill* (1985), the Court held a school board's decision to dismiss an employee or interest in immediate termination, does not outweigh an employee's right to due process.

Table 45

Lawsuits by Employees – Employee Actions – Termination

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Hortonville Dist. v. Hortonville Educ. Assn. (1976)	A school board is assumed to be an impartial review body under the Due Process Clause of the Fourteenth Amendment.	The fact that a school board is a party in a dispute over striking teachers in violation of Wisconsin law does not mean there is sufficient bias to preclude them from impartial review in a teacher dismissal issue. Teacher negotiations are a statutory duty of a board.
Mt. Healthy City Bd. of Educ. v. Doyle (1977)	A board's decision to nonrenew a teacher must not be based on a protected First Amendment freedom of speech right.	Speech criticizing school district policies by a government employee is constitutionally protected when it entails the interests of an employee, and as a citizen, in commenting on matters of public interest and of the State as an employer.
	The Eleventh Amendment may prohibit immunity.	A school board is not entitled to immunity from lawsuit under federal law when state law prohibits immunity.
Givhan v. Western Line Sch. Dist. (1979)	Private expression of one's own views between an employee and his or her employer is protected under the First Amendment.	Teacher criticism alleging discrimination of district policies in private discussions with a principal is protected.
Harrah Indep. Sch.Dist. v. Martin (1979)	Teacher nonrenewal for a contract violation does not violate Due Process or Equal Protection under the Fourteenth Amendment.	A school board's decision to nonrenew a teacher's contract for not complying with a continuing education requirement is rationally related to a Board's concern with the educational qualifications of its teachers. Teacher qualifications are a legitimate governmental concern.
Cleveland v. Loudermill (1985)	Public employees have employment property interests.	When an action is taken against a public employee that may result in the loss of a constitutional right, the employee is entitled to procedural due process with the right to be given notice and an opportunity to be heard.

Emergent Legal Theme

The emergent legal theme in these cases was a school board is considered an impartial review body in teacher dismissal actions.

- Teachers may not be dismissed when their speech is protected under the Constitution.
- Teachers must be given notice and provided an opportunity to be heard when a disciplinary action arises.
- Some state laws protect school boards by providing immunity from lawsuits.

Table 46 provides an analysis of suits by employees in two areas, involuntary leave of absence and sexual harassment.

In *Cleveland v. LaFleur (1974),* although not mandatory, school districts may require a physician's certification to return to work.

The Court noted, in *Clark County Sch. Dist. v. Breeden* (2001), there was no showing of causality between a female employee's complaint of sexual harassment and their employment transfer or any evidence the superintendent was aware the employee intended to sue at the time of transfer.

Table 46

Lawsuits by Employees – Employee Actions – Involuntary Leave of Absence and Sexual Harassment

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Involuntary Leave of Absence		
Cleveland v. LaFleur (1974)	Mandatory leave policies and arbitrary cutoff dates violate the Due Process Clause of the Fourteenth Amendment.	Mandatory leave and arbitrary cutoff dates for pregnant teachers do not provide continuity of instruction or keep physically unfit educators from teaching.
Sexual Harassment		
Clark County Sch. Dist. v. Breeden (2001)	A single incident of an alleged sexual harassment does not violate Title VII of the Civil Rights Act of 1964.	Sexual harassment under Title VII is actionable only if it is so severe and pervasive that it alters the conditions of employment.

Emergent Legal Theme

The emergent legal theme in *Cleveland v. LaFleur* was mandatory leave and arbitrary cutoff dates for pregnant teachers must be considered under the Due Process Clause of the Fourteenth Amendment.

In *Clark County Sch. Dist. v. Breeden*, the emergent legal theme was sexual harassment under Title VII is only actionable when conditions of employment become altered.

Table 47 represents an analysis of collective bargaining suits by employees in three thematic areas.

In *City of Madison Sch. Dist. v. Wisconsin Employment Relations Comm'n* (1976), the Court noted open meetings provide opportunities for public comment and a teacher's speech is considered as both an employee of the board and as concerned citizen on a matters of importance to the government. Restraining teacher communication to a board on issues involving the operation of the school would significantly prejudice a board's ability to manage a district.

In *Abood v. Detroit Bd. of Educ.* (1977), the Court stated single representation of employees promotes peaceful labor relations through union representation. Further, single representation provides stability with one bargaining agent, reduces conflict, and supports management continuity of representation.

Although the Court was unable to agree on an opinion in *Wygant v. Jackson* (1986), five Justices agreed race-based or national-origin based layoffs violated the Equal Protection Clause and that an affirmative action plan is not required unless an employer has engaged in discriminatory employment practices. In cases where an employer seeks affirmative action remedies, the employer must first have evidentiary support of prior employment discrimination in order to necessitate an affirmative action policy.

Table 47

Lawsuits by Employees – Collective Bargaining

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
City of Madison Sch. Dist. v. Wisconsin Employment Relations Comm'n (1976)	A nonunion teacher has the constitutional right to speak at an open school board meeting where collective bargaining negotiations are occurring under Wisconsin law.	Speech of a nonunion teacher at an open school board meeting does not constitute private negotiations under Wisconsin law because it does not present any clear or present danger to labor and management relations.
Abood v. Detroit Bd. of Educ. (1977)	An agency shop does not violate the First or Fourteenth Amendment rights of nonunion employees.	Agency-shop provisions in a collective bargaining contract between a school board and union allow a union to collect fees from all employees regardless of whether they are a union member or not, unless they are used to support political or ideological views which an employee objects.
Wygant v. Jackson (1986)*	Race- or national origin-based layoffs violate the Equal Protection Clause of the First Amendment.	A collective bargaining agreement with an affirmative retention policy cannot be used to justify retaining minority teachers with less seniority over non-minority teachers with more seniority.

**Note.* Not a precedent; Justices unable to agree on reasoning points.

Emergent Legal Theme

Collective bargaining agreements cannot discriminate against teachers on the basis of race or national origin; mandate the use of union fees to support political or ideological views; or prevent a nonunion teacher from speaking at an open negotiation meeting.

Table 48 provides an analysis of accommodations for religious purposes and the meaning of section 504 of the Rehabilitation Act of 1973 (29 USCS 794) in relation to a contagious disease.

In *Ansonia Bd. of Educ. v. Philbrook* (1986), the Court stated there is no basis in either the Civil Rights Act of 1964 or legislative history that requires an employer to choose a specific accommodation for religious purposes.

In *Sch. Bd. of Nassau v. Arline* (1987), the Court held a person diagnosed with tuberculosis and medically determined to be contagious does not necessarily mean they no longer qualified under section 504 of the Rehabilitation Act. The Court reasoned this determination rests with gathering reasonable medical knowledge about how the disease is transmitted, how long the person may be infectious, what potential harm there may be to others, and what probability the disease will be transmitted and harm others.

Table 48

Lawsuits by Employees – Other

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Ansonia Bd. of Educ. v. Philbrook (1986)	Title VII requires reasonable accommodations for religious purposes.	An employer satisfies the statute obligation when they offer a reasonable accommodation to an employee. Unpaid leave is not a reasonable accommodation when paid leave is provided for all purposes except religious.
Sch. Bd. of Nassau v. Arline (1987)	Teacher with a contagious disease may be considered handicapped within the meaning of 504 of the Rehabilitation Act of 1973.	A person with tuberculosis must provide a record the impairment exists and substantially limits a major life activity based on reasonable medical judgment.

Emergent Legal Theme

Employees must be provided reasonable accommodations for religious reasons.

A medically handicapped teacher diagnosed with a contagious disease may qualify for accommodations under the Rehabilitation Act of 1973.

- Reasonable medical information about the disease must be obtained to determine potential harm to others, contagion timeframe, and probability of transmission.

Table 49 provides an analysis of lawsuits involving the Emergency School Aid Act, Title IX, and Title I fiscal issues.

Table 49

Lawsuits by Others – Fiscal

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Bd. of New York City v. Harris (1979)	The Emergency School Aid Act of 1972 Section 706(d)(1)(B) recodified as 20 USCS 3196 (c)(1)(B) prohibits discriminatory teaching assignments.	A school district is considered ineligible for assistance if it has in effect any disproportionate policies that demote, dismiss or promote instructional or other minority group personnel whether or not the discrimination is the result of state law, collective bargaining agreements, licensing requirements, demographic changes, or other causes.
North Haven Bd. of Educ. v. Bell (1982)	Title IX of the Education Amendments of 1972 prohibits gender discrimination in schools.	Gender discrimination in any federally funded education program violates Title IX and may lead to program termination.
Bell v. New Jersey (1983) *Bennett v. Kentucky Dept. of Educ.* (1985) *Bennett v. New Jersey* (1985)	Misapplied Title I funds violate the Pre-1978 and 1978 Elementary and Secondary Education Act and are recoverable. 1978 ESEA provisions for fund recovery do not apply retroactively.	The federal government has the right to recover misused funds granted under Title I and are required to recover misused funds at the time a grant was made.

Emergent Legal Theme

A school district may not misuse funds or discriminate against an employee under the Emergency School Aid Act of 1972, Title IX of the Education Amendments of 1972, or Title I of the 1978 Elementary and Secondary Education Act.

- School districts with discriminatory policies are ineligible for federal assistance.
- The federal government may recover misused funds.

Table 50 illustrates an analysis of state aid to parochial schools for educational purposes.

Table 50

Lawsuits by Others – Church and State – Fiscal

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Lemon v. Kurtzman (1973)	State aid to parochial schools for secular services prior to 1971 does not violate the First Amendment.	Nonpublic sectarian school reimbursement for services, prior to being declared unconstitutional, was permitted because: (1) payments did not involve state oversight; (2) the final audit provided only a remote possibility of ministerial involvement; and (3) state officials and schools, relying on the statue's provisions, acted in good faith.
Sloan v. Lemon (1973)	State statute authorizing tuition reimbursement for religious schools violates the First Amendment.	Partial tuition expense reimbursement to parents of students attending nonpublic religious schools fosters financial support of religious schools.
Levitt v.Comm. for Pub. Educ. (1973) *New York v. Cathedral Acad.* (1977)	State laws authorizing private school testing and record keeping violates the First and Fourteenth Amendments.	The portion of aid used for secular or sectarian purposes cannot be identified and creates an excessive involvement with religious activities.
Meek v. Pittenger (1975)*	State law providing public aid to parochial schools violates the Establishment Clause of the First Amendment.	The loan of instructional materials, equipment, and professional staff for secular purposes by public school authorities results in an unconstitutional entanglement between church and state and creates the potential for serious discord.
Wolman v. Walter (1977)*	Ohio statute providing educational and remedial services to parochial schools does not violate the First Amendment.	Instructional materials, equipment, and field trip services foster church and state entanglement, and create an inability to separate the flow of state aid to religious schools. Services such as speech, hearing, guidance and remedial services do not.

**Note.* Not a precedent; Justices unable to agree on reasoning points.

Table 50

Lawsuits by Others – Church and State – Fiscal (continued)

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Comm. for Pub. Educ. v. Regan (1980)	Direct aid to parochial schools for testing and reporting does not violate the Establishment Clause of the First Amendment.	A State statute may provide aid to religious schools for mandatory testing and reporting: (1) legislation has a secular purpose; (2) does not advance or foster religious entanglement with the State; (3) there is no risk of control over the outcome of the tests; and (4) the statute provides safeguards against misuse of funds
Aguilar v. Felton (1985)	Use of federal Title I funding for public teacher salaries in parochial schools violates the First Amendment Establishment Clause.	The use of Title I aid creates excessive entanglement of church and state and the need for continuous public inspection.
Sch. Dist. of Grand Rapids v. Ball (1985)	Use of public funding to support religious schools violates the Establishment Clause of the First Amendment.	The Shared Time and Community Education Programs, financed by the Grand Rapids Public School, providing supplemental classes in leased classrooms for private religious schools may advance religion in three ways: (1) teachers may become involved with imparting religious ideology; (2) the programs may symbolically provide students with a connection between state and church; and (3) the programs may directly support religious schools.

Table 50

Lawsuits by Others – Church and State – Fiscal (continued)

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Agostini v. Felton (1997)	Use of Title I funding for teacher salaries in parochial schools does not violate the Establishment Clause of the First Amendment.	Title I remedial instruction on the premises of parochial schools during regular school hours does not violate the Establishment Clause: (a) create religious indoctrination by state employees; (b) to predetermine religious groups; (c) create excessive entanglement between church and state; or (d) entitle parents and school to relief.
Mitchell v. Helms (2000)*	Use of Federal funds for instructional materials and equipment in parochial schools does not violate the Establishment Clause of the First Amendment.	The use of Federal Chapter 2 of the Education Consolidation and Improvement Act of 1981 (20 USCS 7301-7373) funds for the loan of educational materials and equipment to Louisiana private and public schools: (a) had an neutral and secular purpose; (b) did not advance or endorse religion; (c) did not provide for indoctrination by the government; (d) was offered to a wide variety of groups without regard to their religion; and (e) was distributed neutrally.
Zelman v. Simmon-Harris (2002)	Ohio voucher plan does not violate the Establishment Clause of the First Amendment.	Ohio tuition scholarship voucher aid providing students with poor academic performance tutorial assistance in participating public or private schools: (a) are open to public and religious students based on financial need; (b) have a valid secular purpose to provide assistance to poor children failing in public programs; (c) neutrally provide private choice grants; (d) permit participation by all schools; and (e) lack religious endorsement.

**Note.* Not a precedent; Justices unable to agree on reasoning points.

Emergent Legal Theme

Federally funded services and instructional aid to parochial schools significantly expanded from 1972 to 2002.

- Federal aid, established with a valid secular purpose, may be provided to parochial schools for instructional programs, remedial and other services, teacher salaries, testing and record keeping, tuition reimbursement, and some school-related activities.

Table 51 describes suits involving a state law requiring the posting of the Ten Commandments in public school classrooms, denial of facility use by a religious group, and a state statute creating a public school district for a religious community.

A Kentucky State statute requiring the superintendent of public instruction to provide funding for placing a permanent copy of the Ten Commandments on classroom walls in all public elementary and secondary schools was challenged in *Stone v. Graham* (1980) even though financed by private contributions.

In *Lamb's Chapel v. Center Moriches Sch. Dist.* (1993), the Court reasoned a request to use school facilities by a religious group was upheld because the school district: (a) provided use of school facilities for any civic, social, or recreational use except religious purposes; (b) the showing of a family values film met the intended uses provided in board policy; (c) permission to show the film was denied solely on the basis of a religious viewpoint; (d) the denial was not supported by the requirements of the Establishment Clause; and (e) denial of use did not support the purpose of the school board's policy to promote the interests of the general public.

A public school district within the Satmar Hasidic Jewish community provided special services to the handicapped children in *Bd. of Educ. of Kiryas Joel Village Sch.*

Dist. v. Grumet (1994) at an annex in one of the community's private schools. This practice ended when the United States Supreme Court ruled supplemental educational services were unconstitutional. A New York statute was then passed in 1989 allowing the community to operate one public school district within the community which provided special education programs for handicapped children.

Table 51

Lawsuits by Others – Church and State – Miscellaneous

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Stone v. Graham (1980)	State law requiring the posting of the Ten Commandments in public schools violates the Establishment Clause of the First Amendment.	Kentucky law requiring the posting of the Ten Commandments on the wall of each public school classroom is in violation of the Establishment Clause because it infringes on the first prong of the *Lemon* test requiring a secular purpose
Lamb's Chapel v. Center Moriches Sch. Dist. (1993)	Denial of a religious group to use school facilities for religious purposes violates the Free Speech Clause of the First Amendment.	A New York church's request to use public school facilities to show a film on religious family values met the intended use provided in board policy and promoted the interests of the general public.
Bd. of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet (1994)	State statute creating a public school district for a religious community violates the First Amendment.	A New York statute creating a public school district to educate Jewish handicapped children favored the needs and preferences of the religious community.

Emergent Legal Theme

State laws or school board policies cannot result in a purposeful or prohibited union of governmental and religious functions.

- Displaying the Ten Commandments on schoolroom walls does not have a secular purpose.
- School board policies that allow public use of their facilities must also include use by religious groups.
- State laws affecting public schools cannot be enacted with a religious preference.

Table 52 depicts lawsuits involving discrimination criteria for Title VII racial hiring practices, teacher certification of individuals with foreign country citizenship, a state statue mandating student attendance at neighborhood schools, a free speech opinion published in a local paper, and a determination of whether an athletic association may be considered a representative of the State.

In *Hazelwood Sch. Dist. v. United States* (1977), a small percentage of black teachers employed in the Hazelwood School District compared to the percentage of black students in the district established a pattern of hiring practice discrimination.

The Court noted in *Ambach v. Norwick* (1979), the teaching of public school children encompasses responsibility and discretion in preparing children for their participation as United States citizens and, therefore, must be taught by citizens who will preserve the values of our country.

A public high school wrestling coach and school district superintendent in *Milkovich v. Lorain Journal* (1990) testified at a hearing concerning a wrestling meet dispute. The local newspaper printed an article disapproving of their conduct at the wrestling meet and accused the coach and superintendent of lying at the hearing. The coach and superintendent each initiated separate legal actions against the newspaper and article author.

In *Brentwood Acad. v. Tennessee Sch. Athletic Ass'n* (2001), the Tennessee Secondary School Athletic Association was considered a representative of the state because: (a) the governing body included principals, assistant principals, and superintendents; (b) the members met half of the time during official school hours; (c) the primary financial support came from public schools; (d) participants were eligible for membership in the state's retirement system; (e) members had authority to enforce rules and regulations reviewed and approved by the state board, and (f) interscholastic athletics sponsored by the Tennessee Secondary School Athletic Association satisfied state physical education requirements.

Table 52

Lawsuits by Others – Miscellaneous

Case Name (Context)	Legal Holding and Rule (Case Theme)	Reasoning Summary (Situation)
Hazelwood Sch. Dist. v. United States (1977)	Criteria for determining Title VII racial hiring violations must include comparisons of relevant labor markets.	The correct determination of a violation should be based on: (1) the racial composition of the school district's teaching staff to the racial composition of the qualified teaching population in a relevant labor market; (2) proof of hiring practice discrimination; and (3) teacher populations in relevant labor markets.
Ambach v. Norwick (1979)	New York Statute prohibiting teacher certification of aliens does not violate the Equal Protection Clause of the Fourteenth Amendment.	New York people have the right to deny certification of an alien who prefers to retain their citizenship, duty and loyalty in a foreign country.
Washington v. Seattle Sch. Dist. (1982)	State law allowing school to mandate attendance at neighborhood schools violates the Equal Protection Clause of the Fourteenth Amendment.	Washington state Initiative 350 ordering students to attend public schools geographically nearest their place of residence served to undermine the Seattle desegregation plan and used a racial nature to impose significant and unusual burdens on racial minorities.
Milkovich v. Lorain Journal (1990)	A defamatory opinion published in a newspaper does not violate the First Amendment right to free speech.	An opinion expressed in a newspaper ensures freedom of expression. A reasonable search of facts can determine whether the statements are true or false.
Brentwood Acad. v. Tennessee Sch. Athletic Ass'n (2001)	Athletic association may be considered a state representative and subject to Fourteenth Amendment provisions.	The Tennessee Secondary School Athletic Association (TSSAA) can be sued because of its pervasive entwinement with state school officials.

Emergent Legal Themes

Title VII does not permit discrimination in hiring practices of teaching staff.

- Violations must be based on racial composition of teaching staff, proof of discrimination, and comparisons of teacher populations in similar labor markets.

State statutes may deny teacher certification of aliens.

- States have the right to deny certification of applicants who retain citizenship in a foreign county.

State laws cannot undermine public school desegregation plans.

- Schools may not segregate children by requiring they attend schools in their neighborhoods.

Freedom of expression is a function of the First Amendment.

- Free speech includes the right to express an opinion in a newspaper.
- Defamatory comments can easily be determined to be true or false by a reasonable search of facts.

A school organization or association acting as a state representative may be sued.

- Pervasive entwinement includes school personnel meeting for the primary purpose of governing a school-sponsored extracurricular activity, utilization of public funds, eligibility and membership in a state's retirement system, authority to enforce regulatory rules, and sponsorship in educational programs.

Summary

This study used a mixed methodology to analyze what the United States Supreme Court has written with regard to elementary and secondary education. The primary guiding research question of this study examined what United States Supreme Court elementary and secondary education trends have emerged between 1972 and 2004

through analyses of: (a) lawsuits by students, employees, and others; (b) court case outcomes; (c) majority opinion author; and (d) court of emergence. The secondary questions sought to identify United States Supreme Court elementary and secondary decisions by: (a) types of actions adjudicated; (b) types of actions most litigated during the 1972-2004 time period; (c) case outcomes by categorization; and (d) discernable historic trends.

The quantitative analysis of United States Supreme Court cases litigated during the 32 years of this study indicated 61.5% of the lawsuits were brought by or on behalf of students. Lawsuits by others represented 26.0% of the cases, while lawsuits by employees represented 12.5% of the cases brought before the Court.

An overall analysis of Court outcomes by issue favored students, employees or others in 52.8% of the ruling issues (Table 8). The most frequently litigated issues by or on behalf of students were under the discrimination, equal opportunity and sexual harassment, church and state, and special education subcategories (Table 4). School authorities were favored in 33.3% of the litigated issues (Table 8), with the termination, collective bargaining, and involuntary leave subcategories the most frequently litigated areas brought before the Court under the category "lawsuits by employees" (Table 4). The most frequently litigated subcategory was church and state under the category "lawsuits by others."

A breakdown of the issues litigated by state indicated the majority of cases came from the states of Ohio (13.9%) and New York (13.0%), followed by Texas (7.4%) and Missouri (6.5%). Courts of emergence within federal judicial circuits indicated the Sixth Circuit dominated the cases reaching the United States Supreme Court with 22.2% of the

issues, followed by the Second Circuit with 14.8% of the issues, and the Fifth Circuit with 13.9% of the issues.

The qualitative investigation included the use of context, situation, and theme coding in the examination of data. Context coding was used to describe the general case category. The second level of coding referred to as situation coding, specified the major points or major reasons leading to the Court's decisions. Legal themes emerged during the final phase of the coding process. From these legal themes appeared the Court's main conceptions, concluding the coding process.

The most prominent emergent themes in the qualitative analysis were seen in the category entitled lawsuits by students. The three main subcategories appearing under this heading were discrimination, equal opportunity and sexual harassment; church and state; and special education. The emergent themes in the discrimination, equal opportunity and sexual harassment subcategory indicated: (a) schools cannot deny students appropriate instruction, admission, or intentionally engage in segregation practices based on race, color, or national origin; and (b) schools may be held liable for desegregation remedies and student harassment by teachers or peers.

The prominent emergent themes in the church and state subcategory were: (a) once a public school permits one organization to use their facilities, they must allow equal access to other groups regardless of the religious, political, or ideological purpose of the group; (b) state statutes have noticeably expanded the use of public funds over the past three decades for religious school use and assistance to parents of students attending religious schools; and (c) school-sponsored prayer during school or at extracurricular activities or events are not permitted under the Constitution.

The outstanding emergent themes under the FAPE subcategory were: (a) all handicapped children are to be provided a free and appropriate individualized education with appropriate support services; (b) parents may be reimbursed for an appropriate private school placement; and (c) suspension of a handicapped student in excess of 10 days is considered a change in placement.

In the final chapter of this study (Chapter Five), the findings are summarized. The primary guiding question and sub-questions are addressed. The chapter concludes with recommendations for administrators and future study.

CHAPTER FIVE

Findings, Conclusions, and Recommendations

Chapter Five includes a discussion of the findings of this study, conclusions which can be drawn from the data, and recommendations for further consideration. The purpose of this descriptive study was to provide a compendium of trend information analyzing the United States Supreme Court decisions in K-12 education to enhance the effective decision-making ability and understanding of administrators, boards of education, and school attorneys. A mixed method design was used to examine United States Supreme Court elementary and secondary rulings. Further the mixed methodology provided multiple approaches to data analyses.

The sample for this study included 96 United States Supreme Court cases from 1972 through 2004, the time period Chief Justice Rehnquist has served the Court. Additionally, this study included 108 issues which emerged from these 96 Supreme Court cases. The study further explicated information gleaned from analyses of three categorical areas: lawsuits by students, lawsuits by employees, and lawsuits by others.

The Litigation Documentation Form (LDF) developed by Newcomer and Zirkel (1999), revised by Lupini (2000), and amended by Wattam (2004) was modified by the researcher to record and code the following case information: case name and number; time period; issue categorization; lawsuits by students, employees, and others; judicial outcome; majority opinion author; and circuit court area of emergence.

The first section of the analyses, *Quantitative Findings*, describes the quantitative data analyses for: overall cases and main issues; decisions by issue conclusivity for lawsuits by students, employees, and others; majority opinion by current justice; issue distribution by state; and issue distribution within the federal judicial circuits. The cases

and issues are then followed by a summarization of the conclusivity outcomes for lawsuits by students, employees, and others. The *Qualitative Findings* section finalizes the summary of the overall cases and presents emerging main legal themes in this study.

Quantitative Findings

Overall Cases and Main Issues

What trends have emerged between 1972 and 2004?

What types of actions were adjudicated?

What types of actions have been most litigated?

Lawsuits by students represented 61.5% of the total cases. This reflects more than twice as many lawsuits as are initiated by others representing 26.0% of the cases and nearly five times the number of lawsuits initiated by employees representing 12.5% of the cases during the time period between 1972 and 2004.

An overall 32-year analysis (Table 2) revealed 40.7% of all elementary and secondary United States Supreme Court issues were decided during the eight-year period from 1972 through 1979, while 31.5% of the issues were decided during the 1980's, 18.5% of the issues were decided during the 1990's, and 9.3% of the issues were decided between 2000 and 2004. This finding is supported by earlier trend analyses of Imber and Thompson (1991), Zirkel (1997), and Lupini (2000) indicating an overall continual decline in education litigation during the past three decades. The overall issue outcomes revealed a prevailing deference of students, employees or others in the majority of the issues decided by the United States Supreme Court. This trend was consistent in the 1970's, 1980's, and 1990's. The issues decided from 2000 until 2004 signified a dramatic change with school authorities prevailing in the majority of issues decided.

A split-decade analysis (Tables 3, 9, and 10) indicated the highest percentage of issues decided occurred between 1975 and 1979 with 24.1% of the issues and the lowest number of issues decided between 1995 and 1999 with 7.4% of the issues. The split-decade analysis resulted in a "seesaw" trend in overall issues decided as seen in Figure 8. The majority of the issues decided favored students, employees or others between 1972-1974, 1975-1979, 1985-1989, and 1990-1994. The time periods favoring school authorities were 1980-1984, 1995-1999, and 2000-2004.

Figure 8

Split-Decade Analysis

Completely Favoring

Students, Employees or Others	Total Issues	Percent
1972-1974	13	(72.2%)
1975-1979	12	(46.2%)
1985-1989	13	(68.4%)
1990-1994	7	(58.3%)
School Authorities		
1980-1984	9	(60.0%)
1995-1999	4	(50.0%)
2000-2004	7	(70.0%)

An analysis of the overall issue distribution by categories (Table 4) between 1972 and 2004 revealed "lawsuits by students" presented the highest percentage of issues in the discrimination, equal opportunity and sexual harassment subcategory with 24.1% of the issues. The church and state subcategory followed with 11.1% of the issues and special education with 10.2% of the issues.

The second largest area "lawsuits by others," had the greatest number of issues under the church and state subcategory as well with 13.9% of the issues. This finding was comparable to past research indicating increases in special education and religion-related cases during this time period.

Decisions by Issue Conclusivity

What have the outcomes been in these landmark cases?

Have there been any discernable trends emerging from the outcome data?

Overall Issues by Conclusivity

The overall United States Supreme Court decisions by issue conclusivity indicated 53.2% of the 108 issues decided completely favored students, employees, or others while 33.0% of the total issues ruled completely favored school authorities over the 32 year time period. This signified an overall deference towards students, employees or others during the 32 years.

United States Supreme Court issue outcomes by decade denoted students, employees or others prevailed in the 1970's (56.8%), 1980's (55.9%), and 1990's (50.0%). More recently, in the time period from 2000 through 2004, a dramatic deference towards school authorities in 70.0% of the issues.

A split-decade analysis provided differing results, rendering a "seesaw" effect in rulings. Most significantly, the three-year time period from 1972 until 1974 indicated 72.2% of the issues completely favored students, employees or others; with 46.2% of the issues decided between 1975 and 1979; and 68.4% of the issues between 1985-1989. The time period from 1980 through 1984 completely favored school authorities in 60.0% of the issues. The beginning of the 1990's indicated a dramatic decrease in issues completely favoring school authorities in only 8.3% of the issues. The time period from

1994 though 1999 signified a sharp increase with school authorities prevailing in 50.0% of the issues and 70.0% of the issues between 2000 and 2004. Once again an inconsistent ruling pattern emerged.

Lawsuits by Students

The overall outcome by issue category for "lawsuits by students" indicated the majority of the issues decided, or 54.5%, were decided completely in favor of students while 33.3% of the issues completely favored school authorities. The "search and seizure" subcategory differed from the overall trend completely favoring school authorities in 75.0% of the issues while the "church and state" subcategory completely favored students in 83.3% of the issues. The "equal opportunity and discrimination" subcategory completely favored students in 55.6% of the issues, while only 27.6% of the issues completely favored school authorities.

Lawsuits by Employees

The overall issue outcome of "lawsuits by employees" predominantly favored employees in 47.1% of the issues, while completely favoring school authorities in 29.4% of the issues. The largest subcategory, "termination," completely favored employees in 62.5% of the issues and completely favored school authorities in 25.0% of the issues.

Lawsuits by Others

Overall issue outcomes for the main category "lawsuits by others" reflected a deference completely favoring others in 52.0% of the issues decided, while 36.0% of the issues completely favored school authorities. The leading subcategory, "church and state," completely favored others in 53.3% of the issues decided, with 40.0% of the issues completely favoring school authorities, and 6.7% of the issues resulting in a conclusive or

inclusive split decision. A second subcategory, "fiscal," resulted in a 100.0% complete favoring of others.

Have there been any discernable trends emerging from the outcome data?

Majority Opinion by Current Justice

There were 96 United States Supreme Court cases decided from 1972 through 2004. Four of the majority opinions were *per curiam* opinions, representing the opinion of the whole Court. Ninety-two of the opinions were authored by individual Justices. The most prolific writer of the currently seated Justices was Chief Justice Rehnquist, with 14 written majority opinions. Less prolific writers of majority opinions currently seated on the Rehnquist Court in descending order were: Justice O'Connor—9; Justice Stevens—5; Justice Thomas—3; Justice Kennedy—3; Justice Souter—2; Justice Scalia—1; and Justices Breyer and Ginsberg—none.

Issue Distribution by State

The issue distribution by state revealed 34 states produced issues decided by the United States Supreme Court between 1972 and 2004. The two states with the most significant number of decisions brought before the United State Supreme Court were Ohio with 15 issues representing 13.9% of the issues and New York with 14 issues, or 13.0%, of the issues decided. Texas followed with 8 issues, or 7.4% of the decided issues, Missouri with 7 issues, or 6.5%, of the issues, and California with 6 issues, or 5.6%, of the decided issues.

Issue Distribution within Federal Judicial Circuits

The issue distribution by courts of emergence within the federal judicial circuits revealed 24 issues, or 22.2% of the issues emerged from the Sixth Circuit. Additional analyses revealed 16 cases, or 14.8%, of the issues emerged from the Second Circuit, 15

issues, or 13.9%, of the issues emerged from Fifth Circuit, 13 issues, or 12.0%, of the issued emerged from the Eighth Circuit, and 11 issues, or 10.2%, of the issues emerged from the Ninth Circuit. The fewest issues emerged from the Seventh Circuit with only 3 issues, or 2.8%, of the issues.

Qualitative Findings

The qualitative analysis and findings were used to answer the guiding research question of what trends have emerged in the K-12 education rulings issued by the United States Supreme Court between 1972 and 2004 and the sub-questions identifying the types of actions adjudicated and discernable historic trends.

The coding categories in this descriptive study provided a three-dimensional analysis of the United States Supreme Court decisions between 1972 and 2004 as suggested by Biklen and Bogdan (1998). The three dimensions included context coding (general case category), situational coding (reasoning summary), and thematic coding (emergent legal theme). From the ninety-six cases, data which emerged resulted in three contextually coded areas: (a) lawsuits by students, (b) lawsuits by employees, and (c) lawsuits by others. The legal holding and rule for each issue or grouping of issues resulted in the emergent legal theme, while the situational coding resulted in a summarization of the United States Supreme Court's main reasoning.

What discernible trends emerged from the data?

The subcategories for the contextual code "Lawsuits by Students" included: (a) Behavior—Attendance, Discipline, Expression, Firearm Possession, Search and Seizure, and Board Immunity; (b) Church and State—Facilities, Fiscal, Pledge of Allegiance, and Prayer; (c) School Programs; (d) Discrimination and Equal Opportunity—Desegregation, Attorney Fees, and Remedies; (e) Free and Appropriate Public Education (FAPE)—

Attorney Fees, Private Placement, Related Services and Stay Put Provisions; and (f) Fiscal.

Law*suits by Students*

The Rehnquist Court interpreted the First Amendment free speech rights of students differently for students than adults. While offensive language may be protected for adults, the same ruling does not apply to public school students using lewd or obscene speech as ruled in *Bethel Sch. Dist. v. Fraiser* (1986). Further, schools are supported in their exercise of control over school-sponsored publications, theatrical productions, and other expressive activities when the content is deemed inappropriate by school officials as held in *Hazelwood v. Kuhlmeier* (1988).

During the 1970's and 1980's student discrimination, equal opportunity and sexual harassment issues were the most markedly affected subcategory under "lawsuits by students" the Rehnquist Court heard. Desegregation issues represented 17 of the 26 discrimination and equal opportunity issues decided and sexual harassment revealed 3 of the 26 issues. The desegregation movement in public schools began in 1954 with *Brown v. Board of* Education where the concept of "separate but equal" was first introduced. The premise of the Court's ruling provided segregation of children based on race, even though facilities may be equal, deprived minority children equal education opportunities. The United States Supreme Court held in this case segregation violated the Equal Protection Clause of the Fourteenth Amendment (Alexander & Alexander, 2005).

The Rehnquist Court firmly held in desegregation cases, such as *United States v. Scotland Neck Bd. of Educ* and *Wright v. Council of Emporia* (1972) and *Keys v. Sch. Dist. Denver, Colo.* (1973), dual systems of education were prohibited under the Equal

Protection Clause of the Fourteenth Amendment and enforced the use of segregation plans, while looking closely at the "effect" of a segregation course of action.

By the mid 1970's and early 1980's, the Rehnquist Court began to turn its focus towards distinguishing between *de jur* (created by government) and *de facto* (created by demographics) segregation, striking down any attempts by schools or state statutes to proliferate segregation through the disguise of an enactment, policy (*Crawford v. Los Angeles Bd. of Educ.*, 1982), or creation of a separate school district as a means of impeding desegregation. Rulings striking down discrimination and segregation extended to the readjustment of attendance zones seen in *Pasadena City Bd. of Educ v. Spangler* (1976) and the exclusive possession of recreational facilities used by racially segregated public or private schools in *Gilmore v. City of Montgomery* (1974).

Milliken v. Bradley I (1974) signaled the beginning of the Rehnquist Court ruling in favor of originally created school district boundaries over racial imbalances created from the mobility of families. The ruling in *Milliken I* (1974) disallowed a multi-district remedy for a single-district segregation problem based on demographic changes. *Milliken II* (1977) marked the beginning of school districts and states equally sharing in the costs of compensatory and remedial programs for previously segregated and discriminated against children to ensure an equitable education. *Missouri v. Jenkins* (1989) further promoted equitability by holding attorney fees, paralegal, law clerk, and legal assistant fees may be awarded in school desegregation suits under the Civil Rights Attorney's Fees Awards Act of 1976.

By 1990, the U.S. Supreme Court supported Federal Courts requiring school districts to levy taxes beyond state statutory limits in order to fund a desegregation remedy. Although not a precedent case, *Missouri v. Jenkins* (1990) signified the

directing of a school district to bear the burden of solving and financing the segregation problems they created. In *Freeman v. Pitts* (1992), the Rehnquist Court held perpetual regulation of a previously *de jur* segregated school that had maintained unitary status was unnecessary. *Missouri v. Jenkins* (1995) marked the end of the desegregation cases from 1972 through 2004 holding the requiring of teacher salary increases of remedial programs with the goal of attracting or maintaining high quality teachers or the requirement of improved test scores to achieve partial unitary status goes beyond what is required to correct a segregation problem and exceeds the limits of constitutional authority.

Church and State issues represented 10.2% of the "lawsuits by students" category with 11 of the 66 total issues in this category. Student issues in this subcategory have remained one of the most litigated areas throughout each decade of the Rehnquist Court. The decades rendered a "seesaw" effect of rulings. In 1972 the United State Supreme Court held the Wisconsin compulsory attendance law violated the First Amendment rights to the free exercise of religion of the Amish faith in *Wisconsin v. Yoder*. In 1973, the Rehnquist Court held a state statute providing for maintenance, repair, tuition reimbursement, and tax relief to non-public parochial schools in *Comm. For Publ. Educ v. Nyquist* (1973) violated the Establishment Clause and in 1983 reversed this ruling in *Mueller v. Allen*, holding tax deductions for parents of parochial school children did not violate the Establishment Clause of the First or Fourteenth Amendments. In 1974 the Court ruled public school authorities violated a Missouri statute by failing to provide comparable Title I services to children attending private religious schools (*Wheeler v. Barrera)*. In *Wallace v. Jaffree* (1985), *Lee v. Wiseman* (1992), and *Sante Fe Indep. Sch. Dist. v. Doe* (2000) the Rehnquist Court consistently ruled state statues or school district

policies allowing voluntary prayer at school or a school sponsored-activity violated the Establishment Clause.

The passage of the Rehabilitation Act in 1973 and the Education for All Handicapped Children Act (EAHCA) in 1975, incorporated into the Individuals with Disabilities Education Act (IDEA) in 1990, revolutionized the treatment of children with disabilities and changed the way schools educate handicapped children. The defining moment occurred in 1971 when a federal district court in Pennsylvania ruled cognitively delayed children are entitled to a free and appropriate public education (Alexander & Alexander, 2005).

The standard, however, for the intent of a free and appropriate public education (FAPE) for all handicapped children was not set until 1982 in *Bd. of Hendrick Hudson Central Sch. Dist v. Rowley*. In *Rowley*, the United States Supreme Court held the FAPE Clause of the Education for All Handicapped Children Act of 1975 does not require a school to maximize the potential of a special-needs child. In 1984 the Court ruled attorney fees may not be awarded against a school district under 504 of the Civil Rights Act (*Irving v. Tatro*) or under the Education for the Handicapped Act (EHA) when the Act already provides a remedy for a free public education (*Smith v. Robinson*, 1984).

Related services were defined in *Irving v. Tatro* (1984) and *Cedar Rapids Cmty. Sch. Dist. v. Garrett F.* (1999), with the Rehnquist Court holding related services are considered school-required services because they can be performed by a nurse or other qualified individual in a school placement, distinguishing related services from medical services as those performed by a physician for diagnostic or evaluation purposes. The United States Supreme Court ruled in favor of private school reimbursement for tuition and expenses in 1985 under EHA if the private school placement is determined to be

appropriate rather than the proposed individualized education plan (IEP). This ruling holds whether or not the school approves of the placement and whether or not the private school meets all the requirements of FAPE (*School Comm. of Town of Burlington v. Mass. Dept. of Edu.*, 1985; *Florence County Sch. Dist. Four v. Carter*, 1993). The Rehnquist Court further held services under IDEA provided to religious schools does not violate the Establishment Clause of the First Amendment in *Zobrest v. Catalina Foothills Sch. Dist* (1993). Additionally, the United States Supreme Court in *Honig v. Doe* (1988) ruled the stay-put provision of the EHA prohibits authorities from suspending students with disability-related dangerous conduct for more than 10 days without an agreed upon alternate placement by the parent or guardian.

Lawsuits by Employees

The subcategories for the contextual code "Lawsuits by Employees" included: (a) Employee Actions—Termination, (b) Involuntary Leave of Absence and Sexual Harassment; (c) Collective Bargaining; and (d) Other.

The Rehnquist Court heard the fewest lawsuits under the category "lawsuits by employees" from 1972 through 2004, with termination issues representing 6 of the 16 issues decided. In *Clevland v. LaFleur* (1974) the Court held mandatory leave policies, employment termination provisions, and arbitrary cutoff dates for pregnant teachers violated the Due Process Clause of the Fourteenth Amendment.

In *Hortonville Dist. v. Hortonville Eduic. Assn.* (1976), the Rehnquist Court held a school board is assumed to be an impartial review body under the Due Process Clause of the Fourteenth Amendment unless bias can be proven in a teacher strike dispute involving dismissal issues. The Court further ruled in *Harrah Indep. Sch. Dist. v. Martin (1979)* a school board's decision to nonrenew a teacher for refusing to comply with a

continuing education requirement does not violate the Due Process Clause of the Fourteenth Amendment; however, a teacher must be given notice and an opportunity to be heard in a dismissal case (*Cleveland v. Loudermill*, 1985).

In First Amendment free speech cases, the Rehnquist Court ruled a school board's decision to nonrenew a teacher must not be based on a protected First Amendment free speech right in *Mt. Healthy City Bd. of Educ. v. Doyle* (1977) and *Givhan v. Western Line School Dist.* (1979). The Rehnquist Court made a special point to state a board may dismiss a teacher, however, with a preponderance of evidence they would have reached the same dismissal decision in the absence of a protected speech. Further the Court held a school board is not entitled to immunity from a lawsuit under the Eleventh Amendment (*Mt. Healthy City Bd. of Educ. v. Doyle*, 1977).

Lawsuits by Others

The subcategories for the contextual code titled "Lawsuits by Others" included: (a) Fiscal; (b) Church and State—Fiscal; and (c) Church and State-Miscellaneous.

The Rehnquist Court heard a total of 25 cases in the category "lawsuits by others" with 15 church and state cases dominating the United States Supreme Court docket from 1973 through 2000. The 1970's reflected a time period when the Court denied financial assistance to religious schools for tuition reimbursement, state-required testing and record keeping, instructional materials, equipment, and loan of public school professional staff for secular purposes in *Lemon v. Sloan* (1973), *Levitt v. Comm. for Pub. Educ.* (1973), *New York v. Cathedral Acad.* (1977), and *Meek v. Pittenger* (1975).

Woman v. Walter in 1977 signaled a marked change in the Rehnquist Court's decision. Although not a precedential case, the Court ruled an Ohio statute providing educational and remedial services to religious schools did not violate the First

Amendment Establishment Clause, reasoning such services did not foster an entanglement between church and state. The Court further ruled in this case instructional materials, equipment and field trips did violate the Constitution due to the state's inability to separate the flow of state aid to religious schools. In 1980 the Rehnquist Court ruled direct aid to parochial schools for testing and reporting no longer violated the Establishment Clause of the First Amendment (*Comm. for Pub. Educ. v. Regan*, 1980). However, in 1985 the use of federal Title I funding for public teacher salaries remained a violation of the First Amendment in *Augilar v. Felton* and *Sch. Dist. of Grand Rapids v. Ball*. By 1997 the Rehnquist Court ruled on the use of Title I funding for teacher salaries in parochial schools in *Agostini v. Felton;* the use of federal funding for instructional materials and equipment (*Mitchel v. Helms*, 2000); and voucher aid for students with poor academic performance (*Zelman v. Simmon-Harris,* 2002) no longer violated the Establishment Clause of the First Amendment.

Guidance for Administrators

The United States Supreme Court has ruled against school authorities during the past three decades completely or largely favoring students, employees or others in 52.8% of the issues. The only exceptions to this deference in favor of students, employees, or others is seen in some discipline suits (search and seizure, expression, and corporal punishment); suits under the subcategory "other" in lawsuits by others involving a few federal aid church and state suits; and one suit in each of the following areas: alien teacher certification suit, rule enforcement by an athletic association, and an unconstitutional state segregation initiative.

Clearly visible is a need for administrators to be knowledgeable in United States Supreme Court rulings, litigation trends, and how these rulings impact elementary and

secondary education to better serve the needs of their school district, staff, parents and community members. Especially evident is a need for preventative education in school law relating to church and state; special education; discrimination, equal opportunity and sexual harassment; use of federal funds (Title I and Title IX); discrimination practices leading to a denial of federal aid; and other federal program support issues.

Recommendations

Recommendations for Future Research

This research focused on the outcomes and historic trends of the United States Supreme Court from 1972 through 2004. Based on the findings and conclusions of this study, the following recommendations for future research have been generated:

1. Further trend analysis is recommended for United States Supreme Court rulings and lower court rulings in elementary and secondary education to compare how the United States Supreme Court trends impact lower court rulings and schools across the nation.
2. Future research should include an in-depth analysis of the reasoning each Justice presented in concurring or partially concurring with a majority opinion; in a dissenting opinion; or in concurring or partially concurring with a dissenting opinion. The further gleaning of this information will assist administrators, boards of education, other related personnel, and education lawyers by informing them of potential legal pitfalls.
3. The involvement of the United States Congress in education legislation has increased since the 1950's with a concurrent increase in the number of lawsuits. Research is recommended to compare United States Supreme Court litigation trends with Congressional acts and reform movements to determine whether any

relationship exists between the congressional acts and lawsuits in elementary and secondary education.

4. Research is recommended to determine whether knowledge and understanding of Congressional acts, United States Supreme Court rulings and trends eventually lead to a reduction in the role the United States Supreme Court and lower courts now play in education.
5. Additional research is recommended to examine the effects of increased administrator knowledge in education law on their ability to lead schools, offer potentially valuable training programs, and assure compliance with state and federal program mandates, constitutional requirements, and congressional acts.
6. Future research should include voting rights cases as these cases may provide important insights for boards of education and those involved in policy-making decisions.
7. Future research should include historical trends and outcomes in case and issue ascension from lower courts to the United States Supreme Court.

APPENDIX A

UNITED STATES SUPREME COURT

ELEMENTARY AND SECONDARY EDUCATION CASES

1972 – 2004

UNITED STATES SUPREME COURT DECISIONS

Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977)

Agostini v. Felton, 521 U.S. 203 (1997)

Aguilar v. Felton, 473 U.S. 402 (1985)

Ambach v. Norwick, 441 U.S. 68 (1979)

Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60 (1986)

Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176 (1982)

Bd. of Educ. Island Trees Union Free Sch. Dist. v. Pico, 457 U.S. 854 (1982)

Bd. of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet, 512 U.S. 687 (1994)

Bd. of Educ. New York City v. Harris, 444 U.S. 130 (1979)

Bd. of Educ. of Oklahoma City v. Dowell, 498 U.S. 237 (1991)

Bd. of Educ. of Indep. Sch. Dist. of Pottawatomie v. Earls, 536 U.S. 822 (2002)

Bd. of Educ. of Rogers, Ark. V. McCluskey, 458 U.S. 966 (1982)

Bd. Educ. of Westside Community v. Mergens, 496 U.S. 226 (1990)

Bell v. New Jersey, 461 U.S. 773 (1983)

Bennett v. Kentucky Dept. of Educ., 470 U.S. 656 (1985)

Bennett v. New Jersey, 470 U.S. 632 (1985)

Bethel Sch. Dist. v. Fraser, 478 U.S. 675 (1986)

Bradley v. Richmond Sch. Bd., 416 U.S. 696 (1974)

Brentwood Acad. V. Tennessee Sch. Athletic Ass'n., 531 U.S. 288 (2001)

Cedar Rapids Cmty. Sch. Dist. v. Garret F., 526 U.S. 66 (1999)

City of Madison Sch. Dist. v. Wisconsin Employment Relations Comm'n, 429 U.S. 167 (1976)

Clark County Sch. Dist. v. Breeden, 532 U.S. 268 (2001)

Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632 (1974)

Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985)

Columbus Bd. of Educ. v. Penick, 443 U.S. 449 (1979)

Comm. for Pub. Educ. v. Nyquist, 413 U.S. 756 (1973)

Comm. for Pub. Educ. v. Regan, 444 U.S. 646 (1980)

Crawford v. Los Angeles Bd. of Educ., 458 U.S. 527 (1982)

Davis v. Monroe, 526 U.S. 629 (1999)

Dayton Bd. of Educ. v. Brinkman, 433 U.S. 406 (1977)

Dayton Bd. of Educ. v. Brinkman, 443 U.S. 526 (1979)

Edwards v. Aguillard, 482 U.S. 578 (1987)

Elk Grove Sch. Dist. v. Newdow, 124 S.Ct. 2301 (2004)

Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 (1993)

Franklin v. Gwinnett County Pub. Sch. Dist., 503 U.S. 60 (1992)

Freeman v. Pitts, 503 U.S. 467 (1992)

Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274 (1998)

Gilmore v. City of Montgomery, 417 U.S. 556 (1974)

Givhan v. Western Line Consol. Sch. Dist., 439 U.S. 410 (1979)

Good News Club v. Milford, 533 U.S. 98 (2001)

Goss v. Lopez, 419 U.S. 565 (1975)

Harrah Indep. Sch. Dist. V. Martin, 440 U.S. 194 (1979)

Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260 (1988)

Hazelwood Sch. Dist. v. United States, 433 U.S. 299)

Honig v. Doe, 484 U.S. 305 (1988)

Hortonville Dist. V. Hortonville Educ. Assn., 426 U.S. 482 (1976)

Howlett v. Rose, 496 U.S. 356 (1990)

Ingraham v. Wright, 430 U.S. 651 (1977)

Irving Indep. Sch. Dist. V. Tatro, 468 U.S. 883 (1984)

Kadrmas v. Dickinson Pub. Sch., 487 U.S. 450 (1988)

Keyes v. Sch. Dist., Denver, Colo., 413 U.S. 189 (1973)

Lamb's Chapel v. Center Moriches Sch. Dist., 508 U.S. 384 (1993)

Lau v. Nichols, 414 U.S. 563 (1974)

Lee v. Weisman, 505 U.S. 577 (1992)

Lemon v. Kurtzman, 411 U.S. 192 (1973)

Levitt v. Comm. for Pub. Educ., 413 U.S. 472 (1973)

Martinez v. Bynum, 461 U.S. 321 (1983)

Meek v. Pittenger, 421 U.S. 349 (1975)

Milkovich v. Lorain Journal, 497 U.S. 1 (1990)

Milliken v. Bradley, 418 U.S. 717 (1974)

Milliken v. Bradley, 433 U.S. 267 (1977)

Missouri v. Jenkins, 491 U.S. 274 (1989)

Missouri v. Jenkins, 495 U.S. 33 (1990)

Missouri v. Jenkins, 515 U.S. 70 (1995)

Mitchell v. Helms, 530 U.S. 793 (2000)

Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274 (1977)

Mueller v. Allen, 463 U.S. 388 (1983)

New Jersey v. T.L.O., 469 U.S. 325 (1985)

New York v. Cathedral Acad., 434 U.S. 125 (1977)

North Haven Bd. of Educ. v. Bell, 456 U.S. 512 (1982)

Norwood v. Harrison, 413 U.S. 455 (1973)

Owasso Indep. Sch. Dist. v. Falvo, 534 U.S. 426 (2002)

Pasadena City Bd. of Educ. v. Spangler, 427 U.S. 424 (1976)

Plyler v. Doe, 457 U.S. 202 (1982)

Runyon v. McCrary, 427 U.S. 160 (1976)

San Antonio Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973)

Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000)

Sch. Bd. of Nassau v. Arline, 480 U.S. 273 (1987)

School Comm. of Town of Burlington v. Mass. Dept. of Educ., 471 U.S. 359 (1985)

Sch. Dist. of Grand Rapids v. Ball, 473 U.S. 373 (1985)

Sloan v. Lemon, 413 U.S. 825 (1973)

Smith v. Robinson, 468 U.S. 992 (1984)

Stone v. Graham, 449 U.S. 39 (1980)

United States v. Lopez, Jr., 514 U.S. 549 (1995)

United States v. Scotland Neck Bd. of Educ., 407 U.S. 484 (1972)

Vernonia Sch. Dist v. Acton, 515 U.S. 646 (1995)

Wallace v. Jaffree, 472 U.S. 38 (1985)

Washington v. Seattle Sch. Dist., 458 U.S. 457 (1982)

Wheeler v. Barrera, 417 U.S. 402 (1974)

Wisconsin v. Yoder, 406 U.S. 205 (1972)

Wolman v. Walter, 433 U.S. 229 (1977)

Wood v. Strickland, 420 U.S. 308 (1975)

Wright v. Council of Emporia, 407 U.S. 451 (1972)

Wygant v. Jackson Bd. of Education, 476 U.S. 267 (1986)

Zelman v. Simmons-Harris, 536 U.S. 639 (2002)

Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1 (1993)

APPENDIX B

LITIGATION DOCUMENTATION FORM

APPROVAL LETTER

THE PUBLIC SCHOOLS OF BROOKLINE
333 WASHINGTON STREET
BROOKLINE, MASSACHUSETTS 02445

TEL: 617-730-2403
FAX: 617-730-2601

Office of the Superintendent of Schools
William H. Lupini, Ed.D.

January 30, 2005

Kelly M. Benson
2962 W. Central Avenue
Missoula, MT 59804

Dear Kelly:

Thanks for your very kind email message. Congratulations on completing your proposal defense; I wish you the best of luck as you embark on your research.

Please feel free to utilize my Litigation Documentation Form in your research. I would very much like to receive a copy of your completed dissertation when you have finished.

Again, best of luck with all of your work.

Sincerely,

William H Lupini

William H. Lupini, Ed.D.
Superintendent of Schools

Public Schools of Brookline
333 Washington Street
Brookline, Massachusetts 02445
Telephone: (617) 730-2401

APPENDIX C

LITIGATION DOCUMENTATION FORM

UNITED STATES SUPREME COURT DECISIONS
That Have Shaped K-12 Education
Outcome Analysis
Litigation Documentation Form

Case Name: _____ Research No: _____

Citation: _____ Decided: _____

Decision Notes: _____
_____
_____

Time Period:

	_____ 1980	_____ 1990	_____ 2000
	_____ 1981	_____ 1991	_____ 2001
_____ 1972	_____ 1982	_____ 1992	_____ 2002
_____ 1973	_____ 1983	_____ 1993	_____ 2003
_____ 1974	_____ 1984	_____ 1994	_____ 2004
_____ 1975	_____ 1985	_____ 1995	
_____ 1976	_____ 1986	_____ 1996	
_____ 1977	_____ 1987	_____ 1997	
_____ 1978	_____ 1988	_____ 1998	
_____ 1979	_____ 1989	_____ 1999	

Issue Categorization:

Lawsuits by Students

_____ (1) Negligence
_____ (2) Behavior
- _____ (a) expression
- _____ (b) association
- _____ (c) discipline
- _____ (d) attendance
- _____ (e) search and seizure

_____ (3) Church and State
_____ (4) School Program
_____ (5) Special Education
_____ (6) Discrimination, Equal Opportunity & Sexual Harassment
_____ (7) Fiscal
_____ (8) Other: _____

Lawsuits by Employees

_____ (9) Discrimination & Equal Opportunity
- _____ (a) race and national origin
- _____ (b) gender
- _____ (c) church and state
- _____ (d) age

_____ (10) Employment Actions
- _____ (a) termination
- _____ (b) nonrenewal
- _____ (c) transfer
- _____ (d) reassignment/suspension
- _____ (e) involuntary leave of absence
- _____ (f) disability benefits

_____ (11) Collective Bargaining and Negotiations

_____ (12) Tort
- _____ (a) negligence
- _____ (b) defamation

_____ (13) Other: _____

Lawsuits by Others

_____ (14) Contracts

_____ (15) Fiscal

_____ (16) Negligence

_____ (17) Church and State

_____ (18) Other: _____

Outcome by Issue:

(7) Conclusive Decision Completely Favoring School Authorities _____

(6) Conclusive Decision Largely, But not Completely Favoring School Authorities _____

(5) Inconclusive Decision Favoring School Authorities _____

(4) Conclusive or Inconclusive Split Decision _____

(3) Inconclusive Decision Favoring Students, Employees or Others _____

(2) Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others _____

(1) Conclusive Decision Completely Favoring Students, Employees or Others _____

Majority Opinion Author:

_____ Blackmun (1970-1994)

_____ Brennan (1956-1990)

_____ Breyer (1994-present)

_____ Burger (1969-1986)

_____ Douglas (1939-1975)

_____ Ginsberg (1993-present)

_____ Kennedy (1988-present)

_____ Marshall (1967-1991)

_____ O'Connor (1981-present)

_____ Powell (1972-1987)

_____ Rehnquist (1972-present)

_____ Scalia (1986-present)

_____ Souter (1990-present)

_____ Stevens (1975-present)

_____ Stewart (1958-1981)

_____ Thomas (1991-present)

_____ White (1962-1993)

_____ Per Curiam

Court of Emergence: _____

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