

25F-EDUC240-010: Legal and Ethical Issues in American Education

EDUC 240: Law and Ethics in American Education

Fall 2025: Tu 5:30-8:30pm, McDowell 114

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Office: 201B Willard, by appt. in person or online (email me!)

Course description and rationale

This course addresses basic animating principles of the U.S. education system. Syllabus topics are organized around three basic legal and ethical ideals: (1) conscience, (2) liberty, and (3) equality.

Though highly relevant to everyday practice, the readings, lecture and discussion will not be about detailed sets of rules to follow or how to comply with the latest mandates. Our subject matter is more basic than that: it concerns the underlying legal structures and rationales for our contemporary system of schooling. In short, it is a “why” rather than a “how to” course.

These legal structures reflect how schools function as sites for addressing major societal tensions in areas such as religion, freedom of speech and conscience, racial, gender and economic equality, personal liberty and what generations owe one another. Beneath the legalities, these are all inherently ethical matters subject to continual debate; there are no final right answers to any of this. Though current educational practices are bound by specific legal rules—and these must be understood—the situation is not static as things regularly change.

The larger point is that in a democracy what kind of world we create is supposed to be up to *us*—*all* of us. Educators have a special role in realizing that ideal, which starts with teachers *themselves* being the kinds of people who think their own thoughts and who do not just follow orders or traditions without question. If teachers are not thinkers, schools are unlikely to be thoughtful places and our society as a whole will follow suit. The best educators dig deeper than mere rule following and work to grasp the underlying reasons behind what they are doing. In doing so they become more capable of moral and professional leadership. No college course will make someone into a person like that, of course. But it might help a little.

Online databases (*=sites where assigned cases may be found online)

FOR LEGAL CASES:

* www.oyez.com

[Links to an external site.](#)

(for oral argument transcripts plus audio/mp3 options for most cases). Note: for opinions, Oyez links to JUSTIA (the SCOTUS site), so if you have trouble finding something on Oyez go directly to JUSTIA @ <https://supreme.justia.com/>

[Links to an external site.](#)

* <http://www.law.cornell.edu/supct/index.html>

[Links to an external site.](#)

(user-friendly formatting)

Hint: in searches, use the more unusual part of the case name, e.g., “Society of Sisters” rather than “Pierce.” Click “opinion” under the case name and find the *majority* opinion.

Note: Wikipedia has solid entries concerning assigned SCOTUS cases and statutes, including relevant external links. So it is useful and encouraged but is NOT good substitute for reading the course material itself.

Other potentially useful websites (*=cases available here as well)

*FindLaw for Professionals [free sign in],
<http://www.findlaw.com/casecode/supreme.html>

[Links to an external site.](#)

(user-friendly search box), including federal and state cases and codes at
<https://caselaw.findlaw.com/>

[Links to an external site.](#)

*NEXIS UNI (sign in via UD), <https://library.udel.edu/databases/nexisuni/>

[Links to an external site.](#)

<https://www.wikipedia.org/>

[Links to an external site.](#)

(helpful entries and links for most assigned cases)

Law-Related Research (UD),
http://www.udel.edu/POSCISR/jjimagee/legal_research.htm

[Links to an external site.](#)

Optional supplementary material (extra background and examples but **NOT** required)

Alexander and Alexander, *The Law of Schools, Students and Teachers in a Nutshell* (West Publishing, 6th ed., 2018) [available here: <https://tinyurl.com/y2wk6lww>]

[Links to an external site.](#)

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[Quimbee.com](#)

[Links to an external site.](#)

[an excellent site for video summaries of most cases (fee-based)]

Calendar and readings

Notes:

(1) Students are responsible for obtaining on their own online cases (use one of the "Useful Websites," above, oyez.com and supreme.justia.com being the default SCOTUS sites.

(2) *Except where noted otherwise, you are responsible ONLY for the MAJORITY OPINION.*

(3) Make sure to access the *entire* majority opinion rather than just the synopsis or "case syllabus" (on the case's page in oyez.com, under "opinions" on the left side click thru "view case" then "opinion [rather than "syllabus," which is a summary].

(4) ***non***-SCOTUS cases are designated with "*"

(5) Exams will be **in person**

Assessments

There are three things you will be graded for in this class.

1. Exams -- There will be 3 *in-class* exams. These exams will have study guides provided the week prior. Exams are open note -- any printed material you wish to bring to class for the exam will be allowed, though I encourage you to write condensed notes based on the study guide. The exams will be multiple choice on Scantron forms. No electronic devices are allowed for the exam. Attendance for these exams is *mandatory* -- if you cannot attend an exam day you must tell me in advance so I can proctor a make up.
2. Presentations -- Individual students will sign up to present 3 cases for the semester. Sign up sheet will be provided after the first class. Purpose of these presentations is to connect the case to a current event. You can do this in a few ways, by identifying future cases that overturned, modified, or amplified the ruling. Alternatively, you may identify a recent political event that reflects principles articulated in the case. In essence, the idea is to say (i) here is the take-away from the case and (ii) here is how that case permeates through American society today. Presentations should be short, no more than 5 minutes, as we will have multiple presentations per class. We will have multiple students signing up for individual cases -- you should work with those students to generate one presentation, meaning there can be ****at most**** one presentation per case. I will create a Google slide deck and share it with the class so that all presentations can be uploaded onto the one slide deck; this way we don't have to load multiple presentations and waste time. Lastly, all presentations are due Monday at 12pm (about 18 hours before class begins) so that I can review them.
3. Attendance -- This class will have lots of opportunity for discussion and presentations. For these discussions and presentations to be worthwhile, we need people to be in the classroom. Therefore, I will have a "virtual" sign up sheet every week. I will put a pass code up on the slides, and your job is to write that pass code on Canvas to get credit for attending. Because sometimes life gets in the way of school, you will only be graded for attending 8 classes (not counting exams, where attendance is mandatory). Any additional classes you attend will count as extra credit.

Grading

1. Exams are worth 60% of your grade, meaning each exam will be worth 20 points out of 100 points for your final grade
2. Presentations are worth 30% of your grade, meaning that each presentation will be worth 10 points out of 100 points for your final grade. I will not provide a rubric for these presentations because you only need to do 3 things: present the case, identify the main

takeaway from the case, identify an example of how the case permeates through contemporary US society. Full credit is assured if you can do these three things.

3. Attendance is worth 10% of your grade, meaning that for each class you attend will be worth 1.25 points out of 100 points for your final grade. Each additional class you attend will earn you another 1.25 points towards your final grade, roughly equivalent to getting 3 questions on an exam corrected (50 questions = 20 total points, or 1 question = 0.4 total points, so 1.25 points per extra class is about 3 questions)

Schedule

WEEK ONE (8/26) Introduction

WEEK TWO (9/2) The Pledge controversy & compulsory education

- Readings 1 (Pledge): *Minersville School District v. Gobitis* (1940); *West Virginia v. Barnette* (1943)
- Cases: *Gobitis*, *Barnette*
- Readings 2 (compulsory education): *Law of Schools*, Ch. 1; **Old Deluder Satan Law* (1647) [available at http://en.wikipedia.org/wiki/Massachusetts_School_Laws
- [Links to an external site.](#)
-]; *Pierce v. Society of Sisters* (1925); *Meyer v. Nebraska* (1923); *Prince v. Massachusetts* (1944); *Wisconsin v. Yoder* (1972) [+note Douglas dissent]; **Konrad v. Germany* (2006) [find case under canvas/files]
- Cases: **Old Deluder Law*, *Pierce*, *Meyer*, *Prince*, *Yoder*, **Konrad*

WEEK THREE (9/9) Religion I: School Prayer

- Readings: *Engel v. Vitale* (1962); *Abington Twp. v. Schempp* (1963); *Lemon v. Kurtzman* (1971); *Stone v. Graham* (1980); **Lautsi v. Italy* (2011), available at <https://hudoc.echr.coe.int/eng#%7B%22dmdocnumber%22:%5B%22857725%22%2C%22itemid%22:%5B%22001-95589%22%5D%7D>
- [Links to an external site.](#)
- ; O'Connor Concurrence in *Lynch v. Donnelly* (1984) [Endorsement test]; O'Connor concurrence in *Wallace v. Jaffree* (1985) [moment of silence]; see "National Council on Bible Curriculum in Public Schools" statements [available at <http://www.bibleinschools.net/>
- [Links to an external site.](#)

-]; the *Ahlquist* case (RI, 2012) [see http://en.wikipedia.org/wiki/Ahlquist_v._Cranston
- [Links to an external site.](#)
-]; O'Connor concurrence in *Lynch v. Donnelly*
- Cases: *Engel*, *Schempp*, *Lemon*, O'Connor concurrences in *Donnelly* and *Jaffree*, *Stone*, *Ahlquist*, *Lautsi*

WEEK FOUR (9/16) Religion II: School events, student clubs, community groups.

- Readings: *Law of Schools*, Ch. 5; *Lee v. Weisman* (1992) [+note Scalia dissent]; *Santa Fe ISD v. Doe* (2000); *Town of Greece v Galloway* (2014); **FFRF v. Chino Valley School Board* (2018) [available at <https://cdn.ca9.uscourts.gov/datastore/opinions/2018/07/25/16-55425.pdf>
- [Links to an external site.](#)
-]; *Kennedy v. Bremerton* (2022); *Equal Access Act* (1984) [available at <http://www.law.cornell.edu/uscode/text/20/4071>
- [Links to an external site.](#)
- ; see also http://en.wikipedia.org/wiki/Equal_Access_Act]; *Westside v. Mergens* (1990); **Boyd County Gay Straight Alliance v. Board of Education* (KY 2003), available at <https://law.justia.com/cases/federal/district-courts/FSupp2/258/667/2480382/>
- [Links to an external site.](#)
- ; *Christian Legal Society v. Martinez* (2010); *Lamb's Chapel v. Center Moriches SD* (1992); *Good News Club v. Milford Central School* (2001)
- Cases: *Lee*, *Santa Fe*, *Galloway*, **Chino Valley*, *Kennedy*, **Equal Access Act* (statute), *Mergens*, **Boyd County*, *Christian Legal Society*, *Lamb's Chapel*, *Good News Club*

***WEEK FIVE (9/23): FIRST EXAM

WEEK SIX (9/30) Religion III: Neutrality, Evolution and Creationism/Intelligent design

- Readings: *Law of Schools*, pp. 59-63; *Everson v. Board of Education* (1947); *Trinity Lutheran Church v. Comer* (2017); *Espinoza v. Montana Department of Revenue* (2020); *Carson v. Makin* (2022); *State v. Scopes: An Account*, <https://famous-trials.com/scopesmonkey/2127-home>
- [Links to an external site.](#)
-]; *Epperson v. Arkansas* (1968); *Edwards v. Aguillard* (1987) [+note Scalia dissent]; **Kitzmilller v. Dover* (Pa. 2005) [available at <https://law.justia.com/cases/federal/district-courts/FSupp2/400/707/2414073/>
- [Links to an external site.](#)

-]; see also Wikipedia entry]
- Cases: *Everson*, *Trinity*, *Espinoza*, *Carson*, **Scopes*, *Epperson*, *Edwards*, **Kitzmiller*

WEEK SEVEN (10/7) Students' Rights I: Speech

- Readings: *Law of Schools*, Ch. 4 (139-167) & Ch. 6; *Tinker v. Des Moines* (1969) [+note Black dissent]; *Bethel v. Fraser* (1986); *Hazelwood v. Kuhlmeier* (1988) [+note Brennan dissent]; *Morse v. Frederick* (2007) [+note Alito and Thomas concurrences]; **Aktas v. France and others* (2009), google “Aktas v. France” for .pdf at <https://hudoc.echr.coe>
- [Links to an external site.](#)
- ; **SAS v. France and others* (2009), use Wikipedia entry available at https://en.wikipedia.org/wiki/S.A.S._v._France
- [Links to an external site.](#)
- ; NYT podcast, “France, Islam and Laïcité,” available at https://the-daily.simplecast.com/episodes/20210212-uYxop_Ko
- [Links to an external site.](#)
-
- Cases: *Tinker*, *Fraser*, *Kuhlmeier*, *Morse*, **Aktas*, **SAS*

WEEK EIGHT (10/14) Censorship; First Amendment beyond *Tinker* (selected early social media cases, threats and harassment, and teacher speech)

- Readings: *Law of Schools*, 73-84; *Mahanoy Area S.D v. B.L.* (2021); *Pico v. Island Trees* (1982); **Counts v. Cedarville School District* (Ark., 2003), available at <https://law.justia.com/cases/federal/district-courts/FSupp2/295/996/2307891/>
- [Links to an external site.](#)
- ; watch <https://www.pbs.org/newshour/show/schools-watching-students-social-media-raising-questions-free-speech>
- [Links to an external site.](#)
- ;
- “True threats” and discriminatory harassment: *Law of Schools*, 168-173
- True threats: *Watts v. United States* (1969); **In re Douglas D.* (2001), available at <https://www.wicourts.gov/html/sc/99/99-1767.htm>
- [Links to an external site.](#)
- ; **Wynar v. Douglas County* (2013), available at <https://caselaw.findlaw.com/us-9th-circuit/1642928.html>
- [Links to an external site.](#)

- ; *Counterman v. Colorado* (2023); ProPublica report from Tennessee, <https://www.propublica.org/article/tennessee-school-threat-law-kids-arrested>
- [Links to an external site.](#)
-
- Discriminatory harassment: US Dept. of Education, Office for Civil Rights: (1) “Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics” [<https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-shared-ancestry-202301.pdf>]; (2) “Know Your Rights: Title VI and Religion” [<https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf>]; (3) “Dear Colleague” letter on hate crimes and harassment (11/7/23) [<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf>]; (4) “Combating Discrimination Against Jewish Students” [<https://www2.ed.gov/about/offices/list/ocr/docs/jewish-factsheet-201701.pdf>]; (5) guidance on terrorism supporting foreign students (TBA)
- Constitutional rights of teachers: *Law of Schools*, Ch. 16; *Pickering v. Board of Education* (1968); *Mt. Healthy v. Doyle* (1977); *Shelton v. Tucker* (1960)
- Cases: *Mahanoy*, *Pico*, **Counts*, *Watts*, **Douglas D.*, **Wynar*, *Counterman*, *Pickering*, *Mt. Healthy*, *Shelton*, US DoE material on harassment (4 items)

***WEEK NINE (10/21): SECOND EXAM

WEEK TEN (10/28) Students’ Rights II: Searches/drug testing.

- Readings: *Law of Schools*, Ch. 7; *New Jersey v. TLO* (1985); *Safford v. Redding* (2009); *Riley v. California* (2014); *Vernonia v. Acton* (1995); *BOE Pottawatomie v. Earls* (2002)
- Cases: *TLO*, *Redding*, *Riley*, *Vernonia*, *Earls*

WEEK ELEVEN (11/4) Due process and discipline. Begin right to education.

- Readings: *Law of Schools*, Ch. 8;); *In re Gault* (1967); *Goss v. Lopez* (1975) [+note Powell dissent]; *Ingraham v. Wright* (1977); See http://en.wikipedia.org/wiki/Corporal_punishment
- [Links to an external site.](#)
- [+note US and European maps]; <http://tinyurl.com/nr9ufj>
- [Links to an external site.](#)
- (interactive map for corporal punishment states); DE’s statute, <http://delcode.delaware.gov/sessionlaws/ga142/chp017.shtml>
- [Links to an external site.](#)

- ; *Roper v. Simmons* (2005); *San Antonio v. Rodriguez* (1973) [+note Marshall and Brennan dissent]; *Plyler v. Doe* (1982); *Martinez v. Bynum* (1983); *Lau v. Nichols* (1974)
- Cases: *In re Gault*, *Goss*, *Ingraham*, *Roper*, *Rodriguez*, *Plyler*, *Martinez*, *Lau*

WEEK TWELVE (11/11) Desegregation

- Readings: *Law of Schools*, Ch. 9; *Plessy v. Ferguson* (1896) [+note Harlan dissent]; *Cumming v Richmond County Board of Education* (1899); *Gong Lum v. Rice* (1927); *Brown v. Board of Education* (1954); *Brown II* (1955); *Griffin v. Board of Education of Prince Edward County* (1964); *Civil Rights Act of 1964* (statute); [available at <http://www.ourdocuments.gov/doc.php?doc=97&page=transcript>
- [Links to an external site.](#)
- ; see also http://www.law.cornell.edu/wex/Civil_rights
- [Links to an external site.](#)
-]; Wikipedia entries for: *Green v. County School Board of New Kent County* (1968) and *Swann v. Charlotte-Mecklenburg Board of Education* (1971) (available at http://en.wikipedia.org/wiki/Green_v._County_School_Board_of_New_Kent_County
- [Links to an external site.](#)
- and http://en.wikipedia.org/wiki/Swann_v._Charlotte-Mecklenburg_Board_of_Education
- [Links to an external site.](#)
- ; *Milliken v. Bradley* (1974) [+note Marshall dissent];
- Cases: *Plessy*, *Cumming*, *Gong Lum*, *Brown*, *Brown II*, *Griffin*, *Civil Rights Act of 1964*, *Green*, *Swann*, *Milliken*

WEEK THIRTEEN (11/18) Sex/Gender discrimination (Title IX)

- Readings: *Law of Schools*, Ch. 11; *Franklin v. Gwinnett* (1992); *Gebser v. Lago Vista* (1998); *Davis v. Monroe County* (1999); **Frickie v. Lynch* (RI, 1980), available at <https://law.justia.com/cases/federal/district-courts/FSupp/491/381/1799237/>
- [Links to an external site.](#)
- ; *Bostock v. Clayton County* (2020); DOE advisory rulings: (1) “Letter on Transgendered Students,” (US Departments of Justice and Education, 2016), available at

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

- [Links to an external site.](#)
- ; (2) “Dear Colleague Letter” [vacating ‘Letter on Transgendered Students], (US Departments of Justice and Education, 2017), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf>
- [Links to an external site.](#)
- ; *Bostock v. Clayton County* (2020); (3) Title IX new rules 2024 (in canvas/files); (4) Title IX new rules 2025 (TBA); **Soule v. Connecticut Association of Schools* (ongoing case, 2023) [available in canvas/files w possible updates]; Executive Orders (2025): [Keeping Men out of Women's Sports](#)
- [Links to an external site.](#)
- and [Ending Radical Indoctrination in K-12 Schooling](#)
- [Links to an external site.](#)
-
- Executive Orders (2025): *Ending Radical Indoctrination in K-12 Schools*
- Cases: *Franklin, Gebser, Davis, Frickie, Bostock*, DOE advisory rulings (4), **Soule*, Executive Orders (2)

*** Thanksgiving Break***

WEEK Fourteen (12/2) The states, state supreme courts, education finance, and educational opportunity

- Readings: *Serrano v. Priest* (1971); *Board of Education v. Walter* (Ohio, 1979); *Robinson v. Cahill* (NJ, 1973); *Abbott v. Burke* (NJ, 1985-2011); *Rose v. Council for Better Education* (KY, 1989); *Campaign for Fiscal Equity v. State of New York* (NY, 2001-2006); *Mathew and Stephanie McCleary et al., v. State of Washington* (2012)
- *Lee, Hojung, Kenneth Shores, and Elinor Williams. "The distribution of school resources in the United States: A comparative analysis across levels of governance, student subgroups, and educational resources." Peabody Journal of Education 97.4 (2022): 395-411.*

***WEEK FIFTEEN (12/9) THIRD EXAM

Final notes:

(1) Plagiarism or cheating of any kind is not tolerated and will result in a zero for the assignment. Please see the “Academic Honesty” section of the UD Student Guide to University Policies Code of Conduct, available at <http://www1.udel.edu/stuguide/19-20/code.html#honesty>

[Links to an external site.](#)