

**AN INTRODUCTION TO  
EDUCATION LAW FOR  
PUBLIC SCHOOL EDUCATORS**



**John Dayton, J.D., Ed. D.  
Professor  
College of Education  
The University of Georgia**

**and**

**Anne Dupre, J.D.  
Hosch Professor of Law  
School of Law  
The University of Georgia**

**[www.educationlawconsortium.org](http://www.educationlawconsortium.org)**

## **About the Presenters**

### **Professor John Dayton**

John Dayton is a Professor of Education Law at the University of Georgia, College of Education, in Educational Administration & Policy, and Co-Director of the Education Law Consortium. Dr. Dayton was the Director of Music at Harrison-Washington Schools, Gaston, Indiana, when he was offered academic scholarships from the Yeshiva University, American University, and Indiana University Schools of Law. He graduated from Indiana University with a Doctor of Jurisprudence from the School of Law, and a Doctor of Educational Administration & Policy degree from the College of Education. He has experience in both public and private legal practice, and joined the University of Georgia faculty in 1991. Dr. Dayton was inducted into the UGA Teaching Academy in 2007, and was the first recipient of the Glickman Faculty Fellow Award, recognizing excellence in research and teaching. He is nationally recognized as an expert on Education Law and Finance, and he has authored over 100 publications on Education Law and Finance related issues. E-mail: [jdayton@uga.edu](mailto:jdayton@uga.edu).

### **Professor Anne Dupre**

Professor Anne Dupre is the Hosch Professor of Law at the University of Georgia, School of Law. After graduating from the University of Georgia Law School first in her class and editor-in-chief of the Law Review, she served as a judicial law clerk for Judge J.L. Edmondson of the Eleventh Circuit Court of Appeals in Atlanta and then for Justice Harry A. Blackmun at the United States Supreme Court. After practicing law in Washington, D.C., Professor Dupre joined the faculty of her alma mater, where she currently focuses her scholarship on issues relating to law and education. Professor Dupre has published extensively in the area of education law, and is widely regarded as one of the nation's leading scholars on legal issues concerning education. Professor Dupre was a public school teacher for five years before entering law school. Email: [adupre@uga.edu](mailto:adupre@uga.edu).

## How Much Do You Already Know About Education Law? Test Your Knowledge:

For all of the following questions, please answer True (T) or False (F) according to which of these answers is the *best choice* for each question:

- 1) \_\_\_\_ The state can legally require that children attend public schools.
- 2) \_\_\_\_ Schools must prohibit children from praying during school hours because of church-state separation.
- 3) \_\_\_\_ If your high school has established a "limited open forum" this allows you to exclude student hate groups such as the American Nazi Party, the Ku Klux Klan, and Satanists from meeting after school.
- 4) \_\_\_\_ Although students cannot be required to recite the Pledge of Allegiance, they must either stand or leave the room.
- 5) \_\_\_\_ The U.S. Supreme Court has ruled that public schools cannot require that male students cut their hair unless a similar rule is applied to female students.
- 6) \_\_\_\_ Students cannot be punished by school officials for any offense that occurs off of public school property.
- 7) \_\_\_\_ Education is a fundamental right under the U.S. Constitution.
- 8) \_\_\_\_ To avoid potential legal liability, including suits by parents and others, you should only report incidents where you have solid evidence of child abuse.
- 9) \_\_\_\_ Where de facto racial segregation exists federal courts can order a judicially supervised desegregation plan.
- 10) \_\_\_\_ As the school principal, if you do not renew the contract of a nontenured teacher, you should be certain that you give them a legally and educationally sound reason for the nonrenewal.

## Test Answers

1) \_\_\_\_ The state can legally require that children attend public schools.

False. While state officials can require school attendance, they cannot limit that attendance to only public schools. As long as parents are in compliance with applicable state laws and standards, parents may instead choose for their children to attend a private school or a home study program. See *Pierce v. Society of Sisters*.

2) \_\_\_\_ Schools may prohibit children from praying during school hours because of church-state separation.

False. Requirements of “church-state” separation created by the First Amendment’s Establishment Clause only apply to government agents and institutions. In public schools, students are private citizens, not government agents. Accordingly, it is the Free Exercise clause of the First Amendment that applies to students in schools, and the Free Exercise protects students’ rights to, for example, engage in private student initiated prayer, subject only to reasonable time, place, and manner restrictions. Students cannot, for example, pray loudly at a time when this prayer would interfere with instruction, but anytime students can engage in free speech, they may also engage in prayer, prayer protected by both the free speech and free exercise provisions of the First Amendment.

3) \_\_\_\_ If your high school has established a "limited open forum" this allows you to exclude student hate groups such as the American Nazi Party, the Ku Klux Klan, and Satanists from meeting after school.

False. Under the Federal Equal Access Act, if a school has established a “limited open forum” by allowing any non-curriculum related groups to meet, the school must then allow all interested groups of students to meet, regardless of the “religious, political, philosophical, or other content of the speech at such meetings.” All groups must comply with school rules, applicable laws, and reasonable time, place, and manner restrictions, but otherwise, even “hate” speech becomes protected speech under this Act. See 20 U.S.C. § 4071.

4) \_\_\_\_ Although students cannot be required to recite the Pledge of Allegiance, they must either stand or leave the room.

False. Students cannot be required to either say the pledge or stand. In *West Virginia State Board of Education v. Barnette* (1943) the U.S. Supreme Court declared that: “[N]o official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”

5) \_\_\_\_ The U.S. Supreme Court has ruled that public schools cannot require that male students cut their hair unless a similar rule is applied to female students.

False. The U.S. Supreme Court has not ruled on student dress and grooming issues. These issues are governed by varying decisions from U.S. Courts of Appeals and differing state and local policies on student dress and grooming, resulting in notable diversity across the nation in student dress and grooming standards.

6) \_\_\_\_ Students cannot be punished by school officials for any offense that occurs off of public school property.

False. As long as school officials can establish a “logical nexus” between the off campus misconduct and a sufficient negative impact on discipline in the school, school officials can also acquire legitimate jurisdiction over issues that occurred off of school property and outside of school hours, such as a student cursing at a teacher or principal in the grocery store.

7) \_\_\_\_ Education is a fundamental right under the U.S. Constitution.

False. In *San Antonio v. Rodriguez*, the U.S. Supreme Court held that under the U.S. Constitution, fundamental rights are those rights expressly included in the Constitution. Education is not included in the U.S. Constitution and is therefore not a fundamental right under the U.S. Constitution.

8) \_\_\_\_ To avoid potential legal liability, including suits by parents and others, you should only report incidents where you have solid evidence of child abuse.

False. All 50 states have criminal statutes requiring child care professionals, including public school teachers, to report all *suspected* child abuse. These statutes intentionally cast an over broad net, seeking too many reports rather than two few. These statutes also provide immunity from prosecution for all good faith reports, whether than are ultimately proven or not.

9) \_\_\_\_ Where de facto racial segregation exists federal courts can order a judicially supervised desegregation plan.

False. Courts only have jurisdiction over *de jure* (caused by government actions) not *de facto* (caused by private choices) segregation.

10) \_\_\_\_ As the school principal, if you do not renew the contract of a nontenured teacher, you should be certain that you give them a legally and educationally sound reason for the nonrenewal

False. Due process of law is triggered when government officials make statements that negatively impact on an individual’s good name, reputation, honor, or integrity. School administrators are commonly advised to not provide any reason for nonrenewals.

# AN INTRODUCTION TO EDUCATION LAW FOR PUBLIC SCHOOL EDUCATORS

## Why do public school educators need to know about the law?<sup>1</sup>

For at least three reasons: 1) Self Preservation: Ignorance of the law can have dire professional and personal consequences for public school educators; 2) Protecting Your School District: Failing to comply with the law may result in serious financial liability and damage to the public reputation of your school district; and 3) Promoting Good Citizenship: Educators that are knowledgeable about the law are better prepared to meet their obligations as citizens. Further, they are better prepared to teach children about the laws and self-governance in a democracy, so that these children can learn to be better citizens also.

## Why do I need to know about the U.S. Constitution?

The U.S. Constitution plays a central role in the laws governing public schools. The U.S. system of government is founded on the premise that there are definite restrictions upon the power of government. Most of these restrictions are found in the U.S. Constitution. The U.S. Constitution only binds government officials. However, all public school educators are government officials. Public school educators are agents of their state government, and have sworn an oath of office to support the Constitution of the United States, the constitution of their state, and the laws consistent with these constitutions. In Article VI the U.S. Constitution requires that government officials "both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution." As agents of state government, public school teachers and administrators are required to support and comply with the laws under the U.S. Constitution and their state's constitution.

## What happens if I don't know about the law?

All persons, especially professionals who have sworn an oath to uphold the law, are presumed to know the law. Governmental agents that violate this oath of office are subject to dismissal and possibly monetary damages. It is essential that professional educators know and understand the laws governing public schools so that they can meet their legal obligations. In addition to understanding their legal obligations as government agents, educators should be aware of the legal obligations of other governmental officials so that they may assist in the protection of their own legal rights and the rights of their

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<sup>1</sup> All information in this document is intended solely for general educational purposes, representing only the personal opinions of the authors. This information is not intended as legal advice. Legal advice can only be obtained from a qualified attorney in your state, based on the unique circumstances in your case.

students. Further, in addition to fulfilling the obligations of your oath of office, there are some very practical reasons for knowing about the law. You will be better prepared to protect yourself legally and avoid liability, making you a more confident professional. If you know your legal rights and obligations, no one will be able to manipulate you with empty threats of law suits and legal liability.

### How can I learn all the laws that apply to me as a professional educator?

Realistically, you cannot know every law, regulation, and court decision established at the federal, state, and local levels. Even lawyers are generally only familiar with the narrow area of law in which they practice and often must engage in extensive legal research before they can accurately answer legal questions. Instead, educators can achieve legal competence by mastering the general principles of law, and learning the most significant statutes, regulations, and case law that apply to them. Just as learning to fish is superior to being given a fish, learning the general principles of law and how to find answers to your specific legal questions is superior to attempts at rote memorization of laws or constant reliance on others. To fully understand the law it is also important that you not only know the letter of the law, but also the *purposes* of the law for more complete legal comprehension. In addition to the specific purposes of individual laws, systems of law generally are intended to protect vital individual rights and freedoms, to achieve a just balance of competing interests, and to promote a safe and efficient society. A good system of laws and regulations is much more than merely a set of rules. Good laws and regulations can serve as a just and efficient system of problem resolution. Common sense is an essential element in any just and efficient system of problem resolution.

### How do I learn these general principles of law?

Since all laws must be consistent with the U.S. Constitution, the Constitution can be used as a guide to learning about the law and legal decision making. By learning the *fundamental principles of the Constitution* and applying common sense and logic, it is possible to deduce common sense answers to many legal questions. Further, because all government actions must at a minimum be *rational and reasonable*. You can always apply the *reasonableness test* to your actions, asking yourself: How reasonable will my actions appear if I have to explain them to a hearing officer, judge, or jury? What would a reasonable person do under the circumstances I am facing? The law in a nutshell is defined by *reasonableness*. One of the reasons for juries is to assure that persons are judged by a group of their peers, on the basis of common sense and real world experience. Although the system in practice is imperfect, it is intended to protect reasonable persons engaging in reasonable responses to life's problems from legal liability. An understanding of *basic legal principles* and *reasonable application* of those principles will help you avoid most legal problems.

How can I get answers to other more specific legal questions?

Many legal questions can be answered through the application of fundamental constitutional concepts, logic, and the reasonable application of common sense principles. Further, some legal principles are self-evident, such as the obvious illegality of many criminal acts. Other more specific legal questions can be answered only by reading the specific statute or consulting with legal counsel when necessary.

Is the law always clear?

No, unfortunately. It is important to understand that the law is a continually changing system, because the problems and our judgments about who best to address these problems continually change. This is necessary, because a fixed system of laws would quickly become out-dated as circumstances changed. Laws designed for the world of the printing press, for example, need to be modified to accommodate a world that includes the Internet. It is also important to understand that there are not always clear answers to all legal questions, and over time the answers often change. When in doubt, exercise common sense, and consult legal counsel when necessary. Further, it is generally best to err on the side of caution. Even though you might ultimately prevail in a case where legal precedents are not yet clearly established, you probably do not want to volunteer to be the defendant in a test case on that particular legal issue. By learning about the law, however, and applying common sense, you can greatly reduce that chances that you will be that defendant.

What are some of the most important constitutional principles public school educators should know?

Among the most important constitutional principles for public school educators are: the 1st Amendment's religion and freedom of expression provisions; the 4th Amendment's limitations on searches; the 5th and 14th Amendment's due process guarantees; and the equal protection provisions of the 14th Amendment.

What does the 1st Amendment say?

The 1st Amendment to the U.S. Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

What does the 1st Amendment tell educators about religious issues in public schools?

That public educators as government officials must not use their government positions to advance religion (*establishment of religion*) but must respect the appropriate religious expressions of individuals (*free exercise of religion*). Government advancement of

religion is prohibited, but private expression of religion is protected by the 1st Amendment, creating a delicate balance between what government officials cannot and must do regarding religious issues. Clearly, to be anti-religious violates the Constitution as certainly as would any governmental establishment of religion. What is required is *religious neutrality*. In order to maintain this delicate balance of neutrality required by the Constitution the public school educators must balance between: 1) the prohibition against ESTABLISHMENT OF RELIGION; and 2) the mandate to respect the FREE EXERCISE of religion. The Court has adopted the following legal tests to decide ESTABLISHMENT OF RELIGION and FREE EXERCISE OF RELIGION cases:

Establishment clause test:

The *establishment clause* test is often applied to cases involving *school sponsorship* of prayer, religious readings, symbols, etc. When public school actions are alleged to violate the establishment clause, courts will uphold the actions of public schools only if they satisfy each of the following conditions (from *Lemon v. Kurtzman*):

- 1) Secular Purpose: The primary purpose underlying the public school action cannot be religious in nature. There must be a legitimate secular purpose for the school's action.
- 2) Effect: The principle or primary effect of the public school action must neither advance nor inhibit religion. Government action must be religiously neutral.
- 3) Entanglement: The public school action must not foster an excessive entanglement between the public school and religion.

If the challenged action satisfies all three parts of the *Lemon* test, the school will prevail. If the challenged action fails the *Lemon* test, the plaintiff prevails and is entitled to a legal remedy.

Remedy for a public school violation of the establishment clause: As in *Lee v. Weismann*, the school must cease the unconstitutional action. In *Weismann* the school sponsored a religious exercise at a graduation ceremony. When public schools sponsor religious exercises, students who adhere to minority faiths are faced with choosing between participation in the school sponsored religious exercise and denying their personal faith, or risking rejection from the group by declining participation. The establishment clause requires at a minimum that government cannot coerce participation in religion, whether that coercion takes the form of force, legal compulsion, or more subtle means such as clearly predictable social pressure on children. The Court has repeatedly recognized that history documents persistent abuse of official government power to suppress religious freedom and to force government agents' religious beliefs on

citizens, contrary to their personal religious beliefs. This danger is greatest where government requires attendance by law, and the minds of those attending are young and impressionable.

As noted above, the *establishment clause* test is often applied to cases involving *school's* promotion of prayer, religious expressions, studies, symbols, etc.

When public school actions are alleged to violate the religious *free exercise* rights of individuals, courts apply the following *free exercise clause* test.

Free exercise clause test:

Individuals must be granted exemptions from public school actions that violate their religious beliefs if the following test is met:

- 1) Is the plaintiff's belief *religious* as opposed to political or philosophical?
- 2) Is the religious belief *sincerely held*?
- 3) Is the offended practice *central* to the religious belief?
- 4) Is the *burden* on the religious belief *incidental or direct*?

If the plaintiff meets the burden of proof on these issues, the plaintiff is entitled to a religious exemption *unless* public school officials can show that:

- 5) There is a *compelling* governmental interest for denying the exemption (a balancing test, balancing: a) the *magnitude* of the religious burden on the plaintiff and b) the *importance* of the state interest involved).
- 6) The public school action must be *narrowly tailored* to meet government needs while minimizing the intrusion on religious belief (if a less burdensome alternative exists the public school must use it).

Remedy: As in *Wisconsin v. Yoder* those with legitimate free exercise claims are granted an exemption from the public school action, but the regulation is still valid regarding those who do not have a valid religious exemption. In *Yoder* Amish children of high school age were exempted from compulsory school attendance laws because of the mandates of their agrarian religion and lifestyle. Note that as in *Pierce v. Society of Sisters*

compulsory attendance laws can be satisfied either by public or private school attendance, or by home schooling consistent with state law.

What does the 1st Amendment tell educators about freedom of speech and expression in public schools?

As the Court recognized in *Tinker v. Des Moines* students and teachers do not shed their constitutional rights at the schoolhouse gate. Among the rights that students and teachers retain is the right granted by the 1st Amendment to freedom of speech. Regarding students' rights to freedom of expression, the Court has distinguished between two different types of student expression in public schools: 1) Individual student expression; and 2) Public school sponsored student expression:

Individual student speech (student expression not reasonably perceived as school sponsored): Public school officials cannot censor students' individual expression simply because of the *content* of the expression. However, school officials can always place reasonable TIME, PLACE, and MANNER restrictions on student expression as long as these restrictions are: 1) content neutral; 2) narrowly tailored to serve a significant governmental interest; and 3) leave open an adequate alternative channel of communication. Further, under *Tinker*, individual expression can be limited where it represents a *material and substantial* interference with appropriate discipline in the operation of the school.

School sponsored expression (school sponsored newspapers, presentations, convocations, etc.): Educators have wide discretion to control content where the expression is reasonably perceived as school sponsored. School sponsored student expression can be controlled based on any legitimate educational rationale, including the age appropriateness of the content, whether it's contrary to legitimate educational concerns, etc.

Student dress and grooming: Some jurisdictions have recognized student dress and grooming as protected individual expression under *Tinker*. However, the 11th Circuit (Georgia; Florida; and Alabama) adopted 5th Circuit precedents on student dress and grooming. Student dress and grooming can be regulated where the school dress code is based on a reasonable education, health, or safety rationale.

What does the 4th Amendment say about searches?

The 4th Amendment to the U.S. Constitution states that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and

particularly describing the place to be searched, and the persons or things to be seized.

What does this tell educators about searches in public schools?

Students are protected from unreasonable searches by public school officials. However, to maintain order and safety, public educators sometimes have a legitimate need to search students and their property. These searches are permissible as long as they are *reasonable*. In *New Jersey v. T.L.O.* the Court held that because of the "special context" of public schools only *reasonable suspicion* of a violation of the law or school rules is required to conduct a *reasonable search* in schools, not the much higher standard of *probable cause*. The 4th Amendment prohibits *unreasonable* searches. To be reasonable under the *T.L.O.* test the search must be:

- 1) Justified in its inception: the school agent has reasonable grounds to believe that a search will produce evidence of wrong doing (illegal activity or a breach of school rules).
- 2) Reasonably related in scope to the objectives of the search: the search must not be excessively intrusive in light of the:
  - a) *age* of the student.
  - b) *sex* of the student.
  - c) *nature* of the infraction.

Public school educators can conduct necessary searches in public schools as long as they are based on *reasonable suspicion* of a violation of the law or school rules, and are otherwise *reasonable* as defined by the *T.L.O.* test.

What do the 5th and 14th Amendments say about due process?

The 5th Amendment states that: "No person shall . . . be deprived of life, liberty, or property, without *due process* of law." Similarly, the 14th Amendment declares that no State may "deprive any person of life, liberty, or property, without due process of law."

What does this tell educators about due process in public schools?

That the U.S. Constitution requires that due process of law must be provided when school officials' actions significantly impinge on individuals' rights to life, liberty, or property. For example, in *Goss v. Lopez* the U.S. Supreme Court ruled that students threatened with 10 day suspensions had at stake a constitutionally protected property right to education, and a protected liberty interest in their reputations. The school cannot deprive students of these constitutionally protected interests without due process of law. Educators have a duty to maintain a safe and disciplined school environment. However, educators must accomplish this mission while respecting the due process rights of students. Due process in its most basic form requires: 1) Notice of the charges and evidence; and 2) an opportunity to be heard in responding to the charges and evidence. How much process is

due is determined by balancing the potential loss to the individual against the resulting burdens on the government. In general, the greater the potential punishment, the more process is due. In addition to this proportional constitutional standard, most states have adopted specific statutory procedures for due process. Where states have adopted statutory procedures for due process these procedures must be strictly followed. The Georgia code defines various punishments and has established specific due process procedures.

Expulsion and Suspension: The Georgia "Public School Disciplinary Tribunal Act" Ga. code § 20-2-750 et. seq. defines expulsion and suspension, and the due process procedures applicable. Note that the specific due process procedures that will be used with K-3 children are at the discretion of the superintendent.

Corporal Punishment: The Supreme Court in *Ingraham v. Wright* held that the use of corporal punishment in public schools is constitutionally permissible. However, the state legislature or local board may still prohibit corporal punishment if they choose to. Although the Court in *Ingraham* held that corporal punishment required no due process procedures, Georgia law requires certain procedures for the use of corporal punishment including requirements that:

- 1) Corporal punishment shall not be excessive or unduly severe;
- 2) Corporal punishment should not be used as a first line of punishment;
- 3) Corporal punishment must be administered in the presence of the principal or a principal's designee, who must be told in the presence of the student of the reason for the punishment;
- 4) A written explanation must be provided to the student's parents upon request, and;
- 5) Students may obtain an exemption from corporal punishment by following statutory procedures for exemption.

Punishments for off-campus activities: Students may be punished for off-campus activities where educators can establish a reasonable nexus between the off-campus behavior and legitimate school disciplinary concerns.

Discipline for special education students: The "stay put" provision of the Individuals with Disabilities Education Act (IDEA) limits the use of disciplinary methods that could constitute a change in placement for children eligible under the IDEA. If parents agree to a proposed change in placement, school officials may proceed with the necessary changes. But when parents object to proposed changes in placement, the "stay put" provision of IDEA mandates that a child must stay in the current placement while due process proceedings are pending to determine the appropriate placement. However, while the child's placement cannot be unilaterally changed pending the outcome of the hearing, this does not preclude normal procedures for dealing with children who are endangering themselves or others (study carrels; timeouts; detention; restriction of

privileges). Further, the U.S. Supreme Court recognized in *Honig v. Doe* that where parents refuse cooperation and a child is truly dangerous, the school can implement a 10 day suspension during which appropriate court relief may be sought. Federal regulations regarding the placement of special education students state that "it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs." Discipline procedures under the IDEA may be both the most significant and the most confusing provisions for many educators. Accordingly, the following summary of incrementally severe disciplinary options is provided:

Behavior Management Strategies To attempt to modify problem behavior, school officials may utilize a variety of behavior and conflict management strategies, including student carrels, time-outs, detention, restrictions in privileges, etc. As long as IEP services are provided, and there is no change in placement, school officials may unilaterally implement these behavior management strategies.

Obtaining Parental Consent If more serious measures are necessary, school officials may first obtain parental consent for needed changes in placement or for other appropriate behavior management strategies. If parental consent is obtained, the IDEA limitations on disciplinary actions are generally not triggered.

Unilateral 10 Day Removal Provided their actions are not discriminatory, school officials may unilaterally remove a student for up to 10 days for violating a code of student conduct. No services are required, and no manifestation determination is necessary.

Subsequent 10 Day Removals The 1999 IDEA regulations clarified that there is no absolute limit on the total number of days per year that a student may be removed for separate incidents of misconduct, so long as no single removal exceeds 10 days and there is no pattern of removals. Factors considered in determining whether there is a pattern of removals include the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. However, schools must provide services to the extent necessary to allow the child to make progress toward meeting IEP goals. Manifestation determinations are only required when a child is subjected to a disciplinary change of placement.

Long term suspensions and expulsions Students may be long term suspended or expelled for a violation of a code of student conduct that is not a manifestation of the student's disability. However, any removal beyond 10 days constitutes a change in placement, triggering IDEA due process protections. Further, schools must continue to provide a FAPE to these students. For removals beyond 10 days, the child's IEP team determines what services are necessary to provide a FAPE.

45 School Day Removals for Weapons, Drugs, or Inflicting Serious Bodily Injury School officials may unilaterally remove a student to an alternative educational placement for up to 45 school days for possession of weapons, drugs, or inflicting serious bodily injury.

45 School Day Removals for Dangerousness School officials may ask a hearing officer to remove a potentially dangerous student to an alternative educational placement for up to 45 school days by presenting evidence that “maintaining the current placement of such child is substantially likely to result in injury to the child or to others.” Additional 45 day extensions may be repeated as necessary to prevent a dangerous placement.

Obtaining a Court Order If the above options fail, school officials may obtain a court order for a removal or change of placement of a student that presents a serious danger to either the student or others.

Reporting Crimes School officials may report students suspected of committing crimes to law enforcement agents, who have a duty to enforce criminal laws, and are not bound by IDEA limitations.

What does the 14th Amendment say about equal protection of the laws?

The 14th Amendment to the U.S. Constitution declares that no State may "deny to any person within its jurisdiction the equal protection of the laws."

What does this tell educators about equal protection of the laws in public schools?

That public school rules and actions must provide for equal protection of the laws for all persons. This does not mean that everyone must be treated equally in all circumstances, but that public school educators must have a valid nondiscriminatory rationale for differential treatment. Circumstances often require that persons be treated differently because of their particular situation. When public school actions are alleged to violate equal protection guarantees, courts apply one of three general levels of scrutiny based on the type of distinctions government officials are making in assigning differential treatment.

Distinctions based on Fundamental Rights, Race, or Nationality: To justify the differential treatment government officials must establish that differential treatment is *necessary to a compelling interest* and that the action is *narrowly tailored* to avoid unnecessary impingement on protected rights. This is a very difficult burden to meet and government officials can rarely justify differential treatment based on these criteria.

Distinctions based on Gender, Age, or Illegitimacy: To justify differential treatment government officials must establish that the differential treatment is *substantially related to an important governmental interest*, a less rigorous burden to meet than the above strict scrutiny standard. However, concerning gender-based distinctions by government, the Court in *U.S. v. Virginia* held that justification of any gender-based distinctions would require an *exceedingly persuasive justification*, elevating judicial scrutiny in reviewing gender-based decisions almost to the level of scrutiny applicable to race-based discrimination.

Distinctions based on other criteria: To prevail in challenges to other general regulations and actions, government officials need only establish that the differential treatment is *rationally related to a legitimate governmental interest*, a relatively easy burden to meet. Accordingly, government officials are very likely to prevail in these cases, provided there is a legitimate rational for these distinctions.

Other than basic constitutional principles, what other sources of law should public school educators be aware of?

All laws in the U.S. must be consistent with the Constitution or they are unconstitutional and void. But as long as their acts are otherwise consistent with the Constitution, federal and state law makers may pass laws on a variety of issues. However, the U.S. Constitution places strict limitations on what subjects are proper for federal regulation. The federal government may only exercise those powers that are delegated to the federal government by the U.S. Constitution. Since the U.S. Constitution does not delegate power over education to the federal government, regulation of education is a state function. However, federal law makers have exercised significant control over education by linking federal education laws to interstate commerce and civil rights legislation, and the acceptance of conditional federal funding. State law makers may pass legislation on a much broader range of issues, but must also obey constitutional limitations.

What are some examples of federal legislation that public school educators should know about?

Among the federal laws concerning public school educators are the following:

Title VII of the Civil Rights Act of 1964: Prohibits discrimination in employment based on race, color, religion, sex, or national origin. Employment can be based on religion, sex, or national origin only if employers demonstrate a bona fide occupational qualification (BFQ) reasonably necessary to the normal operation of the business. However, note that Title VII provides no BFQ exception for discrimination based on race or color. Accordingly, all discrimination based on race or color is illegal, unless government officials can establish that this discrimination is necessary to a compelling interest and narrowly tailored to achieving this interest. Government officials are unlikely to meet this extremely high burden of proof, making race-based decisions by government officials almost always illegal.

Title IX: Generally prohibits discrimination based on gender in programs receiving federal funds. Among the issues addressed in Title IX are prohibitions against gender discrimination in educational opportunities, athletic opportunities, and other extra-curricular activities. Title IX also prohibits discrimination based on marital or parental status, including pregnancy and related conditions.

Sexual Harassment: Title IX prohibits sexual harassment of students, and makes available monetary damages to plaintiffs that can prove they were subjected to sexual harassment. To prevail, a plaintiff must establish that: 1) The school had *actual knowledge* of the sexual harassment; and 2) After acquiring actual knowledge of the sexual harassment, the school acted with *deliberate indifference*. Title VII prohibits sexual harassment in employment, and provides remedies and damages to employees who prove they were subjected to sexual harassment. To prevail, the plaintiff must establish a prima facie case of sexual harassment, either: 1) Quid pro quo sexual harassment, or 2) Hostile environment sexual harassment.

The Individuals with Disabilities Education Act (IDEA): Requires that public schools provide a free appropriate public education for children with disabilities as defined under IDEA, including special education, related services, and due process protections.

§ 504 of the Vocational Rehabilitation Act: Mandates that no otherwise qualified handicapped individuals can be excluded from participation in any program or activity receiving federal funds solely because of their handicaps. Reasonable accommodations must be provided to allow participation. Requested accommodations are not reasonable if they impose undue financial or administrative burdens, create unreasonable health or safety risks, or require a fundamental alteration in the nature of the program.

The Americans with Disabilities Act: Protects individuals with physical or mental impairments that substantially limit one or more major life activities and applies to employment, public transportation and accommodations, and telecommunications. Note that the U.S. Supreme Court has declared that the provisions of the ADA are not binding on the states.

The Pregnancy Discrimination Act (PDA): The PDA in Title VII prohibits discrimination in employment because of pregnancy, childbirth, or related medical conditions.

The Age Discrimination in Employment Act (ADEA): Prohibits discrimination based on age except where age is a bona fide occupational qualification reasonably necessary to the normal operation of the business. Coverage begins at age 40. Note that in *Kimel v. Florida* the Court declared the ADEA unconstitutional as applied to the states, including public schools. However, state statutes may still prohibit age discrimination in employment.

Family Educational Rights and Privacy Act (FERPA): Grants parents the right to inspect all records, files, and data directly related to their child, to challenge inaccurate or misleading information, and prohibits the release of personally identifiable records of students, without the written consent of parents.

Health Insurance Portability and Accountability Act (HIPAA): The fundamental purposes of HIPAA are to better protect privacy and personal medical information, and improve the efficiency and portability of records and medical insurance. Public schools are subject to HIPAA, but if FERPA and HIPAA are in conflict, it is the opinion of the U.S.

Department of Health and Human Services that FERPA controls, and that FERPA was not amended or preempted by HIPAA.

What are some examples of state legislation that public school educators should know about?

Mandatory Reporting of Suspected Abuse and Neglect: Requires that designated child care professionals, including school teachers, counselors, and administrators, must report suspected incidents of child abuse and neglect to the individual in charge of their facility. Any person who knowingly and willfully fails to report is guilty of a misdemeanor. See Ga. Code § 19-7-5. Note also, the PSC Code of Conduct considers failure to make a required report unethical conduct subject to disciplinary sanction by the PSC.

Grievance Act: Provides a process for filing grievances about issues affecting the employment relationship with a Georgia school district. The purpose of the code section is to resolve employment conflicts at the lowest organizational level with a minimum of conflict and formal proceedings so that good morale and job performance can be maintained in order to better serve the community. See Ga. code § 20-2-989.5.

Period of Quiet Reflection Act: Ga. code § 20-2-1050 states that: "In each public school classroom, the teacher in charge shall, at the opening of school upon every school day, conduct a brief period of quiet reflection for not more than 60 seconds with the participation of all the pupils therein assembled. The moment of quiet reflection . . . is not intended to be and shall not be conducted as a religious service or exercise but shall be considered an opportunity for a moment of silent reflection on the anticipated activities of the day. The provisions of this code section shall not prevent student initiated voluntary school prayers at schools or school related events which are nonsectarian and nonproselytizing in nature."

Remaining on School Property Without Good Cause: Georgia code § 20-2-1180 states: "It shall be unlawful for any person to remain upon the premises or within the school safety zone . . . of any public or private school in this state or to remain upon such premises or within such school safety zone when that person does not have a legitimate cause or need to be present thereon. Each principal or designee of each public or private school in this state shall have the authority to exercise such control over the buildings and grounds upon which a school is located so as to prohibit any person who does not have a legitimate need or cause to be present thereon from loitering upon such premises. Each principal or designee of each public or private school in this state shall notify the appropriate law enforcement agency to prohibit any person who does not have a legitimate need or cause to be present therein from loitering within the school safety zone . . . Any person who shall not have any legitimate cause or need to be present upon the premises or within the school safety zone of any public or private school in this state who shall willfully fail to remove himself or herself from such premises after the principal or designee of such school shall request him or her to do so shall be guilty of a misdemeanor of a high and aggravated nature.

Disrupting Public Schools: Ga. code § 20-2-1181 provides: "It shall be unlawful for any person to disrupt or interfere with the operation of any public school. Any person violating this Code section shall be guilty of a misdemeanor of a high and aggravated nature." Additionally, Ga. code § 20-2-1182 makes it illegal to upbraid, insult, or abuse any public school teacher, administrator, or bus driver in the presence and hearing of a pupil.

What are some other legal issues public school educators often encounter?

Educators' Legal Rights: Educators, like students, do not shed their rights at the schoolhouse door. Within the legitimate perimeters of employment in a public school, teachers and administrators retain significant constitutional rights, including freedom of speech, religious freedom, freedom from unreasonable searches, etc. In addition, teachers and administrators are protected from discrimination in employment, and are guaranteed equal protection of the laws and due process. Due process must be provided if the state is impinging on a public educator's life, liberty, or property rights. A *property* interest is impinged upon if the teacher has tenure, or is not allowed to complete the contract period. A *liberty* interest is impinged upon if a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to the educator. If due process is required the provisions in Ga. Code § 20-2-940 *et seq.* must be followed.

Contract Law: A contract is a legally enforceable bargain. Contracts are created when a valid offer is accepted. Concerning contracts for employment in Georgia public schools, Standard 8 of the PSC Code of Conduct states: "An educator should fulfill all of the terms and obligations detailed in the contract with the local board of education or education agency for the duration of the contract. Unethical conduct includes but is not limited to: 1) abandoning the contract for professional services without prior release from the contract by the employer; and 2) Willfully refusing to perform the services required by a contract."

Tort Liability: A tort is a civil wrong (as opposed to a criminal wrong) where one party has suffered because of the improper conduct of another. The law of torts and contracts are similar, but the "contract" is a social contract to act reasonably. If you have a legal duty to another, there is also the implied social contractual obligation of acting reasonably in fulfilling that duty. The standard is that of a *reasonable person* under the given circumstances. As long as you do what a reasonable person would have done under the circumstances you have satisfied your legal duty.

In summary, what guidelines might be useful to public school educators to help them avoid potential legal problems?

The following guidelines may assist educators in avoiding potential legal problems:

1) *Apply the Reasonableness Test*: The law in a nutshell is based on *reasonableness*. Apply a test of *reasonableness* to your policies and actions. When trying to decide on a course of action ask yourself how will this rule or action appear to others if I have to defend it in front of a tribunal, judge or jury? Will it appear *reasonable* under the circumstances? Am I treating others like I would want to be treated, in a fair and reasonable manner?

2) *Have a Sound Educational Rationale for Your Actions*: For example, achieving effective school discipline sometimes requires reasonable regulations of speech. Wise educators are careful not to be motivated by very human (but generally unlawful) efforts to silence speech they personally disagree with (which may be protected speech under the 1st Amendment), but instead focus on *maximizing the learning environment*, which requires discipline and order, and the channeling of any disruptive individual expression into a more appropriate alternative forum. A good educational policy can transform potentially disruptive expressive behavior into a civil and educational debate. Courts are hesitant to intrude where a sound educational policy is the basis for a school rule. However, if a rule is clearly aimed at silencing constitutionally protected speech, courts will not hesitate to intervene if educators' actions are not supported by a sufficient educational rationale. Rules should focus on maximizing the educational environment for learning, not silencing the honest views of persons who may express opinions that are unpopular with those that have power in the school.

3) *Have Educationally Defensible Policies in Place Before a Crisis Occurs*: Sound policies result from careful and objective consideration of the issues prior to the crisis. When the crisis arrives, it is difficult to see these issues objectively in the emotionally charged environment of crisis. Just as "bad cases make bad law" bad situations often result in bad policies. Further, a policy that is in place prior to a particular incident is less vulnerable to attack as an arbitrary or discriminatory reaction to a current event.

4) *Once Policies and Procedures are Established, Know and Follow Your Established Policies and Procedures (Subject to Common Sense)*: Failure to follow your own rules can be a red flag for a reviewing court that something is seriously wrong with the school's policies or actions. And how do you argue that your policy is legitimate and binding on others, if even school officials do not know or follow their own policies? School officials should always know and generally follow their own policies. However, common sense sometimes dictates that different situations may require different accommodations. If there are legitimate distinctions between situations, an exception to the rule may be necessary. Equal protection of the laws, and due process, require that those in similar situations must be treated equitably and fairly, not that everyone be treated equally in all circumstances. When common sense dictates an exception to a rule, and it can be justified by a legitimate difference in circumstances, an exception may be

appropriate or necessary. But otherwise, school officials should know and consistently follow their own policies.

5) *Be Fair to Everyone*: A basic principle underlying all justice is fundamental fairness. Apply the same rules to all similarly situated persons, and have no favored individuals or groups. It may be useful to ask yourself how you or your child would want to be treated under the circumstances. Adopting fair policies, and applying those policies in a fair manner, will significantly reduce complaints about unfair treatment. Further, if you are truly being fair, few if any of the remaining complaints will be legitimate.

6) *The Law is, at its Best, a Just and Efficient System of Problem Resolution*: The law should not be just a system of arbitrary and absolute rules. Instead, the law should function to help real people to justly and efficiently resolve the conflicts that are an inevitable part of human interaction. It should be the goal of good public officials to utilize the law to fairly and efficiently resolve these disputes. In most disputes, quickly and informally resolving problems minimizes costs and conflict for all parties. If educators know the law, they can in many instances establish a neutral basis for resolving conflicts quickly. Further, in most instances, educators should consider mediation and negotiations prior to any consideration of litigation. The law should be applied with common sense and compassion, and generally, litigation should be the final option, not the first choice.

7) *Ignorance of the Law is No Excuse*: Professionals must know the laws governing their profession. To be certain that you know the relevant laws: a) acquire a thorough understanding of general constitutional and legal principles; and b) update your knowledge of specific laws regularly through professional newsletters, workshops, etc. Knowing the law both reduces the chances that you will become involved in time consuming, frustrating, and expensive litigation, and makes you a more confident educator. If you *know* the law, no one will be able to intimidate you with inaccurate legal threats. Concerning avoidance of unnecessary legal problems, an ounce of prevention truly is worth many pounds of cure.

## 505-6-.01 THE PSC CODE OF ETHICS FOR EDUCATORS

(1) Introduction. The Code of Ethics for Educators defines the professional behavior of educators in Georgia and serves as a guide to ethical conduct. The Professional Standards Commission has adopted standards that represent the conduct generally accepted by the education profession. The code protects the health, safety and general welfare of students and educators, ensures the citizens of Georgia a degree of accountability within the education profession, and defines unethical conduct justifying disciplinary sanction.

### (2) Definitions

- (a) "Certificate" refers to any teaching, service, or leadership certificate, license, or permit issued by authority of the Professional Standards Commission.
- (b) "Educator" is a teacher, school or school system administrator, or other education personnel who holds a certificate issued by the Professional Standards Commission and persons who have applied for but have not yet received a certificate. For the purposes of the Code of Ethics for Educators, "educator" also refers to paraprofessionals, aides, and substitute teachers.
- (c) "Student" is any individual enrolled in the state's public or private schools from preschool through grade 12 or any individual between and including the ages of 3 and 17.
- (d) "Complaint" is any written and signed statement from a local board, the state board, or one or more individual residents of this state filed with the Professional Standards Commission alleging that an educator has breached one or more of the standards in the Code of Ethics for Educators. A "complaint" will be deemed a request to investigate.
- (e) "Revocation" is the invalidation of any certificate held by the educator.
- (f) "Denial" is the refusal to grant initial certification to an applicant for a certificate.
- (g) "Suspension" is the temporary invalidation of any certificate for a period of time specified by the Professional Standards Commission.
- (h) "Reprimand" admonishes the certificate holder for his or her conduct. The reprimand cautions that further unethical conduct will lead to a more severe action.
- (i) "Warning" warns the certificate holder that his or her conduct is unethical. The warning cautions that further unethical conduct will lead to a more severe action.
- (j) "Monitoring" is the quarterly appraisal of the educator's conduct by the Professional Standards Commission through contact with the educator and his or her employer. As a condition of monitoring, an educator may be required to submit a criminal background check (GCIC). The Commission specifies the length of the monitoring period.

### (3) Standards

(a) Standard 1: **Criminal Acts** - An educator should abide by federal, state, and local laws and statutes. Unethical conduct includes but is not limited to the commission or conviction of a felony or of any crime involving moral turpitude. As used herein, conviction includes a finding or verdict of guilty, or a plea of *nolo contendere*, regardless of whether an appeal of the conviction has been sought; a situation where first offender treatment without adjudication of guilt pursuant to the charge was granted; and a situation where an adjudication of guilt or sentence was otherwise withheld or not entered on the charge or the charge was otherwise disposed of in a similar manner in any jurisdiction.

(b) Standard 2: **Abuse of Students** - An educator should always maintain a professional relationship with all students, both in and outside the classroom. Unethical conduct includes but is not limited to:

1. committing any act of child abuse, including physical and verbal abuse;
2. committing any act of cruelty to children or any act of child endangerment;
3. committing or soliciting any unlawful sexual act;
4. engaging in harassing behavior on the basis of race, gender, sex, national origin, religion or disability;
5. soliciting, encouraging, or consummating an inappropriate written, verbal, or physical relationship with a student; and
6. furnishing tobacco, alcohol, or illegal/unauthorized drugs to any student or allowing a student to consume alcohol, or illegal/unauthorized drugs.

(c) Standard 3: **Alcohol or Drugs** - An educator should refrain from the use of alcohol or illegal or unauthorized drugs during the course of professional practice. Unethical conduct includes but is not limited to:

1. being on school premises or at a school-related activity involving students while under the influence of, possessing, using, or consuming illegal or unauthorized drugs; and
2. being on school premises or at a school-related activity involving students while documented as being under the influence of, possessing, or consuming alcoholic beverages. A school-related activity includes, but is not limited to, any activity sponsored by the school or school system (booster clubs, parent-teacher organizations, or any activity designed to enhance the school curriculum i.e. Foreign Language trips, etc).

(d) Standard 4: **Misrepresentation or Falsification** - An educator should exemplify honesty and integrity in the course of professional practice. Unethical conduct includes but is not limited to:

1. falsifying, misrepresenting, omitting or erroneously reporting professional qualifications, criminal history, college or staff development credit and/or degrees, academic award, and employment history when applying for employment and/or certification or when recommending an individual for employment, promotion, or certification;
2. falsifying, misrepresenting, omitting or erroneously reporting information submitted to federal, state, and other governmental agencies;
3. falsifying, misrepresenting, omitting or erroneously reporting information regarding the evaluation of students and/or personnel;
4. falsifying, misrepresenting, omitting or erroneously reporting reasons for absences or leaves; and
5. falsifying, misrepresenting, omitting or erroneously reporting information submitted in the course of an official inquiry/investigation.

(e) Standard 5: **Public Funds and Property** - An educator entrusted with public funds and property should honor that trust with a high level of honesty, accuracy, and responsibility. Unethical conduct includes but is not limited to:

1. misusing public or school-related funds;
2. failing to account for funds collected from students or parents;
3. submitting fraudulent requests for reimbursement of expenses or for pay;
4. co-mingling public or school-related funds with personal funds or checking accounts; and
5. using school property without the approval of the local board of education/governing board.

(f) Standard 6: **Improper Remunerative Conduct** - An educator should maintain integrity with students, colleagues, parents, patrons, or businesses when accepting gifts, gratuities, favors, and additional compensation. Unethical conduct includes but is not limited to:

1. soliciting students or parents of students to purchase equipment, supplies, or services from the educator or to participate in activities that financially benefit the educator unless approved by the local board of education/governing board;

2. accepting gifts from vendors or potential vendors for personal use or gain where there may be the appearance of a conflict of interest;
3. tutoring students assigned to the educator for remuneration unless approved by the local board of education/governing board or superintendent; and
4. coaching, instructing, promoting athletic camps, summer leagues, etc. that involves students in an educator's school system and from whom the educator receives remuneration unless approved by the local board of education/governing board or the superintendent. These types of activities must be in compliance with all rules and regulations of the Georgia High School Association.

(g) **Standard 7: Confidential Information** - An educator should comply with state and federal laws and local school board/governing board policies relating to the confidentiality of student and personnel records, standardized test material and other information covered by confidentiality agreements. Unethical conduct includes but is not limited to:

1. sharing of confidential information concerning student academic and disciplinary records, personal confidences, health and medical information, family status and/or income, and assessment/testing results—unless disclosure is required or permitted by law;
2. sharing of confidential information restricted by state or federal law;
3. violation of confidentiality agreements related to standardized testing including copying or teaching identified test items, publishing or distributing test items or answers, discussing test items, violating local school system or state directions for the use of tests or test items, etc.;
4. violation of other confidentiality agreements required by state or local policy.

(h) **Standard 8: Abandonment of Contract** - An educator should fulfill all of the terms and obligations detailed in the contract with the local board of education or education agency for the duration of the contract. Unethical conduct includes but is not limited to:

1. abandoning the contract for professional services without prior release from the contract by the employer, and
2. willfully refusing to perform the services required by a contract.

(i) **Standard 9: Failure to Make a Required Report** - An educator should file reports of a breach of one or more of the standards in the Code of Ethics for Educators, child abuse (O.C.G.A. §19-7-5), or any other required report. Unethical conduct includes but is not limited to:

1. failure to report all requested information on documents required by the Commission when applying for or renewing any certificate with the Commission.
2. failure to make a required report of a violation of one or more standards of the Code of Ethics for educators of which they have personal knowledge as soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner.
3. failure to make a required report of any violation of state or federal law soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner. These reports include but are not limited to: murder, voluntary manslaughter, aggravated assault, aggravated battery, kidnapping, any sexual offense, any sexual exploitation of a minor, any offense involving a controlled substance and any abuse of a child if an educator has reasonable cause to believe that a child has been abused.

(j) **Standard 10: Professional Conduct** - An educator should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that impairs the certificate holder's ability to function professionally in his or her employment position or a pattern of behavior or conduct that is detrimental to the health, welfare, discipline, or morals of students.

#### (4) Reporting

(a) Educators are required to report a breach of one or more of the Standards in the Code of Ethics for Educators as soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner. Educators should be aware of local policies and procedures and/or the chain of command for reporting unethical conduct. Complaints filed with the Professional Standards Commission must be in writing and must be signed by the complainant (parent, educator, personnel director, superintendent, etc.).

(b) The Commission notifies local and state officials of all disciplinary actions. In addition, suspensions and revocations are reported to national officials, including the NASDTEC Clearinghouse.

#### (5) Disciplinary Action

(a) The Professional Standards Commission is authorized to suspend, revoke, or deny certificates, to issue a reprimand or warning, or to monitor the educator's conduct and performance after an investigation is held and notice and opportunity for a hearing are provided to the certificate holder. Any of the following grounds shall be considered cause for disciplinary action against the holder of a certificate:

1. unethical conduct as outlined in The Code of Ethics for Educators, Standards 1-10 (PSC Rule 505-6-.01);
2. disciplinary action against a certificate in another state on grounds consistent with those specified in the Code of Ethics for Educators, Standards 1-10 (PSC Rule 505-6-.01);
3. order from a court of competent jurisdiction or a request from the Department of Human Resources that the certificate should be suspended or the application for certification should be denied for non-payment of child support (O.C.G.A. §19-6-28.1 and §19-11-9.3);
4. notification from the Georgia Higher Education Assistance Corporation that the educator is in default and not in satisfactory repayment status on a student loan guaranteed by the Georgia Higher Education Assistance Corporation (O.C.G.A. §20-3-295);
5. suspension or revocation of any professional license or certificate
6. violation of any other laws and rules applicable to the profession (O.C.G.A. §16-13-111); and
7. any other good and sufficient cause that renders an educator unfit for employment as an educator.

(b) An individual whose certificate has been revoked, denied, or suspended may not serve as a volunteer or be employed as an educator, paraprofessional, aide, substitute teacher or in any other position during the period of his or her revocation, suspension or denial for a violation of The Code of Ethics.

Authority O.C.G.A. § 20-2-200; 20-2-981 through 20-2-984.5