

**Education Law and Policy**  
**LAWJ-096-05**  
**Tuesday & Thursday 9:35-11AM**

**Professor James Forman, Jr.**  
**Room 470**  
**Office Hours: Tuesday 2-4pm, or by appointment**

“For every question there is a simple answer, and it is wrong.”  
--H.L. Mencken

“Nothing will work unless you do.”  
--Maya Angelou

Class Name: This class is called *Education Law & Policy*. When I first taught this class, some students suggested that it really should be called *Race and Education*. I think they have a point, although I think the most accurate title might be *Race, Class and Education*. While the name remains unchanged for now, be advised that this class looks at K-12 education law and policy through the lens of race and socioeconomic class issues. This is at the expense of certain other topics: for example, we do not examine gender issues, including Title IX. We also do not look at higher education, including affirmative action.

Attendance: Attendance is mandatory. If for any reason you suspect that you will be routinely or periodically absent from class, please drop the class now. With the exception of 3 Jewish holidays this Term,<sup>1</sup> classes cannot be taped. (If an emergency occurs and you miss a class, please get notes from a classmate.) Students who are frequently absent will not be permitted to sit for the final exam or receive credit for the course.

Reading and Participation: The reading assignments are manageable. Accordingly, I expect that you will come to class having read the assignment and prepared to participate. I will call on students, and you will have notice of when you will be on call. Voluntary participation is always encouraged. I evaluate class participation and it may influence your grade.

In-class learning aids: In addition to the oral lectures, I frequently use Powerpoint presentations. The Powerpoint slides are meant as a visual aid to the lecture. I do not put the Powerpoint slides on the web or otherwise distribute them, so if you miss something you think is important I encourage you to check your classmates' notes.

Communication: I'm not a big e-mail person, but I love talking with students at office hours. If you have substantive questions about the material, please come discuss those with me in person. If my office hours conflict with your schedule, I'm happy to find a convenient time to talk.

---

<sup>1</sup> If you have a religious holiday to make me aware of, please do so.

Exam: There will be a 3 hour open book exam.

## I. Introduction

### Tuesday, August 31

- *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), CB 10-19
- *Wisconsin v. Yoder*, 406 U.S. 205 (1972), CB 23-34

## II. Desegregation

### Thursday, September 2

- *Brown v. Board of Ed*, 347 U.S. 483 (1954), CB 363-366
- *Bolling v. Sharpe*, 347 U.S. 497 (1954), CP
- *Brown v. Board of Ed II*, 349 U.S. 294 (1955), CB 371-372

### Tuesday, September 7

- *Green v. County School Bd.*, 391 U.S. 430 (1968), CB 376-379
- *Swann v. Charlotte-Mecklenberg*, 402 U.S. 1 (1971), CB 381-387
- *Keyes v. School Dist. No. 1*, 413 U.S. 189 (1973), CB 389-393

### Thursday, September 9

- *Milliken v. Bradley*, 418 U.S. 717 (1974), CB 399-407
- Levin, "School Desegregation Remedies (discussing *Milliken v. Bradley II*, 433 U.S. 267 (1977)), CB 413-414
- Massey and Denton, American Apartheid: Segregation and the Making of the Underclass, 33-59 (1993), CP

### Tuesday, September 14

- *Missouri v. Jenkins*, 515 U.S. 70 (1995), CB 430-442
- Frankenberg, Lee and Orfield, A Multiracial Society with Segregated Schools: Are We Losing the Dream? 23-36, 53-65 (2002), CP

## III. School Finance Litigation

### Thursday, September 16

- *Serrano v. Priest I*, 5 Cal. 3d 584 (1971), CB 777-780
- *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), CB 781-794
- *Serrano II and III*, CB 797-799

### Tuesday, September 21

- *Robinson v. Cahill*, 62 N.J. 473 (1973), CB 815-817
- *Rose v. Council for Better Ed.*, 790 S.W. 2d 186 (Ky. 1989), CB 819-822
- *Abbott v. Burke*, 119 N.J. 287 (1990), CB 827-837

- Enrich, “Leaving Equality Behind: New Directions in School Finance Reform,” CB 824-826

**Thursday, September 23**

- *Campaign for Fiscal Equity v. NY*, 100 N.Y.2d 893 (2003), CP

**Tuesday, September 28**

- Gary Burtless, “Introduction and Summary,” in Burtless, ed. Does Money Matter? The Effect of School Resources on Student Achievement and Adult Success 1-20 (1996) CP
- Ronald Ferguson, “Can Schools Narrow the Black-White Test Score Gap?” 342-368 in The Black-White Test Score Gap (Christopher Jencks & Meredith Phillips, eds.) (1998) CP

**IV. Other (or 2<sup>nd</sup> Generation) Issues**

**Tracking**

**Thursday, September 30**

- *Hobson v. Hansen*, 269 F.Supp. 401 (D.D.C. 1967), CP
- *NAACP v. Georgia*, 775 F.2d 1403 (11<sup>th</sup> Cir. 1985), CP
- *People Who Care v. Rockford*, 111 F.3d 528 (7<sup>th</sup> Cir. 1999), CP
- Ferguson, “Can Schools Narrow the Black-White Test Score Gap?” 325-342, CP

**Thursday, September 30, 8pm—9:30pm**

**Movie and Pizza Night (optional)**

**Movie: Our Town (77 mins)**

**Testing**

**Tuesday, October 5**

- National Research Council, High Stakes: Testing for Tracking, Promotion, and Graduation, Chap. 2, CP
- *Deborah P. v. Turlington*, 644 F.2d 397 (5<sup>th</sup> Cir. 1981), CP
- *GI Forum v. Texas*, 87 F. Supp. 667 (W.D. Tex. 2000), CP

**Testing**

**Thursday, October 7**

- Jay Heubert, “Non-Discriminatory Use of High-Stakes Tests,” (1999) CP
- Claude Steele, “Stereotype Threat and the Test Performance of Academically Successful African-Americans,” Chap. 11, in The Black-White Test Score Gap (Christopher Jencks & Meredith Phillips, eds.) (1998) CP
- Dalton Conley, Being Black, Living in the Red, Chap.3, CP
- *Sharif by Salahuddin v. New York State Ed. Dept.* (S.D.N.Y. 1989), CB 592-596 and Note 3

**Tuesday, October 12 (no class—Monday class schedule)**

## **Discipline**

### **Thursday, October 14**

- “D. Exclusionary Disciplinary Measures,” and *Fuller v. Decatur Public School Board of Ed.*, 78 F. Supp.2d 812 (C.D. Ill. 2000), CB 524-527
- Harvard Civil Rights Project and the Advancement Project, “Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline Policies” 1-17 (2000) CP
- *Pfeiffer v. Marion Center Area School District*, 917 F.2d 779 (3<sup>rd</sup> Cir. 1990) CB 587-591

## **Schools and Drugs**

### **Tuesday, October 19**

- *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), CB 308-312
- Note 4, CB 316-317
- *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995), CB 317-322
- *Bd. of Ed. of Pottawatomie Co. v. Earls*, 536 U.S. 822 (2002), CP

## **Special Education**

### **Thursday, October 21**

**Guest Speaker: Eileen Ahearn, National Association of State Directors of Special Education**

**Topic: “Special Education Successes, Failures, and Challenges Entering the 21st Century”**

## **Special Education**

### **Tuesday, October 26**

- *Bd. of Ed. v. Rowley*, 458 U.S. 176 (1982), CB 704-708
- Note 4 (*Burlington School Committee v. Mass. Dept. of Ed.*, 471 U.S. 359 (1985), CB 711-712
- *Hartmann v. Loudoun County Bd. of Ed.*, 118 F.3d 996 (4<sup>th</sup> Cir. 1997), CB 714-719
- A. Dupree, “Disability and the Public Schools: The Case Against ‘Inclusion,’” CB 719-723
- *Honig v. Doe*, 484 U.S. 305 (1988), CB 725-730

## **V. Reforms**

### **Reforms and Obstacles to Reform**

#### **Thursday, October 28**

- C. Faber, “Is Local Control of Schools Still a Viable Option?” CB 882-887
- Frederick Wirt and Michael Kirst, “Schools in Conflict” CB 900-902
- Alfie Kohn, “Only for My Kid: How Privileged Parents Undermine School Reform” CB 906-910
- J. Chubb and T. Moe, “Politics, Markets, and America’s Schools” CB 912-913

- *Peter W. v. San Francisco Unified School Dist.*, 60 Cal. App. 3d 814 (1976), CB 932-936

**Thursday, October 28, 8pm—9:30pm**

**2d Movie and Pizza Night (optional)**

**Movie: The First Year (80 minutes)**

**The Politics of Reforming an Urban School System**

**Tuesday, November 2**

**Guest Speakers: Steve Seleznow, Julie Mikuta, Chuck Lawrence**

- Readings to be Determined

**Controlled Choice and Class Integration**

**Thursday, November 4**

- Richard Kahler, All Together Now: Creating Middle Class Schools through Public School Choice, Chaps. 3 & 6 (2001), CP

**No Child Left Behind**

**Tuesday, November 9**

**Guest Speaker: Paul O'Neill, Law Firm of Brustein & Manasevit**

**Topic: "No Child Left Behind: What's Good, What's Bad, What's Unknown, and Will it Make a Difference?"**

- Readings To Be Determined

## **VI. Reforms: School Choice**

**Charter Schools**

**Thursday, November 11**

- Jeffrey Henig and Stephen Sugarman, "The Nature and Extent of School Choice," in School Choice and Social Controversy (Stephen Sugarman & Frank Kemerer, eds. 1999) CP
- Johnson and Medler, "The Conceptual and Practical Development of Charter Schools, CP
- Bierlein and Mulholland, "The Promise of Charter Schools," CB 974-976
- Molnar, "Charter Schools: The Smiling Face of Disinvestment," CB 976-978

**Charter Schools**

**Tuesday, November 16**

- Readings to be Determined

**3<sup>rd</sup> Movie and Pizza Night(optional)**

**Tuesday, November 16 8pm—9:10pm**

**Film: Innocent Until Proven Guilty**

**Charter Schools**

**Thursday, November 18**

- Levin, “Race and School Choice,” CB 528-536
- Brian Gill, et al, “Academic Achievement,” in Rhetoric v. Reality: What We Know and What We Need to Know about Vouchers and Charter Schools (Rand 2001) CP

**Vouchers: The Constitutional Case**

**Tuesday, November 23**

- *Zelman v. Harris*, CP

**THANKSGIVING BREAK**

**Vouchers: The Empirical Research**

**Tuesday, November 30**

- Peterson, Howell, and Greene, “An Evaluation of the Cleveland Voucher Program After Two Years,” (1999) CP
- Metcalf, et al, “Evaluation of the Cleveland Scholarship and Tutoring Program” (2003) CP
- Brian Gill, et al, “Integration,” in Rhetoric v. Reality: What We Know and What We Need to Know about Vouchers and Charter Schools (Rand 2001) CP

**Vouchers: More Empirical Research**

**Thursday, December 2**

- Winerip, “What Some Much-Noted Data Really Showed About Vouchers” (2003) CP
- Howell and Peterson, “The Urban Test Score Gap” (2002) CP
- Krueger and Zhu, “Another Look at the New York City School Voucher Experiment” (2002) CP