

MOVING FROM COMPLIANCE TO *Equity*

By Robert Kim and Liz Kleinrock

When educators sit down to write their to-dos for the upcoming week, it's unlikely that *increase knowledge of legal principles* comes to mind—or makes it anywhere near the “top ten most urgent tasks” list. And yet, chances are that at least one item reminiscent of the following *does* make that list:

- Lead student discussion on their recent provocative social media posts re: Black Lives Matter.
- Recommend eight students for gifted and talented math/ELA.
- Write unit on bullying/kindness.
- Talk to Chuck M. about Xmas hallway display.
- Administer student survey on mental health/drugs/alcohol use.
- Attend faculty mtg. on need for school counselor.
- Document student absences due to immigration policy/ICE raids.
- Prepare for IEP meeting for Susan T.
- Translate note to parents into Spanish.
- Meet AVP re: 3-day suspension of Marcus P.

TEACHERS AS LEGAL ACTORS AND ROLE MODELS

Although it may not seem like it on the surface, *all* of the previous tasks have a legal component. That is, *how* an educator tackles them is at least partially informed by a policy, statute, or court case. For example, to prep for the first task related to Black Lives Matter, it would help to have a basic understanding of the extent and limits of students' free speech rights, both in and outside the classroom. As for the second task—providing accelerated learning for the eight students—the educator might wish to check school-level data and guidance on ensuring equal opportunities for students of all racial backgrounds. And so on. The truth is, although the law may seem like an invisible presence hiding in the wings, it actually dominates the school landscape.

Teachers are not only pedagogical masterminds and miracle workers (because that's who they are); *they are also legal actors and role models*. This doesn't mean there's no difference between

the average teacher and Judge Judy. This *does* mean that the actions of educators have legal implications and that educators are continually modeling for others—colleagues, students, and parents—what it means to follow the societal rules of the road (the law), whether they're conscious of this or not.

The previous tasks also happen to have an *equity* component: *how* the educator goes about them will determine whether students are treated equitably or fairly, or not. School situations involving equity and fairness are precisely when the law moves from the shadows to assume a front-and-center role. Therefore, to foster educational equity in schools, *educators must have a foundational understanding of core legal principles*.

EQUITY AND TEACHING

Awareness of legal principles, however, is only the first step for the equity-minded educator. The next step involves teaching concepts of equity and justice to students. Why is this important?

First, schools are the first public spaces in which most children experience what it's like to be treated fairly or unfairly. Educators routinely draw upon students' experiences as sources for all kinds of learning. So, educators are well positioned to teach students about equity and justice.

Second, students learn about equity, whether or not we teach it to them. They passively learn positive and negative messages about equity and justice on a daily basis—for example, when they are called upon (or not) in class, when they are bullied (or not) because of their appearance or background, or when they notice who is getting opportunities to participate in challenging curricula, sports, or the arts (and who isn't). The choice, then, is not whether students learn about equity and justice, but whether they do so *actively*, through the steady hand of an educator, or *passively*, in the wilderness of their daily lives.

We hope we've established that there is a close relationship between teaching, equity, and the law and that educators are uniquely situated to teach concepts of equity to students. But what about this thing we call “the law”? How can educators bridge courts and classroom? Read on.

WHAT THE LAW IS—AND HOW TO FIND IT

Law is not just a bunch of edicts written by old people in dusty robes. Sure, it includes judicial opinions from different jurisdictions (e.g., federal vs. state courts) and levels (trial or district courts vs. appellate courts). But law also includes the U.S. and state constitutions; bills, statutes, and policies written by the federal (Congress) or the state (legislature) governments; municipal codes or ordinances; and school-district-level policies or bulletins. Within this morass is an incredibly rich array of texts, narratives, historical artifacts, and information related to equity and justice in schools—a veritable (and largely untapped) gold mine for educators.

STEP 1 Find Legal Materials Relevant to Your Location and Desired Topic

If you have an actual legal problem, it's your lawyer's job to find the right sources of law covering the issue and to advise you accordingly. But for pedagogical purposes, you're a bit on your own. Should you live near a law school or university, the law librarian needs to become your best friend. The next best thing is to go online and try to find some legal sources on your own. You can do it.

1st Find materials that cover your jurisdiction.

You'll want to find materials pertaining to where you (and your students) live. For local or district-level materials, go directly to your city or school district website. For state and federal sources, you can go to www.law.cornell.edu, a user-friendly and free website run by Cornell University. Then, if you live in California, for example, you can narrow your search to:

- 1 Federal materials** that apply to California (this includes U.S. Supreme Court opinions) and/or
- 2 State-level materials** applying to the state of California. A case or statute from New York or another state might also be potentially useful or interesting, but if you're from California that might not be the best place to start.

2nd Decide what kind of material you want.

If you want to teach about a piece of legislation, you might want to start by looking up federal statutes, which are often labeled as "U.S. Code." If you want to look up court cases, you can search www.law.cornell.edu for federal and/or state judicial opinions.

3rd Decide your topic.

You can do this at the outset (for example, search in all kinds of sources under the category "education") or do your topical search once you've identified a specific source (e.g., California Supreme Court judicial opinions). Be specific: if you want to understand students' free speech rights, for example, you might type in *First Amendment* and *free speech* and *students* and any other limiting term. Otherwise, the website will give you everything but the kitchen sink.

In our view, judicial opinions involving K–12 students are often the best legal materials to use. After all, they delve into some of the most important topics and situations students face every day. Students can see themselves in the controversies that led to the case. The cases often include interesting historical and factual details. They use terms and language that are useful to teach and learn (along with a healthy dose of legalese that can be tossed to the curb). They provide rich narratives concerning the real problems of real people. And many of them impart lessons on equity, justice, and our rights and freedoms as denizens of the United States.

Before choosing a specific case or another legal source for your students, revisit what you already know about your students: Where do they have prior knowledge, and what do they care about? What events have occurred in your classroom, school, or the broader community that connect to both civil rights and students' experiences?

TIP

Accessing legal information may feel alien and confusing at first, but trust us—the more you do it, the more comfortable you'll become. You may wonder if what you've found is the right document or whether it is still valid and in effect. Don't hesitate to reach out to a lawyer for help; he or she would probably be *thrilled* to field a question from a teacher for once, rather than from an impatient or annoying client.

STEP 2 Understand Your Legal Texts—and Prepare to Use Them with Students

Once you've found a suitable legal document to use, you'll want to make sure you understand its content and significance. This is easier said than done. For complex judicial opinions, even experienced lawyers have difficulty wading through the thicket of arcane and formalistic text, replete with procedural throat-clearing, mile-long citations and Latin phrases befitting a Vatican conclave. But the best-written opinions are usually fairly straightforward, and since you're looking for K–12 school-related opinions, you'll likely quickly grasp the underlying issues in the case.

If you're not sure where to start, take a look at *Elevating Equity and Justice: 10 U.S. Supreme Court Cases Every Teacher Should Know* (Heinemann 2020) by Robert Kim. The book breaks down ten hugely influential Supreme Court cases into their essential components: an easy-to-follow description of the narrative, who the plaintiffs and defendants were, important legal terms, and the outcome of the case—along with assorted facts, historical commentary, and resources on where to go for more information.

TIP

HOW TO READ A JUDICIAL OPINION

89 S.Ct. 733

The legal citation for the case. Use this to find cases online and to provide an exact reference to the case you are discussing or researching.

Supreme Court of the United States

The name of the court.

John F. TINKER and Mary Tinker, Minors, etc., et al., Petitioners, v. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT et al. No. 21.

The names of the parties in the case. At the appellate level, the words *plaintiff* and *defendant* may be replaced by other terms, such as *Petitioner*, *Appellant*, or *Appellee*.

Argued Nov. 12, 1968.

The date the case was argued before the Court.

Decided Feb. 24, 1969.

The date of the opinion—when it officially became “the law.”

Opinion

Mr. Justice FORTAS delivered the opinion of the Court.

The author of the “majority” opinion. In the U.S. Supreme Court this usually represents the voice of at least five of the justices. In many cases, there is also a “concurring” opinion (written by a justice who largely agrees with the majority opinion but has something separate or extra to say) and a “dissenting” opinion (written by a justice who disagrees with the majority).

Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Petitioner Mary Tinker, John’s sister, was a 13-year-old student in junior high school. In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands . . . The principals of the Des Moines schools became aware of the plan . . . they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused . . .

The facts. Judicial opinions traditionally begin by providing the story and outlining the details of the conflict or issue.

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years . . .

The general “rule” in this area of law. What the law says. Sometimes the rule is peppered with choice verbiage (such as the *schoolhouse gate* phrase used here) that become the key lines committed to memory by advocates.

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression . . . Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk . . .

The specific holding of the case. The legal principle resulting from the decision made on the case that all subsequent cases must follow. Here, the **holding** is that the schools may not suppress student speech unless it would “substantially or materially interfere” with school operations.

In order for the State in the person of school officials **to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness** that always accompany an unpopular viewpoint. Certainly, **where there is no finding and no showing that** engaging in the **forbidden conduct would “materially and substantially interfere with** the requirements of appropriate discipline in **the operation of the school,”** the **prohibition cannot be sustained.**

The disposition of the case. Instructions are given by the Court at the end of the opinion. Here, the Court **reversed** (overruled) the decision of the lower court that had sided with the school district, and **remanded** (returned) the case back to the lower (appellate or district) court to figure out what remedy to provide to the victorious plaintiffs (the students)—such as removing the suspension from their records, restoration of class credit, changes in school policies, or cold, hard cash.

We express no opinion as to the form of relief which should be granted, this being a matter for the lower courts to determine. We reverse and remand for further proceedings consistent with this opinion.

USING LEGAL TEXTS WITH YOUR STUDENTS

Once you've digested your source material, the next step is to decide how to use it with students. Age and the reading level of your students are obviously important. But we've found that students of all ages and levels can engage with words and concepts derived from legal sources. For example, although Supreme Court cases and most other legal materials might feel out of reach for young learners, children are able to understand the concept of equity, and from our experience, they often feel a deeply rooted sense of injustice when they deem a situation to be unfair.

Educators can decide whether to use excerpts from the primary source versus a paraphrased description or alternate rendering of the primary source. For an upper elementary class, Liz Kleinrock, coauthor of this article, looked at the *Tinker v. Des Moines* case and used a simplified version of the case provided in Kim's *Elevating Equity and Justice*. She made this choice due to the age and reading levels of the students, because the class had some prior understanding of free speech, and because she wanted to ensure multiple access points since this was their first Supreme Court case study.

The students had the opportunity to discuss the issues and rights at stake for the students in the *Tinker* case. The resulting conversation was fascinating. Interestingly, this group of children felt confused about why it was necessary for a dispute over antiwar armbands to travel all the way to the Supreme Court, which opened up a larger discussion about the importance of recognizing those who fought for civil rights and why we must learn about these histories to not take these rights for granted.

Liz furthered the unit by tying the narrative to key concepts related to equity and justice. This can be done with students of all ages, using a variety of legal sources as inspiration or launch point. For elementary-aged students, a simple way to begin conversations around ethics is to define and differentiate between the terms *equitable* and *equal*. This group of students was tasked to come up with situations in which people receive either the same or different outcomes. As seen in their answers below, the students decided that everyone in the school should have equal access to classes such as art, music, and gym and that it was equitable for students with food allergies to have access to options for desserts.

EQUAL	EQUITABLE
Everyone gets the same	Everyone gets what is fair, or what they need
People of different races have equal rights.	People who have asthma or are in wheelchairs can use elevators.
People of different religions should get equal respect.	Lactose intolerant people have the option of a different dessert (than ice cream).
All classes get art, music, gym.	5th graders get to go to AstroCamp (everyone will eventually go).
Kids of all sizes should be treated with kindness and respect.	Kindergarteners should get to eat first because they are little.

TOWARD A MORE EQUITABLE SOCIETY—ONE STUDENT AT A TIME

In too many schools, the law is presented (typically as part of a less than stimulating inservice training) as boring and is often compliance-driven. The purpose of this article is to help educators reimagine and repurpose law as a valuable teaching tool for equity.

Although we are confident that most educators can bridge courts and the classroom in one way or another, it's worth noting that the law is best at defining the *floor* for equity behavior and activity in schools, not the *ceiling*. In other words, the law often tells us the minimum of what schools *must* do, but not the maximum of what they *can* or *ought* to do. It's up to educators to define the equity ceiling, for themselves and for their classrooms and schools.

Finally, let's return to the list of teacher tasks we mentioned at the beginning of this article. Notice how each item relates to some aspect of students' civil rights or civil liberties—including freedom of speech, separation of church and state, privacy, bullying and harassment, access to school resources, and equal treatment of students of color, immigrant students, English learners and their families, and children with disabilities. There's evidence that students' understanding of these essential rights and freedoms is eroding; studies show that **less than a quarter of students are proficient in civics**. In an era in which democratic norms are being challenged, inequality between the haves and have-nots is increasing, and new stressors like the onset of the coronavirus pandemic in 2020 have stretched governments and communities to the limit, it's more important than ever that our—and our students'—understanding of equity and justice moves from abstract to actionable. We can do it.



Robert (Bob) Kim is a leading expert in education law and policy in the United States. A former civil rights attorney, Bob is author of *Elevating Equity and Justice: Ten U.S. Supreme Court Cases Every Teacher Should Know*, and coauthor of *Education and the Law, 5th ed.* and *Legal Issues in Education: Rights and Responsibilities in U.S. Public Schools Today* (West Academic Publishing, 2019 and 2017). Bob currently serves as an education consultant and has advised thousands of educators on civil rights, equity issues, and school climate topics.



Liz Kleinrock is an anti-bias and anti-racist educator of both children and adults, and creates curriculum for K–12 students, specializing in designing inquiry-based units of study. She began her career in education as an AmeriCorps volunteer teacher in Oakland, California, in 2009 and has since served as both a classroom educator and diversity coordinator in Los Angeles, California. Liz also works with schools and districts throughout the United States to develop workshops for adults that support ABAR practices that fit the needs of different communities.