

AN ANALYSIS OF SELECTED LEGAL RIGHTS AND RESPONSIBILITIES OF
GEORGIA PUBLIC SCHOOL EDUCATORS

by

CHARLOTTE ROSE SADLER

(Under the Direction of John Dayton)

ABSTRACT

This study identified and analyzed Georgia and Federal legislation, regulations, and judicial decisions that directly relate to the legal rights and responsibilities of Georgia public school educators. In determining the selected legal rights and responsibilities of Georgia public school educators, the literature and laws were closely studied. Those areas that were most prominent were analyzed and discussed. This study addressed the legal principles in the following areas of public school education: 1) education of students with disabilities; 2) terms and conditions of teacher employment; 3) tort liability; and 4) legal responsibilities regarding students.

The data for the study included a detailed analysis of historical documents, constitutional provisions, statutes, regulations, and case law.

Findings of the study include the following:

- 1) Education of students with disabilities: The primary legislation pertaining to the education of students with disabilities is found in the Individuals with Disabilities Act of 1997 (IDEA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA). These acts provide substantive and procedural rights and ensure that children with disabilities receive a free appropriate public education (FAPE).
- 2) Terms and Conditions of Teacher Employment: In Georgia, the Professional Standards Commission (PSC) is the governing agency for certification of educators. The PSC Code of Ethics defines professional behavior for educators. The Georgia Fair Dismissal Law and the Georgia A Plus Educational Reform Act of 2000 serve to protect educators' rights and establish accountability.
- 3) Tort Liability: Negligence is the most common tort faced by educators. Georgia retains limited sovereign immunity.
- 4) Legal Responsibilities Regarding Students: Student rights regarding speech, due process, and search and seizure must be considered. Student records are protected under the Family Educational Rights and Privacy Act.

INDEX WORDS: Teacher rights, Teacher responsibilities, Special education, Students with disabilities, Terms and conditions of teacher employment, Teacher hiring practices, Georgia A Plus Educational Reform Act of 2000, H.B. 1187, Tort liability, Responsibilities regarding students, Free speech, Discipline, Search and seizure, Student records

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DEDICATION

Dedicated to God. That says it all.

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The most important acknowledgement I make is to God for blessing me with the abilities and gifts throughout my life and for making this possible. All things are possible with God. Of this, I am certain.

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CHAPTER 1

INTRODUCTION

Statement of the Problem

Public school educators face many challenges regarding their legal rights and responsibilities as educators. This is because of the complex and ever-changing legal environment in education law. Lawmakers and the courts in the United States have a great influence on educational policy and practice in public education. Changes in the law may be a result of new legislation, regulations, changes in school board policies, or court decisions. The impact of judicial influence can be seen in the areas of school desegregation, religion in schools, treatment of students with disabilities, sexual and racial discrimination, civil rights, etc. As a result of the constant changes in the laws and regulations that govern education, there exists a gap between what educators know about their legal rights and responsibilities and what these actually are. According to Zirkel (1996), a study of educators' knowledge of legal issues suggests a low level of legally accurate knowledge with a tendency to choose responses that relate to professional norms rather than legal requirements.

There are a variety of reasons why many educators are uncertain of the laws which govern them. These include the passage of many new laws, the fact that little information is taught during their college education regarding the legal aspects of education, and, with the exception of special education, the lack of sufficient inservice training regarding education law through the school systems (Fischer, Schimmel, & Kelly, 1999). Although educators have legal rights, they also have certain responsibilities in connection with their position. The profession of teaching is vitally

important because it involves the development of the minds of our future citizens and leaders. It is, therefore, extremely important that educators are knowledgeable in their rights, responsibilities, and duties (Hessong, 1991).

There are certain legal obligations that must be considered by educators. Schools function within a complex legal environment and must be certain to protect each individual's rights; therefore, public school educators must have knowledge and understanding of the legal issues that directly affect them. Unlawful school practices often result from a lack of knowledge or a misunderstanding of the law. However, ignorance does not relieve educators from the responsibility of maintaining the law. The United States Supreme Court ruled that teachers and administrators can be held personally liable for violating students' rights, and can be sued for monetary damages (Fischer et al., 1999). In order for educators to manage themselves in a legally defensive manner, they must be familiar with judicial activity that affects education (LaMorte, 2002). Thus educators must be aware of the laws and regulations that govern their profession. According to McCarthy & Cambron-McCabe (1992), many educators do not fully understand the legal concepts related to education, and are uncertain about daily decisions that must be made. Since they can be held liable for these decisions, it is important that they learn as much as possible about the law pertaining to education. Many of the policies, rules, and regulations that govern schools are based on the law, and the decisions made regarding these must be legally defensible (Essex, 2002). Valente & Valente (2001) also contend that educators must be familiar with the structure of the American legal system.

In addition to knowledge of the law, Dunklee & Shoop (2002) state that preventive law should also be practiced. This involves preventing disputes, avoiding litigation, and managing risk. These practices should limit the number of cases and increase the prospects for favorable court rulings in cases involving the schools. However, in order to practice preventive law, educators must be aware of the legal concepts and framework of education law.

Due to the numerous changes that occur in educational litigation and legislation, there is a need to analyze the current legal rights and responsibilities of educators. Specifically in Georgia, there have recently been numerous changes in Section 20 of the Official Code of Georgia (O.C.G.A.). Some of these changes have been the result of the passage of the Georgia Education Reform Act of 2000, which has generated an abundance of regulations that dictate rules of conduct for educators and administrators alike. Included in the act are changes pertaining to the curriculum, educational programs, and terms and conditions of employment.

The purpose of this study was to identify and analyze legislation and judicial decisions that directly relate to the legal rights and responsibilities of Georgia public school educators. In determining the *selected* legal rights and responsibilities of Georgia public school educators, the literature and laws were closely studied. Those areas that were most prominent in the literature were analyzed and discussed. This study specifically delineated the legal principles in the following areas of public school education:

1. Education of students with disabilities
2. Terms and conditions of teacher employment

3. Tort liability
4. Legal responsibilities regarding students

The major findings in this study can serve as a guide to Georgia public school educators to assist them in making decisions that are consistent with case law and statutes. This dissertation examined the current status of the law regarding the four areas listed above. Discussion included implications for public school educators.

Research Questions

The study investigated the following research questions:

1. What is the current status of the law concerning the education of disabled students, the terms and conditions of teacher employment, tort liability for educators, and the legal responsibilities regarding students for educators in Georgia?
2. Based on an analysis of the current status of the law regarding these selected legal rights and responsibilities, what useful information can be provided for Georgia educators?

Procedures

Research for this study focused on analyzing historical documents, constitutional and statutory laws, and case law in order to determine the current legal rights and responsibilities of Georgia public school educators. The primary sources of data included Georgia and federal legislation and regulations, as well as judicial opinions from state and federal courts.

The research began with a survey of dissertations on the legal aspects of education law and educators. This included a detailed review of “An analysis of the legal rights and responsibilities of Indiana public school educators” by McKinney (1991). McKinney’s dissertation provided a framework that would guide the organization of this

dissertation. Once a general framework was created, the author examined Section 20 of the Official Code of Georgia (O.C.G.A.). In particular, the statutes pertaining to the responsibilities regarding individuals with disabilities, the terms and conditions of teacher employment, tort liability, and legal responsibilities regarding students were examined closely.

Following this, a thorough review of *School Law* by LaMorte (2000) and *Teachers and the Law* by Fischer, Schimmel, & Kelly (1999) was conducted. Subsequently, research was compiled regarding the legal history of public education in the United States and Georgia. A survey of federal and state judiciary opinions provided examples of how the laws pertaining to educators have developed and changed. The research also included data regarding case law, whereby the legal rights and responsibilities of educators were analyzed. This involved preparing legal briefs of cases, which included identifying the parties involved, the issue in dispute, the facts of the case, and the courts' holdings.

Information from relevant law and education journals was identified through the use of the *Lexis-Nexis* database. Historical information and general information pertaining to education law was identified through a search of the University of Georgia library.

Chapter two provides a review of the literature pertaining to the legal history of public education in the United States and Georgia and the legal history of Georgia. The review of the literature also covers the education of disabled students, terms and conditions of teacher employment, tort liability, and the legal responsibilities regarding students. Major cases, both federal and state, and U. S. Supreme Court decisions are

included. Chapter two is presented in chronological order to demonstrate the historical development of law related to public school education.

Chapter three analyzes the four areas of public school education included in this study: the education of disabled students, terms and conditions of teacher employment, tort liability, and the legal responsibilities regarding students. Relevant legislation, statutes, judicial decisions, and court cases are discussed. The current status of the law for each area is also presented. Chapter four includes this study's findings, conclusions, and recommendations.

Limitations of the Study

The findings of this study are limited to public schools, grades kindergarten through twelfth grade, in the state of Georgia. It excludes higher education and non-public schools. The study specifically concerns selected Georgia case law and statutes, and analyzed federal court decisions and law that affects Georgia public school practice. This study focused on the current status of the law concerning the education of disabled students, the terms and conditions of teacher employment, tort liability, and the legal responsibilities regarding students for educators in Georgia.

CHAPTER 2

REVIEW OF THE LITERATURE

Historical Development of Selected Regulations Regarding Public Education in the United States and Georgia

The roots of public schools in the United States, and specifically in the state of Georgia, can be traced back to the first permanent English settlement in the early colonies. In order to fully understand the legal influences on the establishment of Georgia public schools, it is important to recognize the role that was played by the English in the early colonies with regard to the creation of public schools. It is also necessary to take notice of governmental influences through the legal means of ordinances, laws, and statutes.

Beginning influences regarding public school establishment within the colonies can be seen in the early settlements. The Virginia settlement of 1607 marked the beginning of a permanent occupation that would allow for the establishment of education. There was no evidence of schools for the first ten years. In 1616, the king ordered that money be collected for a college in Virginia. However, there was a terrible massacre in 1622 which only left a few survivors and ended the opening of the American University. Two years later, an island was secured by Sir Edwin Palmer to be used for the founding of a school. That year, 1624, marked the initiation of school legislation as the General Assembly decided that Indian children should receive education in religion and a civil course in life (Dexter, 1904).

The precedent for financing schools through tuitions, taxes, gifts, endowments, and land rentals came from England (Button, 1989). The first public school in America supported by direct taxation was in Dorchester, Massachusetts, in May 1639. The first teacher at this school was Reverend Thomas Waterhouse. In 1645, the town appointed three overseers of the school. This school committee was the beginnings of a school board as we know it today (Dexter, 1904).

The Massachusetts Bay Colony Law of 1642 required that children be taught the principles of religion and the laws of the country. The town provided for materials and tools for instruction. Although schools were not specifically mentioned, this was an educational law that started a trend in the relationship of the state with education.

In 1647, the “most important school law of our whole history” was passed (Dexter, 1904). It contained all the essentials of a democratic society. Teachers for public schools were appointed and paid for by the people. They were hired to teach reading and writing. With this law it became mandatory that schools be established. Communities that did not comply were fined. At first, unfortunately, the fines were too small and some towns felt they would rather pay the fines than meet the expenses of providing a school. This error was later recognized and fines were increased (Dexter, 1904).

In 1702, Virginia’s law required the teaching of reading and writing. Early laws in Pennsylvania required that children be taught a trade or skill. Apprenticeship laws were in place to ensure masters actually taught their apprentices and did not use them for free labor. These early efforts were the first attempts by American governments to require that children be educated (Good, 1973).

English influence on Georgia public school education directly began with the establishment of the Province of Georgia. This began with the settlement of Savannah in 1733. From 1733 until 1752, the control of education in the colony resided with the Trustees in England. It was their responsibility to employ and dismiss teachers. The first known schoolmaster in Georgia was Christopher Ortman, whose primary responsibility was to teach English to German settlers (Orr, 1950). In 1734, 25 communities started schools in Georgia, but none of these survived (Joiner, 1979).

According to Orr (1950), in accordance with English precedent, the children of the poor were given a free education and those who had money were expected to pay. The Trustees for Georgia required a list of students receiving free instruction. Because many of the colonists were proud, they did not want their names on this list; therefore, they did not send their children to school. John Dobell, a teacher in Savannah, realized this would cause many children to remain uneducated and presented this information to the Common Council of England. Although the Council was not impressed with the pride shown by the colonists, they agreed to pass a resolution on April 18, 1743, that stated schools should be free to all children in the colony, regardless of their ability to pay (Orr, 1950).

From 1752 until 1776, the Royal Governors controlled education in the Province of Georgia. On March 5, 1754, a law made a provision for a minister and two schoolmasters in Georgia. The Governors wanted instruction to be given in connection with religion (Coleman, 1991).

In 1767, Thomas Jefferson shared his views on education when he stated that he felt an educational system was necessary to a democratic society so that the citizens

would have knowledge and understanding regarding their obligations and duties as citizens. He also felt it would aid them in pursuing personal happiness. Jefferson believed that education would help citizens to be better prepared to assume the role of leadership in our society (Button, 1989).

The importance of education in Georgia was demonstrated on February 5, 1777, when Georgia's new Constitution provided the beginning of a legislative program for public education in the state. The constitution required the establishment of a school in each county and stated these schools would be supported by the state under legislative direction (Coleman, 1991). The first countywide systems were created involving Chatham, Richmond, Glynn, and Bibb counties (Joiner, 1979).

On July 31, 1783, there was a legislative enactment that stimulated the promotion of academies in Richmond and Burke counties and 1,000 acres for the free school in Wilkes County. An additional provision of the law was that the government granted 1,000 acres of vacant land for *free schools* in other counties (Orr, 1950).

The beginning of Congress as a supporter of the common school was established in the Congressional Ordinance of 1785. This ordinance indicated how townships of 36 square miles should be sub-divided into 36 lots, each comprising of one square mile. Lot No. 16 within each township was to be reserved for the maintenance of public schools. This showed the government's belief in the importance of public schools and their active involvement in supporting formation of these schools (Tyack, James, & Benavot, 1987).

Also in 1785, the University of Georgia was chartered. The governing board of the University was given the right to oversee all public supported schools in Georgia. In

this same year, the Richmond Academy, the oldest school in the state of Georgia, was formed (Coleman, 1991).

Congress continued to show their support for education in the Ordinance of 1787. Within this ordinance, basic rights were guaranteed. In addition, this famous clause was included: “Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.” (Tyack et al., 1987). The Constitution of 1798 supported the academy system as the legislature promoted instruction in the arts and sciences. It permitted, but did not require, legislation to establish local schools.

During the late 1700s, Old Field Schools were established throughout the colonies. These derived their name from being built in old fields that could not be used for other purposes and were located near the center of the community. These schools were local community projects that were generally managed by the people. The members of the community built the house, hired the teacher, sent their children, and paid the bills. One of the unique features of the Old Field School was that it was coeducational. Attendance was not mandatory due to the need for the children to help with the farming. In general, children might receive two or three years of education (Orr, 1950).

Political motives began to take form regarding the advancement of education. It was recognized that, in a democratic government, the people needed to be educated in order to understand the purposes and processes of government. Therefore, in 1817, a legislative committee advised creating a fund for free schools throughout the state. The act passed in December of that year and provided to set aside \$250,000 to establish free

schools throughout the state (Orr, 1950). No schools were established, however, until 1822, when the law was revised (Coleman, 1991).

In 1818, a provision was made for the education of poor children with lots ten and one hundred of each surveyed district set aside for the education of poor children. The act used the phrase, *free for poor*, which took away the premise of free schools for all. The state legislature of 1821 presented a request to the U.S. Congress for federal aid for education. They did not receive this funding and therefore, had to provide their own funding (Orr, 1950).

In 1822, an act was passed formally establishing the Poor School Fund. This was for white children who were unable to afford academies in order that they might be provided some education (Joiner, 1979). In this year, \$500,000 was added to the poor school fund. The money had little effect, however, since it was divided among public poor schools, academies for the middle and upper class, and private old field schools. Although there were some free school systems established in cities and counties, children in rural areas and lower class children still received little or no formal education (Coleman, 1991).

Although attempts were made to establish a regular statewide free school system, on December 23, 1822, a bill was passed to set up a poor school fund. Provisions of this bill stated that the state would not pay tuition for any child who had already been previously taught reading, writing, and arithmetic. It also stated that tuition would not be provided for those under eight or over eighteen and that a maximum of three years would be provided (Orr, 1950).

The poor school fund proved to be inadequate. Through 1829, the law governing the operation and expenditures of education was revised and amended. All this time, the poor did not like the stigma attached to being educated with the *poor school fund*. Although the poor school fund provided limited elementary education, it led the way toward state controlled and tax supported schools. From this beginning came the common school (Orr, 1950).

In November 1830, a state legislator, Joseph J. Singleton, wrote a bill to establish free community schools. This bill intended to provide three months of tuition for all children whose parents agreed to provide tuition for the additional three months (Orr, 1950). This bill was passed, and then repealed. Attempts were made during the 1830s to organize a true public school system, but conservative opposition and economic depression kept this from happening (Coleman, 1991).

Joseph Emerson Brown, a liberal governor in 1857, was a champion for public education. He persuaded the legislature to appropriate \$100,000 for schools from the profits of the Western and Atlantic Railroad. In 1858, he established a broad public school system for white children. This replaced the poor school system. Unfortunately, this system did not flourish over the next several years due to the country being on the eve of civil war (Coleman, 1991).

Following the Civil War, with the U.S. Constitution of 1865, the Johnson plan of reconstruction called for a public school system for white children. In fact, until reconstruction, public education as we now know it did not exist (Coleman, 1991). In December of 1866, the legislature of Georgia passed a bill establishing free public schools for white children between the ages of six and twenty-one. Since the state was in

poverty following the war, however, the act was not slated to go into effect until January of 1868. This act never went into effect because Johnson's presidential plan of reconstruction was replaced by congressional reconstruction.

Following the Civil War, during the forming of new states, the U.S. Congress had its greatest influence on public education. In 1867, the U.S. Congress established a federal department of education. Many efforts were made in providing grants to schools for the development of common schools; however, these efforts largely failed due to the small staff and budget of the Department of Education and its limited powers (Tyack et al., 1987).

The state constitution of 1868 provided for a "thorough system of general education to be forever free to all children of the State" (Coleman, 1991). Although this was mandated in 1868, the school system was not actually created by the General Assembly until 1870 (Coleman, 1991). The constitution established a State Board of Education and a State School Commissioner. It also made it an obligation for the state to support separate schools for both white and black races (Dexter, 1904). On October 13, 1870, the Legislature passed the act to establish public instruction. The new system officially opened in August of 1871 (Joiner, 1979).

In 1872, a general property tax to help finance the public education system was enacted (Coleman, 1991). Liquor tax revenues were added in 1878 and poll taxes and fees from the licensing of carnivals and shows were later added to supplement the financing of the public school system. In the 1870s, rental fees by the state owned Western and Atlantic Railroad were the primary source for funding schools (Joiner, 1979).

The standard view under the Tenth Amendment to the U.S. Constitution was that education was a function of the states. All educational governance within a state was to be dictated by the state. During the 1800s, often state constitutions and state statutes conflicted, and it was unclear how the powers were allocated within the branches and levels of government (Tyack et al., 1987).

Centralization of power by the state in regard to education was enhanced by federally supported state school funds in the late 1800s. The states used this power to establish laws that placed conditions on local districts in order for them to receive funds. Requirements included submitting statistical reports, raising local taxes, hiring only certified teachers, and holding the school term as set by law. The funds provided were primarily used for teachers' salaries, schoolhouses and their maintenance, and mandated services such as teacher training institutions (Tyack et al., 1987).

Under the new constitution in 1877, in the first session of the General Assembly, a free public school system for all children in Georgia was established. It provided state funds for elementary schools and the state university, but not for high schools (Coleman, 1991). Within the elementary schools, the constitution mentioned the instruction of reading, writing, arithmetic, grammar, and spelling (Joiner, 1979).

The issue of segregation was addressed by the U.S. Supreme Court in *Plessy v. Ferguson* (1896). The Court held that it was constitutional for separate-but-equal facilities for blacks and whites. The basis of this decision was that the Fourteenth Amendment required equality between the races but did not abolish social distinction based on skin color or require commingling between the races (Zirkel, Richardson, & Goldberg, 1995). This ruling allowed the legal segregation of students in schools.

The state legislature tried to improve the public school system in 1910. Laws and amendments were passed that raised the standards for teaching certificates, increased the powers of the state board of education, established public high schools, and increased financial support for the public schools. In 1911, the legislature expanded the powers of the State Board of Education and made it responsible for policies regarding public schools, courses of study, and textbook selection. A statewide system of certification for public school teachers was also established (Coleman, 1991). Standards for awarding teaching certificates included passing a Georgia history exam. In addition, recognition was given to teachers for special college subject areas (Joiner, 1979).

Amendments ratified in the state constitution in 1912 and 1919 made high schools part of the public education system. It also required counties to levy a local tax to support the public schools. The legislature in 1919 appropriated \$100,000 in funds to enable the poor, rural districts to establish high schools. This grew to \$500,000 by 1930 (Coleman, 1991).

The issue of requiring children to attend public schools was addressed through the holding by the U.S. Supreme Court in *Pierce v. Society of Sisters* (1925). Although the Court held that the state may regulate schools and require that all children attend school, it stated that they may not deny the child the right to attend a public or an adequate private school (Zirkel et al., 1995).

In 1937, Governor Eurith D. Rivers supported educational reform. He helped lead the way for passage of a bill created in 1936 which required that the state provide free textbooks and guaranteed a minimum school term of seven months for grades one through eleven. He did not realize the cost involved with some of his plans and a

shortage of state revenue caused people to fear that the schools might close. Rivers used highway funds to keep this from happening (Coleman, 1991). Another provision in the Legislative Act of 1937 was the creation of the state lay board of education (Joiner, 1979).

In 1943, the governor was eliminated as a member of the State Board of Education in Georgia. Governor Ellis Arnall signed this into law on February 4, 1943 (Joiner, 1979). The state constitution in 1945 allowed for the formation of independent or city school systems and more emphasis was placed on higher education. It also provided for a longer term for teachers and better-equipped schools (Joiner, 1979).;

Georgia had serious racial issues during the 1950s. One of the most important court decisions regarding schools and segregation came with the case of *Brown v. Board of Education* (1954). Cases from the states of Kansas, South Carolina, Virginia, and Delaware were consolidated. In these cases, black students were seeking admission to community schools based on non-segregation. The constitutions in these states had provisions that required segregation in public schools. *Brown v. Board* (1954) overturned the Court's holding in *Plessy v. Ferguson* (1896) and held that separate but equal was not constitutional. *Brown v. Board of Education II* (1955) gave the responsibility for supervising desegregation to the federal courts (Zirkel et al., 1995).

In 1959, the Georgia legislative session approved a constitutional amendment that was ratified by the voters. This amendment permitted the use of state funds for scholarships for prospective teachers in Georgia (Joiner, 1979).

During the 1950s and 1960s, legislation in Georgia authorized the State Board of Education to provide training for severely mentally retarded children. This was done

through contracts, grants, or tuitions to private schools, other states, or political subdivisions. The General Assembly passed legislation and Governor Lester Maddox signed House Bill 453 into law in 1968. This bill required that all schools provide a comprehensive and complete program for all exceptional children in the state of Georgia (Joiner, 1979).

The issue of desegregation was still not settled in Georgia in the late 1960s. In 1969, the U.S. Department of Justice filed a suit against the state requesting complete integration of public schools (<http://www2.thingstodo.com/states/GA/history.htm>).

The Supreme Court addressed student rights concerning freedom of expression in *Tinker v. Des Moines Independent Community School District* (1969). In this case, three public school students were wearing black armbands to protest the government's policy in Vietnam. They were suspended from the school and the students wanted the suspensions declared unconstitutional. The holding of the Court was that it is unconstitutional to discipline students for peaceful symbolic expressions unless it materially interferes with, or disrupts the school's routine (Zirkel et al., 1995).

Joiner (1979) states during the administration of Governor James Earl (Jimmy) Carter, from January 1971 through December of 1974, there were many pieces of educational legislation. In 1972, the General Assembly set qualifications for county board of education members due to concern over *conflict of interest* tactics used by some members. Another act under this administration was the Early Childhood Act of 1972, which helped to implement early childhood development programs (Joiner, 1979).

In 1985 the Georgia General Assembly passed the Quality Basic Education Act. Governor Joe Frank Harris signed it into law. This act provided for an overall revision of

kindergarten, primary, and secondary education in Georgia. It was designed to insure all students received a quality education and it was meant to create a seamless education.

In 1999, the General Assembly created the Governor's Education Reform Study Commission. The purpose of the Commission was to review, evaluate, and report the effectiveness of the Quality Basic Education Act. The Commission was also designed to recommend strategies to continue to improve education in Georgia.

Governor Roy Barnes signed the A Plus Educational Reform Act of 2000 into law. The Act made several changes to the educational system in Georgia, including the mandating of school councils at each school, the creation of an Early Intervention Program in kindergarten and a Primary Grades Early Intervention Program in grades 1-3, changes in class sizes, and additional requirements for teachers, especially in middle school. A major change was the elimination of tenure for teachers hired after July 1, 2000.

Education of Students with Disabilities

The federal role regarding students with disabilities began with the creation of special schools for the mentally ill, blind, and deaf between the 1820s and 1870s. Similar state schools were established as early as 1823. Until World Wars I and II no further significant federal activity occurred with regard to individuals with disabilities. At this time, programs were established to help rehabilitate and aid disabled veterans. These were later extended to include others with disabilities (Turnbull & Turnbull, 1998).

In the case of *Brown v. Board of Education* (1954), the United States Supreme Court declared that segregation in education denied the Fourteenth Amendment's guarantee of the equal protection of the laws. Although this decision dealt with racial

desegregation, it led to the seeking of desegregated education for children with disabilities. The cases that were filed stated that children with disabilities were being denied equal protection and due process rights by being excluded from public schools (Dayton, 2002).

The U.S. Congress first addressed the education of children with disabilities when it amended the Elementary and Secondary Act of 1965 (PL 89-750). This amendment was known as Title VI and established federal grants to the states to help in starting, expanding, and improving programs and projects in educating children with disabilities (Turnbull & Turnbull, 1998). In 1970, the 1966 amendment was repealed and replaced with the Education of the Handicapped Act (Dayton, 2002).

In Georgia, the 1968 General Assembly enacted the Education of Exceptional Children Act which required school districts to establish and maintain special education facilities. It also provided that the State Board of Education would implement statewide programs in the public schools to educate exceptional children. At this time an Advisory Council for Exceptional Children and Committees for Exceptional Children were established.

The rights of children with disabilities are based on both the U.S. Constitution and federal legislation. Challenges regarding the excluding and misclassification of students with disabilities directly relate to violations of the equal protection and due process clauses of the U.S. Constitution. Exclusion includes students who are denied access to schooling or students who are provided grossly inappropriate education or placement with no special assistance (also referred to as functional exclusion). Misclassification is

when a student is assessed, placed, or tracked erroneously in a school program (Fischer et al., 1999).

A federal district court in the case of *Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania* (1972) held that access for free public education should be provided for mentally retarded students who were of the ages six through twenty-one. The plaintiffs in this case were mentally retarded children and a parent advocate group. They argued against Pennsylvania's educational statute, which permitted the exclusion of children who were considered unable to be trained, educated, or benefit from public schooling. The Court agreed that this violated the equal protection and due process rights of the Fourteenth Amendment (McKinney, 1991). The Court also stated that children with disabilities should be placed in a regular classroom whenever possible. When this is not possible, they should be provided with special classes as needed (Dayton, 2002).

The case of *Mills v. Board of Education of the District of Columbia* (1972) provided another important ruling by a federal district court by extending the provisions in PARC to all children with disabilities and stating that they all must be provided with a free and adequate public education (Dayton, 2002). The court found that the District of Columbia school system had denied the students due process and equal protection of the law when the school system excluded children with disabilities and did not provide for adequate and timely alternative procedures. Even though the school system argued that they did not have adequate financial resources to provide disabled children with appropriate educational services, the court dismissed their claim and stated that available

funds must be expended equally and cannot bear more heavily on children who are disabled than on the children who do not have a disability (McKinney, 1991).

Congress passed Section 504 of the Rehabilitation Act in 1973. This prohibited discrimination against handicapped persons in programs that received federal funding. In 1975, Congress passed Public Law 94-142, the Education for All Handicapped Children Act (EAHCA). Prior to its enactment, almost 4 million children with disabilities in the United States did not receive appropriate educational services and a million children were totally excluded from public schools. This Act provided substantive legal rights and procedural protection for children who were handicapped (Dayton, 2002).

The EAHCA required the provision of *appropriate* education. Legally, this meant that education must be designed to meet the specific needs of a particular child. In order to do this, it involved the drawing up of an individual educational program or plan (IEP) for each child and carrying out this plan in an appropriate educational setting. The IEP should be specifically made for each individual student with a disability and carefully assesses and evaluates the student's abilities and disabilities. Periodic assessments determine the progress and appropriateness of the plan (Fischer et al., 1999). The expected outcomes of the EAHCA included equal protection guarantees for students with disabilities, state compliance with federal and self-imposed state regulations regarding students with disabilities, overcoming total and functional exclusion practices, and the reformation of school systems to accommodate students with disabilities (Turnbull & Turnbull, 1998).

In 1990, Public Law 94-142 was renamed the Individuals with Disabilities Education Act (IDEA) and *handicapped children* was replaced with *children with*

disabilities. In this same year the Americans with Disabilities Act (ADA) of 1990 was passed. This Act extended the antidiscrimination protections to the private sector and covered issues regarding employment, public accommodations, transportation, and telecommunications. Although the IDEA, Section 504, and the ADA all provide legal protection for individuals with disabilities, the IDEA has had the greatest impact on education (Dayton, 2002).

In 1997, the United States Congress issued a reauthorization the Individuals with Disabilities Education Act (IDEA) and recognized that disabilities should not lessen the individual's right to contribute to or participate in society. This law provided that children with disabilities must receive appropriate educational services. Additional regulations were added in 1999. Due to the numerous additions and changes that occur with the law regarding individuals with disabilities, educators should remain aware of new legislation, regulations, and judicial decisions. This is especially important since they are required that they comply with the law (Dayton, 2002).

Terms and Conditions of Teacher Employment in Georgia

Certification

The terms *certification* and *license* are historically considered synonymous. In issuing a teaching certificate to an individual, the state is giving formal permission for that individual to practice their profession in the public schools of that state. Although the certificate grants permission, it does not guarantee employment (Hudgins & Vacca, 1995).

In the state of Georgia, the school laws of 1858 established the first provisions that required certificates of all teachers' schools that received funds from the State. The

county Board of Examiners issued certificates of qualification to teach. Included in this was the phrase that the individual should be of *good moral character*. The Georgia State School Commissioner authorized the issuance of a permanent state license in 1887; however, it was not until 1924, when the State Division of Certification was established (Professional Standards Commission, 2001).

The state legislature attempted to make improvements in the public school system in 1910. The standards for teaching certificates were raised. A statewide system of certification for public school teachers was also established (Coleman, 1991). Standards for awarding teaching certificates included passing a Georgia history exam. In addition, recognition was given to teachers for special college subject areas (Joiner, 1979).

Prior to 1946, there was a dual system of state certification and county certification in Georgia. This was discontinued, and only the state teaching certificate was required. Since that time, changes occurred which included the increase in requirements for initial certification, the addition of new fields of certification, alternative preparation, initial and continuing assessment of educators, and a trend toward national certification. Throughout these changes, collaboration between the Division of Certification, institutions with teacher preparation programs, and Georgia educators has existed (PSC, 2001).

The Professional Standards Commission (PSC) was created in July of 1991 through a legislative mandate. This Commission was designed to act as a separate government agency, was not connected with the Georgia Department of Education, and was given the main responsibility of establishing an understandable, flexible, streamlined

process for certification and licensure. The desire was to remove barriers and attract individuals who were qualified to the education profession (PSC, 2001).

The PSC currently has several major purposes. These include simplifying the certification process for education personnel in Georgia, attracting highly qualified personnel to become educators in Georgia (including those from other states), and improving the level of preparation of educators. (PSC, 2001).

Revocation of certification is not the same as being dismissed or removed from a position. Although local school boards have the authority to remove or dismiss educators, generally the state commissioners and state boards are the only one legally able to revoke a certificate (Hudgins & Vacca, 1995). Georgia state statutes specify the grounds and procedures regarding certificate revocation. It is important that these be adhered to.

Contracts

Although contracts vary from state to state and district to district, typically they include teacher salary schedules, provisions for insurance and sick pay, policies regarding transfers, and grievance procedures for those teachers who wish to complain of contract violations (Fischer et al., 1999). The basic elements for a valid contract include offer and acceptance, competent parties, consideration, legal subject matter, and proper form (Alexander & Alexander, 1995).

Only a school board may officially make an offer to contract with a teacher. Acceptance is only after there has been a meeting of the minds regarding the terms and conditions of the contract. This cannot be done if a teacher accepts the offer but wants an

increase in salary. Both parties must agree before the offer is accepted (Alexander & Alexander, 1995).

In order for the parties to be considered competent, they must have the legal capacity to contract. The school board is considered a legal authority under the authority of the legislature. In order for the teacher to be considered legally competent to contract, he or she must have certification (Alexander & Alexander, 1995).

Consideration is an important element of a contract. This refers to receiving something of value for performing an act or service. In teaching contracts, this generally refers to the payment of a salary for rendering teaching services. There are three categories of consideration: a valuable, a good, and a promise for an act. A teaching salary would be considered a *valuable* consideration (Alexander & Alexander, 1995).

Legal subject matter must be in the contract. For example, this would include requiring a teacher to teach a prescribed curriculum. Nothing in the contract can be required for illegal subject matter or beyond the scope of legal subject matter. If this were the case, the contract would then become invalid and voidable (Alexander & Alexander, 1995).

The final element of a contract is the legal form required by the state statutes or regulations. Teaching contracts must be in writing and must be approved in a public action by the board of education. This action will be recorded in the minutes of its meeting (Alexander & Alexander, 1995).

Employment Discrimination

Employment discrimination is unconstitutional under the Fourteenth Amendment's Equal Protection and Due Process Clauses. In addition to this, there are

federal statutes, which protect public school personnel against employment discrimination. A few of these statutes include Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 as amended, and Title VII of the Civil Rights Act of 1964.

The legislative enactment that was meant to eliminate discrimination in the United States was the Civil Rights Act of 1964. Title VII deals with discrimination in public and private workplaces (LaMorte, 2002). In part, this section provides:

- (a) It shall be an unlawful employment practice for an employer
 - (1) to . . . discriminate against any individual with respect to his compensation, individual's race, color, religion, sex, or national origin; or
 - (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.
- (e)(1) it shall not be unlawful employment practice. . . to hire and employ employees. . . on the basis of. . . religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonable necessary to the normal operation of that particular business or enterprise.
- (h) it shall not be an unlawful employment practice. . . to use a bona fide seniority or merit system. . . provided that such differences are no

the result of intention to discriminate. . . . Nor shall it be an unlawful employment practice. . . to give and to act upon the results of any professionally developed ability test, provided that such test, its administration, or action upon the results is not designed, intended, or used to discriminate.

- (j) Nothing contained in the Title shall be interpreted to require any employer. . . to grant preferential treatment to an individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist between the percentage employed by any employer and the percentage. . . in any community, State, section, or other area (P.L. 88-352 – Section 703).

There have been personnel practices that have impacted racial minorities, women, pregnant women, and religious groups. These practices have led to cases dealing with racial discrimination, sex discrimination, discrimination due to pregnancy, and religious discrimination (LaMorte, 2002).

Racial discrimination was addressed in the Supreme Court's decision in *Brown v. Board of Education of Topeka* (1954). The Court stated that *de jure* segregation violated the Equal Protection Clause of the Fourteenth Amendment. Many of the desegregation plans following this decision affected the hiring, promotion, and dismissal of school personnel. Affirmative action plans have also been imposed by the courts on school districts that violated Title VII (LaMorte, 2002).

In the case of *Clark v. Huntsville City Board of Education* (1983), Title VII was used as a black assistant principal challenged the school system when he was denied the position of director of vocational education, and the position was given to a white applicant. The court upheld the school system's selection and recognized that superior qualifications was a nondiscriminatory reason and was valid (LaMorte, 2002).

Sex-based discrimination was addressed in the case of *Marshall v. Kirkland* (1979) in the Eighth Circuit Court of Appeals. The appellants claimed gender-based discrimination. Although women predominated as teachers in the district, assignment to *specialty* positions and promotions to administrative positions statistically favored men. The superintendent, Mr. Kirkland, testified that males were preferred for the positions and that the sex of a teacher was a factor in making that determination. The district court felt the plaintiffs did not prove their case; however, the United States Court of Appeals reversed the decision (LaMorte, 2002).

Discrimination against pregnant women was addressed when local school board policies providing for mandatory leave at a specific time during the pregnancy and rules regarding reemployment after delivery were heard by the United States Supreme Court. In *Cleveland Board of Education v. Laflour; Cohen v. Chesterfield County School Board* (1974), public school teachers challenged the constitutionality of the mandatory maternity leave rule. This rule required them to leave work before they desired to. One district required pregnant teachers to take leave without pay five months before the expected birth. They could not return to work until the beginning of the next regular school semester after their child reached three months of age. It was also required that a doctor provided a certificate of health (Zirkel et al., 1995).

Another district required leave four months before birth. Return to work was guaranteed no later than the first day of the school year after a doctor's certificate was presented. The teacher also had to assure the board that the care of the child would cause minimal interference with her job (Zirkel et al., 1995).

The Court held that mandatory maternity terminations, which state the number of months prior to anticipated childbirth, were unconstitutional and violated the Due Process Clause of the Fourteenth Amendment. Additional court challenges, both related to education and business, resulted regarding policies for disability benefits, sick leave, and insurance regarding pregnancy. These cases led to the passage of the Pregnancy Discrimination Act by Congress. This Act went into effect in 1979 (LaMorte, 2002).

The Pregnancy Discrimination Act was an amendment to Title VII and stated that employment discrimination because of sex included discrimination based on pregnancy, childbirth, or related medical conditions. Women must be treated based on their ability to work. They may not be forced to take leave, denied promotions, be fired, or be refused employment as a result of their being pregnant or having an abortion. In addition, fringe benefits must maintain the same basis as those for other employees who are unable to work for other temporary medical conditions. Health insurance must cover pregnancy-related conditions; however, expenses for abortions do not have to be covered unless the life of the mother would be endangered or if other medical complications result from such an abortion (LaMorte, 2002).

Protection from religious discrimination is provided in Title VII of the Civil Rights Act of 1964, which states that the employer must reasonably accommodate to an employee's religious practices or observances, but that it should not cause undue

hardship on the employer. There have been several cases which show the nature of such hardships (LaMorte, 2002).

In *Ansonia Board of Education v. Philbrook* (1986), the school board had a policy that allowed for three religious leave days and three days for necessary personal business. The school district did not include religious observances for personal business leave; therefore, the teacher would have to take unpaid leave for religious observances after they used up their three days of religious leave. The Court found that this was a reasonable accommodation by the board according to Title VII.

The case of *United States v. Board of Education for the School District of Philadelphia* (1990), challenged the *Garb Statute*, which prohibited the wearing of religious garb by teachers while teaching. The plaintiff was a Muslim teacher who believed that Muslim women should cover their entire body, except the hands and face, when in public. The court ruled that there should be an atmosphere of religious neutrality in the public schools, and the school district's refusal to allow her to wear such dress was upheld (LaMorte, 2002). This ruling was similar to *Cooper v. Eugene School District No. 4J* (1986/1987) which upheld Oregon laws that disallowed the wearing of religious dress while teaching. It also provided for suspension and the revocation of the teaching certificate (LaMorte, 2002).

The Civil Rights Act of 1991 changed or nullified many Supreme Court decisions from the late 1980s. This law allows victims of employment bias based on race, sex, disability, religion, or national origin to collect compensatory and punitive damages. The law also requires employers to prove that any employment standard with an adverse impact is necessary for successful job performance (LaMorte, 2002).

Tort Liability

A principle that came from England to America is that each individual is liable for his or her own negligence and must bear the burden for their own wrongful acts (Nolte, 1980). A tort is a civil wrong that arises out of a breach of duty that is imposed by the law. Under state tort law, when an individual causes injury to another by violating some legal duty, a tort has been committed, and the individual is liable to pay damages to the injured party (Valente & Valente, 2001).

Tort liability has three major categories: negligence, intentional torts, and strict liability. Negligence involves an injury that results due to conduct that falls below an acceptable standard of care. Intentional torts involve a desire to inflict harm. They include assault, battery, false imprisonment, and trespass. Strict liability is when injury results from the creation of an unusual hazard, such as the storage of explosives. Strict liability cases are rare in education (McCarthy & Cambron-McCabe, 1992).

Negligence

Employees are subject to legal liability for damages or injuries caused by negligence, which is a failure to act or protect others from unreasonable risks of harm (McCarthy & Cambron-McCabe, 1992). The circumstances of each case must be considered when determining liability and whether the individual acted as a reasonably prudent person in the situation. In court, a judge or jury determines if the employee was negligent and if that negligence caused the damages for which compensation is sought (Hamilton, 1956).

In order to establish negligence of an individual, the following conditions must be met: 1) the individual must have duty to protect another from harm or unreasonable risks,

2) the duty must be breached by the individual failing to exercise an appropriate standard of care, 3) there must be a causal connection between the resulting injury and the negligent conduct, and 4) there must be an actual loss resulting in the physical or mental injury (McCarthy & Cambron-McCabe, 1992).

To claim negligence, the injured party can show that the injury could have been avoided and that the alleged negligent party should have anticipated the possible harmful results of his or her actions or inactions. In these instances, there is no conscious desire to injury someone. The test to determine negligence usually involves determining if a reasonable and prudent degree of care was exercised (LaMorte, 2002).

Other than demonstrating that the elements for negligence were not present, educators may defend themselves against negligence through establishing contributory negligence or assumption of risk. Contributory negligence may be used if it can be shown that the injured party failed to exercise the care necessary to ensure safety. Assumption of risk may be used if the injured party knew the possible risk of danger existed and voluntarily accepted the possibility of harm. This may include participants or spectators at athletic events (LaMorte, 2002).

Intentional Torts

Intentional means that a person desires to bring about consequences for an act (Imber & Van Geel, 2000). Although the act is deliberate, it may or may not involve malice. Even when there is no intent to harm another person, but an individual proceeds in a manner that infringes on another person's rights, a tort is committed. Intentional torts include assault, battery, defamation, libel and slander, mental distress, false imprisonment, and trespassing on personal property (Essex, 2002).

Assault is when the offer of force is used in a hostile manner and it causes apprehension. It includes the threat to inflict harm to another. This is a tort that is committed against an individual's mind when there is fear or apprehension for his or her safety. There does not have to be any physical injury involved to be considered assault (Essex, 2002).

Battery involves actual physical contact. The contact is considered hostile and unlawful and generally comes after assault. Each individual is responsible for controlling his or her own actions. Educators are also responsible for their actions not only involving the administration of corporal punishment but also in taking the proper steps to prevent injury when observing a student being assaulted or battered by another. In battery, there must be intent to make physical contact with another individual (Essex, 2002).

Defamation is when false statements are made about another. They usually involve the intent to harm a person's good name or reputation or the intent to subject the person to ridicule, contempt, or hatred. Laws pertaining to defamation protect individuals from false or malicious statements from others. Even when statements are true, if they may injure or harm another, they should not be made. Educators should not share information regarding students' background, home conditions, or family history if it may prove damaging to the student. When sensitive information is shared, there may be grounds for personal damages (Essex, 2002).

Libel and slander are two categories of defamation. Libel is written defamation and slander is oral defamation. In order to establish defamation, a third party must be privileged to the information or communication. There are four categories of slander that do not require a person to prove damages. They include criminal behavior, professional

or job incompetency, and possession of a contagious disease, such as AIDS (Essex, 2002).

Mental distress can be claimed when a person's conduct exceeds the boundaries of decency. It involves creating mental anguish that is of a serious nature. This may include causing an individual to be humiliated or ridiculed in the presence of their peers through an unreasonable or unorthodox method of discipline that causes embarrassment. In the *Celestine V. Lafayette Parish School Board* (1973) case, a teacher required students to write a vulgar word 1,000 times in front of their classmates if they had said the word. The teacher was dismissed. Teachers are, however, allowed to admonish students in front of their peers when necessary. This was addressed in the *Gordon v. Oak Park School District No. 97* (1974) case when the court recognized the teacher has a right to verbally chastise a student within the broad delegation of parental authority (Essex, 2002).

False imprisonment is when a teacher or administrator detains a student illegally. If a student is wrongfully detained for an unreasonable amount of time for a behavior that does not warrant such action, a tort has occurred. School and district policies should be used as a guide. Students may be detained to prevent participation in some extra school related activities such as recess and playground activities. After school detention should only occur if the offense warrants it and if the parents are aware so that transportation arrangements can be made. Lunch breaks should never be denied to a student as a form of punishment (Essex, 2002).

Trespassing on personal property involves confiscating or interfering with the use of a student's personal property without having the proper authority. This intentional tort

most often involves teachers and administrators. Items that are a violation of school rules may be confiscated but they cannot be kept or retained for an unreasonable period of time. Parents should be notified regarding items that may be considered dangerous, and arrangements should be made to return them to the parent. Items that are nonthreatening should be returned to the student as soon as possible, and the student should be told not to return to school with them. If the item is not violating a school rule or is not causing a disruption to the educational process, school personnel do not have the right to confiscate it. Under no circumstances should a student's property ever be damaged or destroyed (Essex, 2002).

Strict Liability

Of the three categories of torts, strict liability is least often found in education. This occurs when an injury results from creating an unusual hazard. Strict liability may involve things such as the storage of explosive materials. In this case, the party does not have to show that the injury was negligently or knowingly caused (McCarthy & Cambron-McCabe, 1992).

Although strict liability marginally applies to education, legal action against schools still exists at times. Allegations regarding hazards related to laboratory experiments, athletic equipment, and vocational education in schools have occurred (McKinney, 1991).

Tort Immunity

Throughout history, courts have generally ruled that school districts could not be held liable for injuries to teachers and students that resulted from errors of judgment. This was due to tort immunity and was based on the idea that public funds used for

education should not be used to pay private individuals. There have been exceptions to this idea in recent years when authority has been exceeded or an injury has been caused by negligence (Fischer et al., 1999).

Individual school employees, however, have not been historically protected from liability in tort. Some states have felt that school employees are least able to defend themselves in court and have reconsidered the notion. For example, in Georgia, immunity has been extended to include school principals and classroom teachers (LaMorte, 2002).

In *Hennesy v. Webb* (1980), it was shown that school officials are immune from negligence tort liability for personal injuries or death sustained by pupils or others where only negligence was involved. The case of *Truelove v. Wilson* (1981) also showed the use of sovereign immunity due to negligence. The act is protected unless there is an element of willful conduct or wanton conduct, which would remove it from negligence and, therefore, the protective shield of sovereign immunity.

Under federal law, according to the Civil Rights Act of 1871, there is a provision for liability if a person operating under the state violates another person's civil rights (LaMorte, 2002). This law states:

Every person, who, under the color of any statute, ordinance, regulation, custom, or usage, of and State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be

liable to the party injured in an action at law, suit to equity, or other proper proceeding for redress. (42 U.S.C. § 1983)

Recent Supreme Court decisions have addressed this law and the liability of school districts and officials. In the case of *Wood v. Strickland* (1975), three high school students put malt liquor in punch at an extracurricular meeting at school and they were later expelled. Suit was brought by the students and their parents under Sec. 1983 and money damages were sought from two school administrators and members of the school board (Zirkel et al., 1995).

The Court found that officials who act in accordance with the law and with the constitutional rights of those affected by the action have immunity from a lawsuit for damages. If, however, the officials knew or reasonably should have known that the action taken would violate the constitutional rights of the student, or if the action was with malice or intent to injure, then the official is not immune from liability for damages under Section 1983. The Court also stated that Section 1983 provided for federal court correction only when there is a violation of specific constitutional rights. They deferred decision as to the denial of procedural due process in the Fourteenth Amendment and sent the case back to the lower court to determine that issue (Zirkel et al., 1995).

Legal Responsibilities Regarding Students

Some of the areas that educators need to be aware of concerning their legal responsibilities regarding students include freedom of expression, discipline, search and seizure, and student records. Court decisions regarding students and the law tend to balance the students' constitutional rights and the duty of public school officials to maintain a safe, appropriate learning environment. In order to reduce legal

confrontations, school officials should adopt policies that are legally and educationally sound (LaMorte, 2002).

Freedom of Expression

The First Amendment and the Equal Protection Clause of the Fourteenth Amendment forbid officials of the school to restrict or suppress expression merely based on the content or viewpoint. The need to maintain orderly scheduling and use of school facilities is the strongest reason or justification for restricting free speech (Valente & Valente, 2001).

The first freedom of expression case involving public schools was heard by the U.S. Supreme Court in *West Virginia Board of Education v. Barnette* (1943). The case was against a West Virginia public school system and brought by parents of children who refused to participate in saluting the American flag. Their reason was due to the fact that they were Jehovah's Witnesses and it violated their religious beliefs. The Court ruled that saluting the flag was symbolic and decided the case based on free speech grounds. Therefore, the students were not required to salute the American flag (Dunklee & Shoop, 2002).

In 1969, the United States Supreme Court addressed the issue of students having the First Amendment right of freedom of expression in the case of *Tinker v. Des Moines Independent Community School District* (1969). Although it did not address *pure speech*, it clarified the right of students to have political freedom of expression (LaMorte, 2002).

In *Tinker* (1969), three public school students wore black armbands to school to protest the government's policy in Vietnam. The students were suspended from school. The school could not show that there was any interference with school work or school

discipline. They also did not prohibit the wearing of other symbols and were only interested in suppressing the students' opinion about the Vietnam War. The students declared the suspensions were unconstitutional (Zirkel et al., 1995).

The holding of the court was that it was unconstitutional to discipline students for the peaceful wearing of armbands or other symbolic expressions of opinion when there was no interference or disruption of the school routine. The peaceful expression of opinion is entitled to protection under the First Amendment. This is applicable to the states under the Fourteenth Amendment. School officials may not infringe on the students' right to expression unless it materially and substantially interferes with the operation of the school and the rights of other students to learn (Zirkel et al., 1995).

The *Tinker* (1969) decision was relied upon by the federal courts and many decisions were upheld that involved student expression that school officials and parents considered inappropriate. The decision in *Bethel School District No. 403 v Fraser* (1986) helped to limit what was previously allowed (LaMorte, 2002). In *Bethel* (1986), a student delivered a lewd speech while nominating a friend for a student office at a high school assembly. There was no explicit foul language, but there was sexual innuendo and metaphors. The student was suspended for three days for violating a school rule against obscene or profane language. The student's father filed suit stating his son's First Amendment rights had been violated. The Court upheld the action of the school and stated the First Amendment does not mean students cannot be disciplined for indecent or lewd speech (Zirkel et al., 1995).

Freedom of expression was challenged in regard to censorship as *Hazelwood School District v. Kuhlmeier* (1988) addressed the right of a school principal to censor

student news articles (LaMorte, 2002). After students had written articles for the school newspaper, the principal deleted two articles dealing with divorce and teenage pregnancy. The Supreme Court held that the school official did not violate the First Amendment by editing the content of student speech in a school-sponsored activity as long as it related to valid educational purposes (Zirkel et al., 1995).

Although school officials may enforce rules that are reasonable to ensure the operation of the school, a student's freedom of expression may not be restricted just because it displeases an official or has the potential for causing a disruption. In *Beussink v. Woodland R-IV School District* (1998) a student created an Internet home page on his computer at home and it contained vulgar language and was critical of the school. The student was suspended. The court held that his First Amendment Rights had been violated and that his language and comments about the school on the home page did not interfere with school discipline (LaMorte, 2002).

In schools, students learn that certain types of expressions may not be restricted because they are annoying or slightly disruptive. The rationale is that if students are to be full participants in a free and democratic society, they must understand their freedom to express themselves regarding social, political, or economical issues without being restrained or punished by the government (LaMorte, 2002).

Discipline

When parents place their child in the care of the school, the teacher and principal are said to be *in loco parentis*, in the place of the parent, regarding the performance and operation of the schools. The courts have recognized that teachers and principals must be given authority in order to maintain an orderly and responsible learning environment.

Therefore, it has been held that student conduct is under reasonable control of the officials of the school (Alexander & Alexander, 1995).

School officials, however, must maintain a balance between a safe and orderly school environment and maintaining students' individual rights. Courts tend to uphold school officials regarding discipline unless a student's liberty or property rights are threatened or if the punishment is considered unreasonable or arbitrary (Dunklee & Shoop, 2002). Students may be held accountable for breaking a school rule as long as the rule is reasonable. Often what is considered reasonable is litigated in court. For example, a student was expelled for possessing approximately 100 pills that contained caffeine. The student claimed the punishment was excessive, unreasonable, and arbitrary. In *Wilson v. Collinsville Community Unit School District No. 10* (1983), the court disagreed, stating that the rules prohibiting such items was in the best interest of the school (Alexander & Alexander, 1995).

The Fifth Amendment guarantees that no person can be deprived of his or her life, liberty, or property without being given due process of the law. There are two types of due process: substantive and procedural. Substantive due process requires that the rules or policies that are being enforced are fair. Procedural due process requires that the rules, policies, and regulations must be carried out in a fair manner (Dunklee & Shoop, 2002). In procedural due process, a person must be given proper notice that he or she is going to be deprived of life, liberty, or property; the person must be provided with an opportunity to be heard; and the hearing must be conducted fairly. Substantive due process requires that the state has a valid reason for depriving a person of life, liberty, or property, and the means used must be fair (Essex, 2002).

A Supreme Court decision that addressed due process for students was in the case of *Goss v. Lopez* (1975). Principals in Ohio were allowed to suspend students for up to 10 days without giving them notice or a hearing. Several high school students challenged the constitutionality of these statutes. The Supreme Court held that students who are suspended for up to 10 days must be given oral or written notice of the charges, an explanation of the charges if they are denied, and an opportunity for the student to present his point of view regarding the incident. The required procedures must precede suspension unless the student's presence poses a threat to persons, property, or the academic program (Zirkel et al., 1995). The Court noted that if the continued presence of a student at school poses a danger, that student may be removed from school immediately, and the notice and hearing must follow as soon as possible (Dunklee & Shoop, 2002).

Search and Seizure

British practices before the Revolutionary War that involved invasion of homes without just cause led to the Fourth Amendment. Privacy is one of the values protected by the Fourth Amendment and protects individuals from unreasonable search and seizure. The U.S. Supreme Court addressed this issue in *New Jersey v. T.L.O.* (1985) and its decision has served as a guide in searching individual students (LaMorte, 2002).

In *New Jersey v. T.L.O.* (1985), a teacher discovered a student smoking a cigarette in the restroom. This was a violation of school rules so the student was taken to the principal's office. The girl denied she had been smoking and claimed that she did not smoke at all. The principal demanded to search her purse and found cigarettes and rolling papers, usually associated with marijuana. Further search uncovered marijuana, a

pipe, plastic bags, a large amount of money, and writings that implicated her in dealing drugs. The state brought charges against the student. The student tried to suppress the evidence, claiming it was tainted by an unlawful search (Zirkel et al., 1995).

The Court held that the Fourth Amendment does not require school officials to show probable cause or obtain a warrant to search a student under their authority. The constitutionality of the search depends on two steps: 1) there are reasonable grounds for suspecting the search will turn up evidence that a law or rules of the school have been violated at the inception of searching the student; 2) the scope of the search must be reasonable in its relation to the objectives of the search, the age and sex of the student, and the nature of the infraction (Zirkel et al., 1995).

The basis of the Court's decision was that the Fourth Amendment's purpose was to safeguard the privacy and security of individuals against unreasonable and arbitrary invasions by government officials. This includes civil as well as criminal authorities. School officials act as government representatives of the state in carrying out searches and other disciplinary functions. The context of the search determines the level of justification. The Court determined the necessity in balancing the student's interest in privacy and the school authorities' interest in discipline. The initial search in the case showed justification for further search (Zirkel et al., 1995).

Courts have upheld administrators in their search of lockers and student vehicles on campus and recognized that neither should have something illegal or hazardous. In searching lockers, the courts have reasoned that the lockers are the property of the school and the students' right to privacy is lessened because they jointly possess the locker with the school (McKinney, 1991). When searching an individual, it is considered acceptable

for the student to agree to voluntarily empty their pockets. In general, searches are upheld when there is reasonable suspicion. Each case, however, must be examined individually to determine reasonableness. Educators who are operating as agents of the state need to remember to follow the requirements of the Fourth Amendment (Hudgins & Vacca, 1995).

Student Records

Educational records are primarily maintained to aid school officials in providing the best educational program for each student. Student records may include information used for program development, grade placement, individualized instruction, counseling, college admissions, and other purposes. These records also contain information regarding the family background, health records, achievement test results, discipline records, progress reports, and other material that is confidential (Essex, 2002).

Determining who is eligible to see student records was decided in 1974 when Congress passed the Family Educational Rights and Privacy Act (FERPA). This law was passed because of abuses in the use of students' records. This primarily occurred when outsiders were provided access to records, yet parents and students were denied access (Fischer et al., 1999). The act has five important features:

1. School districts must inform parents each year of their rights under the act.
2. Parents are guaranteed the right to inspect and review the educational records of their children.
3. Procedures are established for parents to challenge the accuracy of student records.

4. The confidentiality of student records is protected by preventing disclosure to outsiders without parental consent.
5. Parents are entitled to file complaints with the U.S. Department of Education when there are alleged failures to comply with the act (Fischer et al, 1999).

Directory information may be released regarding students as long as the school district publishes this information yearly. This includes information concerning the student such as their name; address; phone number; date and place of birth; participation in extracurricular activities; weight, height, and membership on athletic teams; dates of attendance; and diploma and awards received. If parents object to the release of directory information, the school should note the objection and honor the objection of the parent (Essex, 2002).

There have been four misunderstandings regarding FERPA (1996) that have regularly occurred since the passage of the Act. First, all educators are not aware that the access to student records applies to all records, not just cumulative files. Second, some parents believe the act gives them the right to challenge the fairness of grades. It does allow them to challenge the accurateness of the recording of the grade; however, they may not challenge the reasonableness of the grade. Third, many administrators are not aware that the rights of parents to inspect records applies to noncustodial parents unless prohibited by a court order. Fourth, schools are not prohibited from sharing information about students if there are safety or health issues involved as long as the teachers have a legitimate interest in the student (Fischer et al., 1999).

There have been two recent U. S. Supreme Court decisions that relate to FERPA. In *Owasso Independent School District v. Falvo* (2002), peer grading was challenged as a

violation of FERPA and related regulations. The Falvos sued their local Oklahoma School Board over the practice of students grading tests and assignments for each other and announcing the grades aloud. The District Court held that grades placed on papers by other students were not educational records. The Tenth Circuit Court reversed this decision. After hearing the case, the U. S. Supreme Court reversed the decision of the Tenth Circuit and stated that peer grading did not violate FERPA and that grades on students' papers were not covered under FERPA until they were collected and entered in the grade book.

The case of *Gonzaga University v. Doe* (2002) brought up the issue of personal rights in relation to FERPA. In this case, a student at Gonzaga University in Washington State was preparing to graduate from a teacher education program. In order to receive a teaching certificate in Washington, it was required that the student obtain an affidavit of good moral character from the graduating college. The teacher certification specialist overheard comments of sexual misconduct involving Doe and a female university student. This was investigated and the state certification department was contacted. As a result, Doe did not receive a teaching certificate. He sued the university and the teacher certification specialist and was awarded punitive damages under FERPA. The Washington Court of Appeals reversed this decision. The Washington State Supreme Court then reversed the Court of Appeals decision. After hearing the case, the U. S. Supreme Court decided that the respondent's action was foreclosed because the relevant provisions of FERPA do not create personal rights to enforce under 42 U.S.C. § 1983.

CHAPTER 3

CURRENT STATUS OF THE LAW

Introduction

Much of the historical information discussed in Chapter 2 is reflected in the current status of the law for educators in Georgia. A detailed study of the court cases and legislation from the past is necessary in order fully understand the current status of the law. This chapter provides an analysis of the current status of the law for Georgia public school educators in the selected areas of education of students with disabilities, terms and conditions of teacher employment in Georgia, tort liability, and legal responsibilities regarding students.

Education of Students with Disabilities

Attitudes toward those with disabilities have changed in recent times due in part to scientific evidence that all humans can learn and can benefit from appropriate education and training (Fischer et al., 1999). The primary legislation that applies to students with disabilities includes the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA).

Individuals with Disabilities Educational Act (IDEA)

With the reauthorization of IDEA, Congress extended federal funding for special education services and added important amendments. The 1997 IDEA is meant to assure that all children with disabilities receive a free appropriate public education (FAPE).

This requires that special education and related services be provided to meet each individual's needs (Dayton, 2002).

By enacting the 1997 IDEA, Congress

1. reiterated the original purposes of idea and justified the need for federal presence in special education,
2. stated the success of state and federal agencies in carrying out the law from 1975,
3. identified the barriers that existed to having effective special education – primarily the low expectations of students with disabilities and the lack of applying research methods that were proven to be effective for teaching children with disabilities, and
4. proposed solutions for the barriers to special education which include:
 - a. Have high expectations for students.
 - b. To the greatest possible extent, ensure access to the general curriculum.
 - c. Ensure a stronger family role in participating in their children's education at school and home and strengthen the parents' roles.
 - d. In order for students to benefit from reform, coordinate IDEA with local education agencies, state, and federal school improvement efforts.
 - e. Redefine special education as a service provided for students and not a place students are sent.
 - f. Support professional development for all school personnel that is of high quality and intensity.

- g. Reduce the need for labeling students as having a disability and meet their needs by providing intensive whole-school approaches or prereferral interventions.
- h. Reduce paperwork and requirements that do not improve educational results and focus on the teaching and learning. (Turnbull & Turnbull, 1998)

As educators, it is important to know the current status of the law in order to carry it out properly. With the 1997 IDEA, it must be known who is eligible, how to identify and evaluate students, what are substantive educational rights, how to implement an individualized education programs (IEP), how to appropriately educate and place students, what are procedural protections, how to discipline students with disabilities, what are the transition services that are provided, the role of graduation and competency exams, and the issue of cost. Each of these areas is extremely important and will be outlined below (Dayton, 2002).

Eligibility

In order to be eligible for IDEA, a student must meet two requirements. First, they must have a disability and second, due to their disability, they must require special education and related services. Under Section 1401 of the IDEA, the disability categories are the following:

1. Mental retardation
2. Hearing impairments, including deafness
3. Speech or language impairments
4. Visual impairments, including blindness

5. Serious emotional disturbance
6. Orthopedic impairments
7. Autism
8. Traumatic brain injury
9. Other health impairments
10. Specific learning disabilities

These categories are exclusive and for children aged 6 through 21. Also according to section 1402 of the IDEA, for children aged 3 to 9, each state or local agency may include children who need special education or related services because they are experiencing developmental delays in their physical development, cognitive development, communication development, social or emotional development, or adaptive development (Turnbull & Turnbull, 1998). This addition of the provision for children with developmental delays was one of the most significant changes in the reauthorization of the 1997 IDEA (Jones & Aleman, 1997).

Identification and Evaluation of Students

It is the duty of the state to identify children with disabilities. Some children are identified through hearing tests, vision tests, and other mass screening tests. If a child is suspected of needing IDEA services, they may be referred for an evaluation but the school must obtain parental consent. If the parents refuse, the school encourages cooperation. If the parents continue to refuse, the school is still obligated to provide a FAPE for the children with disabilities. If necessary, due process proceedings may be initiated to obtain permission for an evaluation from a hearing officer. In order to prevent

improper labeling, identifying a student with a disability should not be done through a single procedure (Dayton, 2002).

One of the provisions of the 1997 IDEA is the requirement not only to obtain parental consent to evaluate a child, but also to provide the parents with a notice that describes the evaluation process that will be used with the child. Additional amendments make it clear that the parental consent is only for the evaluation itself and not for the consent of services (Jones & Aleman, 1997).

After an evaluation has been conducted, the child's eligibility under the 1997 IDEA is then determined. A team of qualified professionals and the child's parent makes this determination. If a child's problem is due to a lack of instruction in math or reading or due to limited English proficiency, they cannot qualify. The parent receives copies of the evaluation report and the documentation of eligibility determination (Jones & Aleman, 1997).

If a parent or teacher requests a reevaluation, or if conditions warrant it, local educational agencies (LEAs) must reevaluate the student. It is required that each disabled student is reevaluated at least every three years. Parental notification and consent is required for the reevaluations. During the reevaluations, LEAs must review existing evaluation data of the child through the child's individualized education program (IEP). Additional data is then gathered to determine whether the child has a disability, the child's present levels of performance and educational needs, whether special education or related services are required, and whether additions or modifications to the existing program need to be made in order to help the child meet his or her measurable annual goals according to the IEP (Jones & Aleman, 1997).

Substantive Educational Rights

The IDEA identified *free appropriate public education* as special education and related services that are free to the parents and students, provided through an educational program that is appropriate and under the supervision and direction of the public, and conforms to the individualized education program (IEP) for each child (Dayton, 2002). In 1982, in the *Board of Education v. Rowley* (1982), the Supreme Court heard the case regarding a first grade hearing-impaired student whose parents wanted her to have the services of a qualified sign-language interpreter. The school did not want to provide this because the student was already assisted by a hearing aid, had a speech therapist for three hours each week, and had a special tutor for an hour each day. The student was progressing well; however, the parents felt the interpreter would help to maximize the child's learning potential (Fischer et al., 1999). The Court held that the school provided *appropriate* education as required by the IDEA and that the IEP was reasonably calculated to enable the student to advance to the next grade and achieve passing grades (Zirkel et al., 1995).

The idea of whether educational services could be required outside of the normal school year was challenged in Georgia. In *Georgia Association of Retarded Citizens v. McDaniel* (1983), the Court of Appeals for the Eleventh Circuit determined that an *appropriate education* must need the individual's needs. The court also determined that the normal 180-day school year may not be sufficient to provide FAPE for all students. The determination of whether or not extended school year services are required is based on whether or not the child will regress significantly due to the absence of services and whether they will adequately recoup once services are resumed (Dayton, 2002).

Individualized Education Program

An individualized education program (IEP) must be provided for each child with a disability. This is a written document that serves as an aid the teacher in planning, an administrative form, and a parent involvement tool. The IEP basically describes the child's special needs and the educational services that have been designed to meet the needs of the child (Jones & Aleman, 1997).

The IEP consists of

1. the child's parents,
2. at least one regular education teacher of the student (if they are or may be participating in regular education),
3. at least one special education teacher,
4. a representative of the local agency who is knowledgeable about the general curriculum and available resources and who is qualified to provide or supervise the instruction that is designed to meet the unique needs of the student,
5. an individual who can interpret the evaluation results and the instructional implications (who may be a member of the team already), and
6. other individuals who have special knowledge or expertise, and the student (when it is appropriate), at the parents' or agency's discretion (Turnbull & Turnbull, 1998).

The IEP must consider the strengths of the child, the concerns of the parents for enhancing their child's education, and the results of the initial or most recent evaluations of the child. There are also special factors that must be considered. These include the

strategies used to address the behavior of a child whose behaviors impedes his or her learning or the learning of others, the language needs of a child with limited English proficiency, the provision of instruction and use of Braille when determined appropriate for a child who is blind or visually impaired, the language and communication needs of a child who is deaf or hard of hearing, and the child's need for assistive technology devices and services (Jones & Aleman, 1997).

The following statements and information must be included in IEPs:

1. A statement of the child's present levels of educational performance which includes how the child's disability affects the child's progress and involvement in the general curriculum.
2. A statement of measurable goals, which includes benchmarks or short-term objectives and relates to meeting the needs of the child that result from the child's disability. These should enable the child to progress in and be involved in the general curriculum.
3. A statement of special education and related services, as well as supplementary aids and services, that will be provided for the child. This also involves a statement of the program modifications or supports for school personnel that will be provided in order for the child to advance appropriately toward the annual goals, be involved in the general curriculum as well as extracurricular and nonacademic activities, and be able to participate and be educated with other children with disabilities and children without disabilities.

4. An explanation, if needed, of the extent to which the child will not participate with children without disabilities in the regular class and in extracurricular and nonacademic activities.
5. A statement of any individualized modifications needed regarding the administration of state or districtwide assessments of student achievement. If it is determined that the child will not participate in the assessment, the IEP must contain a reason why it is not appropriate for the child and how they will be assessed in another manner.
6. A statement of how the child's progress toward their annual goals will be measured and how the parents will be regularly informed of the child's progress toward these goals. This will also inform the parent of the extent to which the progress is sufficient in order that the child may achieve the goals by the end of the year. (The parents of children with disabilities must be informed of their children's progress at least as often as parents of children without disabilities.)
7. The projected date for the beginning of services and modifications, as well as the anticipated frequency, location, and duration of the services and modifications.
8. If a disabled child is aged 14 years, an annually updated statement of the transition service needs of the child under the IEP components that focus on the child's courses of study.

9. If a disabled child is aged 16 years (or younger if determined by the IEP team), a statement of the transition services needed by the child which includes interagency responsibilities or other linkages as necessary.
10. If a disabled child will reach the age of majority in a year, a statement that the child has been informed of his or her rights under IDEA when he or she reaches the age of majority (Jones & Aleman, 1997).

The IEP must reconvene to address changes that educators or others contemplate in the student's measurable annual goals, benchmarks, or short-term objectives, or in any of the services, program modifications, or other IEP content. It is not required, however, for the IEP team to meet regarding specific day-to-day adjustments in instructional methods. The school must have in effect an IEP for each student at the beginning of the school year and must review and revise the IEP at regular intervals, but not less than annually (Turnbull & Turnbull, 1998).

Appropriate Education and Placement

As indicated in the U.S. Supreme Court case of the *Board of Education v. Rowley* (1982), which was discussed earlier, the Court held that *appropriate* education as required by the IDEA is meant to enable the student to advance to the next grade and achieve passing grades (Zirkel et al., 1995). The requirements of *appropriate* education and the IEP are meant to complement each other. The IEP assesses and evaluates the student's particular abilities and disabilities then makes curricular plans and instructional approaches based on the evaluation. Assessments are periodically done to check progress and determine the continued appropriateness of the plan (Fischer et al., 1999).

Section 1412 of the IDEA states that children with disabilities must be placed in the *least restrictive environment* (LRE). According to the IDEA, in order to meet the LRE requirements, it is mandated that

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412 (1997).

Several factors must be considered when determining appropriate placement. Although parental participation is mandated, it is not the sole determinant in deciding where the student should be placed. They should be placed in the LRE, which prefers the regular classroom and education with nonhandicapped students whenever possible. Such an environment must take into consideration the academic, social, and physical needs of the student (Dunklee & Shoop, 2002). The term *full inclusion* does not appear in IDEA and therefore the placement of all children in the regular classroom is not required. In fact, this placement would violate the mandates of the IDEA since it requires individualized placements for each child with a disability (Dayton, 2002).

In order to provide a FAPE, a child may need to be placed in a more restrictive setting. This occurs when the regular classroom cannot satisfactorily meet the educational needs of the child. Restrictive placements are also considered appropriate

when the safety of the disabled child or other children would be threatened in a less restrictive placement. This is also necessary when the disabled child is so disruptive in a regular classroom that the education of the other students is significantly impaired (Dayton, 2002).

Related Services

According to the IDEA, *related services* is defined as

(T)ransportation, and such developmental, corrective, and other support services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluative purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. 20 U.S.C. § 1401 (1997).

The expenses involved in providing health related services for children with disabilities is often high and there have been many controversies regarding whether school districts must pay for certain health services as *related services*. It is not always clear which services are required related services and medical services that are not required (Dayton, 2002).

In the case of *Irving Independent School District v. Tatro* (1984), a child born with spina bifida suffered from impairments and a condition, which prevented her from

emptying her bladder voluntarily. She had to be catheterized every three to four hours in order to avoid kidney damage. The parents requested the administration of clean intermittent catheterization (CIC), which is a simple procedure that can be learned in about an hour. Although the district court had held that CIC was not a related service, the U.S. Supreme Court held that CIC was a related service since it allowed the student to remain in school during the day (Fischer et al., 1999). The basis of this decision was the requirement of related services, which is also defined as supportive services that would allow the child to benefit from special education. The Court felt the services provided could be provided by a school nurse and did not meet the medical exclusion of services provided by a licensed physician (Zirkel et al., 1995).

Procedural Safeguards

The procedural safeguards in the IDEA protect the due process rights of children with disabilities and their parents. They also hold the school and district accountable for compliance with the provisions of the law regarding the identification of a student having a disability, the evaluations used in determining eligibility for services, the placement of students with a disability to receive eligible special education services, and the provision of a free, appropriate, public education (Dunklee & Shoop, 2002).

According to Section 1415 of the IDEA, parents must be notified of the state's procedural safeguards on at least three occasions: (a) at the time of the initial referral of the student for evaluation; (b) with each notification of an IEP meeting or reevaluation; and (c) when registering a complaint regarding the identification, evaluation, educational placement, or free appropriate education of a child. These procedural safeguards must be

written in an easily understandable manner and, unless it is not feasible to do so, in the native language of the parent (Turnbull & Turnbull, 1998).

The procedural safeguards in the IDEA, according to Section 1415, include:

1. opportunity for the parents of a child with a disability to examine all records relating to their child and to participate in meetings that are held regarding identification, evaluation, and educational placement of the child; opportunity for the provision of a free appropriate public education to their child; opportunity to obtain an independent educational evaluation of the child;
2. procedures to protect the rights of the child if the parents of the child are not known;
3. prior written notice to the parents when the agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.
4. procedures to ensure that the required notice is in the native language of the parents unless it is not feasible to do so;
5. an opportunity for mediation
6. an opportunity to present complaints regarding any matter related to the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

Section 1415 also states that the written prior notice must include:

1. a description of the action proposed or refused by the agency;
2. an explanation of why the action is proposed or refused;

3. a description of other options considered by the agency and the reasons why those options were rejected;
4. a description of each evaluation procedure, test, record, or report that was used by the agency as a basis for their proposed or refused action;
5. a description of any other relevant factors related to the agency's proposed or refused action
6. a statement that the parents of the child with a disability have protection under the procedural safeguards of this part; if a copy is not included, if this is not an initial referral for evaluation, a means of obtaining a copy of the procedural safeguards is given; and
7. sources for parents to contact if they would like assistance in understanding the provisions of this notice.

In addition to providing parents with a document which describes the procedural safeguards at the initial referral of the child for evaluation, on notification of an IEP meeting and reevaluation of the child, and upon registering a complaint by the parent, the school must also have a model form available to assist the parents in filing an IDEA complaint (Dayton, 2002).

In Section 1415, the document of procedural safeguards required by the IDEA must fully explain the rights related to

1. independent educational evaluation;
2. prior written notice;
3. parental consent;
4. access to educational records;

5. opportunity to present complaints;
6. the child's placement pending the outcome of the due process proceedings;
7. procedures for students who may be placed in an interim alternative educational setting
8. requirements for the unilateral placement by parents of children in private schools at public expense;
9. mediation;
10. due process hearings, including the requirements for disclosure of evaluation results and recommendations;
11. State-level appeals (if it is applicable to that State);
12. civil actions; and
13. attorneys' fees.

The procedural safeguards in the IDEA are designed to ensure the ability of parents to protect their disabled child throughout the educational process. Since the creation of IDEA, one of its fundamental principles was securing the due process rights of the children with disabilities and their parents (Jones & Aleman, 1997).

The right to an impartial due process hearing is one of the most important procedural protections in the IDEA (Dayton, 2002). According to Section 1415, any party to a hearing must be given:

1. the right to be accompanied and advised by counsel and by other individuals with special knowledge related to the problems of children with disabilities;
2. the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

3. the right to written or (at the option of the parent) electronic verbatim record of the hearing; and
4. the right to written or (at the option of the parent) electronic findings of fact and decisions.

There is a *stay-put* provision within IDEA that is used unless the special education student poses a serious threat to safety or engages in other types of misconduct (Dayton, 2002). This provision states:

(D)uring the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, applying for initial admission to a public school shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed. 20 U.S.C. § 1415 (1997).

Discipline

In disciplining children with disabilities there are special concerns that exist. The *stay put* provision is only one of several significant additional legal protections imposed by the IDEA. These protections were provided due to the historical prejudices that have existed against individuals with disabilities, the misunderstandings regarding mental and physical conditions that may result in problem behaviors, and the fears that children with disabilities may be unfairly suspended or expelled by school officials due to prejudice (Dayton, 2002).

In the case of *Honig v. Doe* (1988), the United States Supreme Court addressed the concern as to whether or not there was an implied exception to the stay-put rule. Two children in *Honig* were emotionally disturbed and exhibited violent behavior due to their disability. One child had choked another student, leaving abrasions on the neck, and then kicked out a window on the way to the principal's office. The other child had made lewd comments and been involved in stealing and extorting money from other students. The school system wanted to expel both students; however, the Court found that they could not do so because of the stay-put provision in IDEA. According to the Court, there was not an implicit dangerous exception to the stay-put rule (Jones & Aleman, 1997).

In *Honig*, the Court did not leave administrators powerless to deal with dangerous students. According to Section 1415 of the IDEA, the Court stated that administrators may suspend a student for up to ten days if they are dangerous to themselves or others. During this time, the IEP can be reviewed and they can work with the parents to agree on an interim placement. If the parents do not agree to a change in placement and the child is truly dangerous, the school may involve the courts during the ten days to approve a new placement (Fischer et al., 1999).

Additional authority was given to school officials regarding the placement of students with disabilities when it involves weapons, drugs, or they are dangerous to themselves or others. The amendments in the IDEA state:

School personnel under this section may order a change in the placement of a child with a disability –

- (i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the

extent such alternatives would be applied to children without disabilities); and

- (ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if -
 - (a) the child carries a weapon to school or to a school function...
 - (b) the child knowingly possesses or used illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function. 20 U.S.C. § 1415 (1997).

In the event children with disabilities present a serious danger to themselves or other students, school officials may ask a hearing officer to place the student in an alternative setting. The 1997 IDEA amendments provide that:

A hearing officer...may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer –

- (a) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
- (b) considers the appropriateness of the child's current placement;
- (c) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current

placement, including the use of supplementary aids and services; and

(d) determines that the interim alternative education setting meets [other requirements of the IDEA]. 20 U.S.C. § 1415 (1997).

The IDEA amendments requires that the interim alternative educational setting allows the child to participate in the general curriculum, to receive services as described in the IEP, to meet their IEP goals, and to receive services and modifications that are designed to avoid recurrences of the problem behavior. Although the alternative placement can only be for 45 days, in order to avoid dangerous placement, additional 45 day extensions may be repeated (Dayton, 2002).

The provision of a hearing officer was controversial due to the concern that it could result in more children with disabilities being excluded from school. School officials, however, felt the need to have a way to remove children whom they felt would be dangerous without having to go to court for a *Honig* injunction. Congress felt that allowing a hearing officer would help to balance the rights of children with disabilities and the need for flexibility when dealing with violence in schools (Jones & Aleman, 1997).

An important consideration regarding disciplining a child with disabilities is whether the behavior is a manifestation of the disability or if it is not related to the disability. Determining this may cause the response of the school to be different (Jones & Aleman, 1997). According to the IDEA Amendments of 1997, the IEP Team and other qualified personnel are required to conduct a review and determine if the child's

problem behavior is a manifestation of their disability whether a change of placement is needed (Dayton, 2002).

Determining manifestation is only required if the child receives a disciplinary change of placement which involves being removed for more than 10 consecutive days or from a series of removals that shows a pattern and adds up to more than 10 school days within the school year. Subsequent removals for separate actions of misconduct are allowed as long as there is no pattern involving the length of each removal, the total time removed, and the closeness of the removals to one another (Dayton, 2002).

In order to determine that the problem behavior is not a manifestation of the disability of the child, it must be determined that:

- (i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
- (ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
- (iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action. 34 C.F.R. § 300.523(2) (1999).

If it is determined that the behavior was not a manifestation of the student's disability, the school may then discipline the student in the manner that other students are

disciplined. This includes the initial 10-day suspension. A suspension for longer than 10 days or expulsion can be done if the behavior was not a manifestation of the student's disability; however, any inclusion for more than 10 days brings in the procedural protections of the IDEA and schools cannot terminate special education services for these students. The 1999 IDEA regulations state that services must be provided after the initial 10 days that will allow the student to make appropriate progress toward the IEP goals (Dayton, 2002).

If it is determined that the problem behavior was a manifestation of the student's disability, the student generally cannot be punished for that behavior (Dayton, 2002). The school may, however, review the placement of the child and, if appropriate, make a change in the child's placement. They still also have the option of suspending the student for 10 school days or less (Jones & Aleman, 1997).

If a parent requests an appeal to challenge an interim alternative educational setting or the manifestation determination regarding a disciplinary action, the student must remain in the interim alternative educational setting until there is a decision by the hearing officer or until the specified time period expires, whichever comes first, unless there is an agreement between the parents and the educational agency. If a proposed change in placement is to occur at the end of the placement in the interim alternative educational setting and the parents challenge it, the child will stay in the setting prior to the interim alternative educational placement. An exception to this rule allows for an expedited hearing if it is determined that it is dangerous for the child to be in the placement they were in prior to the interim placement (Jones & Aleman, 1997). The hearing officer must apply the same standards as the IEP Team. This includes the

determination that there was no manifestation due to the disability, that the disability did not impair the student's ability to understand that the behavior was wrong, and that the disability did not impair the student's ability to control the behavior (Turnbull & Turnbull, 1998).

Transition Services

In 1990, Congress amended the IDEA to require that transition services be provided for children with disabilities. This was done since some special education children have difficulties in transitioning from school to work, independent living, or further education (Dayton, 2002). Beginning at the age of 14, a statement of transition service needs must be included in the IEP and must be updated annually. This statement should focus on the courses of study for the student. At the age of 16, the IEP must include this statement and, if appropriate, interagency responsibilities or needed linkages (Turnbull & Turnbull, 1998).

The individual student's needs, preferences, and interest should be taken into consideration when determining appropriate transition services. These services may include instruction, related services, development of employment skills, development of adult living skills, and community experiences (Dayton, 2002).

Graduation and Competency Exams

In general, a child with a disability is eligible for graduation after completing an appropriate IEP. Parents must receive notification that the student is scheduled for graduation since this is a change in placement. If a child has reached the maximum age for IDEA eligibility before completing their goals and objectives, federal funds are provided for special education services through the age of 21. If, however, the state law

does not provide for the education of non-disabled students from the ages of 18 through 21, then they are not required by the IDEA to provide special education services for children with disabilities in that age group (Dayton, 2002).

It may be required that students with disabilities be required to pass competency exams in order to obtain a high school diploma, and it is possible that some students, due to their disabilities, may not be able to pass these exams. According to the courts, however, these competency exams may be required as long as the students were given notice of what was generally contained in the exam and they had the opportunity to learn the academic content (Dayton, 2002).

Cost Issues

According to the IDEA, educating children with disabilities must be provided free to the parents. Even though the expense is sometimes great, the courts have held that the public schools must provide appropriate education, including testing, guidance, and other special and support services, and this must be at no cost to the parents (Fischer et al., 1999). In *Rowley*, which was previously discussed, the Court held that school must provide special education services that are appropriate for the child and will sufficiently provide educational benefits. These services do not have to be the best available services. Even when the parents express wishes for more expensive options, the school is able to choose as long as the services provided are appropriate (Dayton, 2002).

Section 504 of the Rehabilitation Act

In 1975, Congress amended the Rehabilitation Act of 1973 and prohibited disability discrimination in Section 504. As a comprehensive civil rights legislation, which protects individuals with disabilities, it applies to entities that receive federal

funds; therefore, it applies to the majority of public schools. Because of the broad, functional definition of disability, many individuals are eligible for services under Section 504 that are not eligible under the IDEA (Smith & Patton, 1998).

The Department of Education Regulations for Section 504 state:

No otherwise qualified handicapped person shall, on the basis of handicap, be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from financial assistance. 34 C.F.R. § 104.4 (1997).

In order to qualify under Section 504, an individual with a disability, or handicapped person, is defined as

[A]ny person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record or such an impairment, or (iii) is regarded as having such an impairment. 34 C.F.R. § 104.3 (1997).

Regarding public schooling in preschool, elementary, secondary, or adult educational services, a qualified person is of an age during which nondisabled people receive such services and of an age when it is mandatory by state law to provide service to people with disabilities. A qualified person is also one to whom, under the IDEA, the state must provide special education (Turnbull & Turnbull, 1998).

As long as the handicapped student is qualified to participate in a school program or activity they cannot be discriminated against or excluded solely because they are handicapped. If, however, the student is not qualified for a program or activity, or if

reasonable accommodations are not possible, the student may not participate. For example, a blind student would not be able to participate in a driver's education course since they would not qualify or be safely accommodated (Dayton, 2002).

In the case of *Southeastern Community College v. Davis* (1979), the U.S. Supreme Court made its first Section 504 decision (Turnbull & Turnbull, 1998). In this case, a student with a serious hearing disability enrolled and sought admission to the nursing program. The college denied her admission to the program and stated it would be unsafe for her to participate in the training program and to practice as a nurse. She requested to be reconsidered and was again denied. A suit was filed in federal court and it was alleged that she was denied her Fourteenth Amendment rights and of Section 504. The Court held that the educational institution did not violate Section 504 of the Rehabilitation Act. The basis of this decision was that Section 504 does not require educational institutions to disregard the disabilities of individuals. It also does not require the institutions to make substantial modifications in order for disabled individuals to participate in their programs. In fact, the regulations stated that the *qualified* individual must be able to meet all of the requirements of the program in spite of their handicap (Zirkel et al., 1995).

Sometimes an individual may qualify under Section 504, yet not benefit from the IDEA. A student with human immunodeficiency syndrome (HIV) or acquired immunodeficiency syndrome (AIDS) may not need special education, yet are protected from discrimination under Section 504 (Turnbull & Turnbull, 1998). Whether or not students with these infections should attend school is a continuing controversy. The

courts have been sensitive to the students with HIV and AIDS and have favored their inclusion in the mainstream public school (Dayton, 2002).

In the case of *Thomas v. Atascadero Unified School District* (1987), a five-year-old boy who was infected with the AIDS virus was eligible to attend kindergarten in California. The School District had a policy of allowing a Placement Committee to advise the School Board regarding the placement of children infected with communicable diseases. The Committee recommended that the student be allowed to attend kindergarten and the School Board accepted their recommendation. Although he attended school for a few days without incident, he was then involved in a skirmish and he bit the other child's pant leg. The bite did not cause the skin to break (Dayton, 2002).

It was decided that the student should remain at home until the Placement Committee could reconsider its recommendation and determine if there was a potential threat of the child biting another student. After being evaluated by a psychologist, it was determined that the student might act aggressively and the decision was made that he be kept out of class and be tutored at home for the remainder of the school year (Dayton, 2002).

The previous year, the Centers for Disease Control for the United States Government (CDC) published a report that recommended children infected with the virus should be educated in a setting that would minimize the exposure of other children to their blood or body fluids. The Placement Committee had taken the CDC recommendation into consideration; however, they could present no medical evidence that proved the virus could be transmitted through biting. Because of this, the School District was sued by the parents of the student, stating that he had suffered injury because

of his exclusion from kindergarten. The parents were awarded a settlement. The decision rendered stated that the District did not comply with the requirements of Section 504 because they could not demonstrate that the student was not *otherwise qualified* to attend kindergarten and there was no evidence that he posed a risk of harm to himself or others (Dayton, 2002).

Students under 504 must be provided with due process procedural safeguards related to their identification, evaluation, or educational placement. These safeguards include a written notice to the parents, an opportunity for parents or guardians to examine relevant records of the student, an impartial hearing with all involved parties, and a procedure for review. Section 504 is unlike the IDEA in that it does not require consent prior to the initial evaluation or for the accommodation plan. Notice, however, is required. It is advised that the school obtain consent in order to follow the IDEA procedures (Smith & Patton, 1998).

Any complaints filed under Section 504 must be filed within 180 days of the supposed violation of the act. These are filed with the U.S. Department of Education and are sent to the regional Office for Civil Rights (OCR) of the Department of Education where the school district is located (Smith & Patton, 1998). Although the complaint does not have to be filed in a particular form, the information provided should include the following: name, address, telephone number of the complaining party; basis for complaint; names of those affected by the discrimination; name and address, if known, of the discriminating agency; approximate date of the discriminatory conduct; a brief description of what occurred; and the signature of the complaining party (Underwood & Mead, 1995).

Section 504 complaints are unlike IDEA complaints, which require administrative action before court action. Also, Section 504 regulations do not have extensive, specific requirements related to the hearing process. It is required that the hearing process should be reasonable, and the OCR makes that determination if necessary (Smith & Patton, 1998).

Due to the many students who may be eligible for services under Section 504 who do not qualify for services under the IDEA, the schools must make certain they identify eligible students and implement procedures to make certain they receive a free appropriate public education. Due to individual student needs, schools may need to develop and implement accommodations and modifications to meet the free appropriate public education requirement (Smith & Patton, 1998).

It is important that school personnel understand due process requirements and the appropriate procedures to follow under Section 504. Failure to do this can result in students receiving inappropriate services. If due process requirements have not been adequately complied with, complaints and litigation may result for the school districts (Smith & Patton, 1998).

The Americans with Disabilities Act

The Americans with Disabilities Act of 1990 (ADA) does not specifically address educational policy issues; however, there are some aspects, which are relevant to schools. For example, Section 510 of the act excludes a person who is using drugs or who is disabled solely because of a drug or alcohol dependency as an *individual with disability*. Therefore, the school may use ordinary discipline procedures. If the individual, however,

has some other disabling condition, the school must consider the procedures applied to special needs students (Fischer et al., 1999).

According to the ADA, schools must make public accommodations that are required for those wanting to attend school events at facilities such as stadiums and auditoriums. These facilities must be barrier-free for individuals with disabilities. Overall, however, the impact of the ADA on schools was not as great as the IDEA or Section 504. (Dayton, 2002).

Terms and Conditions of Teacher Employment in Georgia

There are various terms and conditions related to the employment of teachers that Georgia educators should know. These include information regarding certification requirements, contracts, the Georgia Fair Dismissal Law, the Code of Ethics by the Professional Standards Commission, accountability, continuing education requirements, and annual performance evaluations.

Certification

In Georgia, the Professional Standards Commission is the governing agency for establishing the certification/licensure process. According to the Professional Standards Commission Rule 505-2-.08, the requirements for applicants for certification in Georgia for all individuals except those holding certificates in fields with valid life status are as follows:

- (a) An applicant must pass content knowledge assessments in their field of certification and other assessments as required by the Professional Standards Commission. All fields do not have specific assessments at this time.
 1. An applicant may be exempt from a PSC content knowledge assessment if

- (i) they hold or have held a professional certificate in another state and passes the content knowledge assessment(s) required in that state or
- (ii) if they hold a valid certificate from the National Board for Professional Teaching Standards (NBPTS).

2. Required Assessments, Administration Procedures, and Assessment Development.

- (i) PSC-adopted materials such as policies, procedures, and bulletins annually outline the required assessments for all Georgia teaching, service, leadership, and vocational fields.
- (ii) All assessment requirements including registration procedures, administration requirements, participation requirements, and scoring and reporting procedures shall be followed. Examinees with documented handicaps may have special administration procedures arranged.
- (iii) The PSC has the ultimate authority for setting passing standards on each assessment. The assessment development work and standard setting procedures will be in compliance with the accepted testing practices which are outlined by appropriate professional bodies such as the National Council on Measurement in Education, American Psychological Association, and American Educational Research Association.

- (b) All applicants must comply with the ethical standards of the profession.

- (c) All applicants must verify recent study or experience within five years preceding the date of the application for certification in Georgia.
- (d) All applicants certified in a teaching field, the leadership field of Education, and/or Media Specialist or School Counseling must complete course work regarding the identification and education of children with special needs. This must be approved by the Professional Standards Commission or taken through a Georgia approved staff development program. Holding NBPTS valid certification will satisfy the special education requirement.
- (e) All applicants certified in Elementary Education, Early Childhood Education, Middle Grades, Mental Retardation, Learning Disabilities, Behavior Disorders, Interrelated Special Education, Interrelated Special Education/Early Childhood, and English must complete course work in the Teaching of Reading. This may be a course approved by the PSC or an equivalent through a Georgia approved staff development program. Holding NBPTS valid certification in a specific field where the teaching of reading is required will satisfy this requirement.
- (f) Effective July 1, 2001, any person certified in any field must demonstrate proficiency through a PSC-approved test of computer skill competency or complete a PSC-approved training/course equivalent. Holding NBPTS valid certification will satisfy this requirement.

In order to be employed as a teacher, a valid certificate must be held. When the certificate expires, it must be renewed. The requirements to renew certification in

Georgia according to the Professional Standards Commission Rule 505-2-.13 are as follows:

(1) Clear Renewable certificates are renewed by earning 10 quarter hours of acceptable resident college credit or credit specifically approved through Georgia staff development for certification renewal and by passing appropriate assessment(s). The renewal credit for current valid certificates must be completed in the five-year period preceding the expiration of the certificate. If certificate is being renewed that has expired for five years or less, the credit must be completed with the five-year period preceding the application for renewal. Information regarding reinstatement of Certificates that have been expired for more than five years is found in Rule 505-2-.38. Achieving NBPTS certification during a renewal cycle will renew all clear renewable fields for the next cycle or the subsequent five-year cycle.

Submitting a valid State of a Georgia license issued by the Examining Boards Division of the Office of the Secretary of State, O.C.G.A. Title 43 (such as Speech/Language Pathologist, Audiologist, or Psychologist), will renew all PSC clear renewable field(s).

(2) Ten quarter hours or staff development units where the credit is taken within the five-year renewal cycle preceding the expiration date will renew all clear renewable fields. Any course taken within this five-year period can be used toward certification renewal unless it was required to convert an Emergency certificate from the conditional category to the clear renewable category.

- (3) Applications for standard renewal will not be accepted until after October 1 of the school year in which the certificate expires.
- (4) Provided the course work is completed during the appropriate time frame, the following types of credit are acceptable when renewing clear renewable certificates.
 - (a) Any special Georgia courses required to extend a certificate may be used in meeting renewal requirements. Any Special Georgia Requirement course not completed must be completed in order to renew the certificate.
 - (b) Course work taken in order to add a new field or type of certification to an existing certificate.
 - (c) Course work earned in order to renew a probationary certificate.
 - (d) Course work specifically earned for renewal with the approval of an employing Georgia superintendent.
 - (e) Course work taken in the content of the certificate field(s) or professional education course work which address the age level of the learners covered by the certificate or addressing the certification, as long as it does not duplicate previously take course work.
 - (f) Course work earned as part of a degree program in education which is taken at a regionally accredited college or university with the approval of a college advisor.
- (5) A qualifying score on the appropriate assessment(s) approved by the PSC for each field of certification being renewed is required.

- (6) Any educator employed in a local unit of administration who applies for a renewal of a certificate expiring after July 1, 2000, is required to have a criminal record check according to O.C.G.A. Section 20-2-211.
- (7) Effective July 1, 2001, any applicant for renewal must have demonstrated satisfactory proficiency through a PSC-approved test of computer skill competency or complete a PSC-approved training/course equivalent. All certified personnel must meet this requirement by June 30, 2006. Once this requirement is satisfied it does not have to be met again.
- (8) For certificates that expire June 30, 2005, or after, an educator who has received two unsatisfactory annual performance evaluations within the previous five-year validity cycle shall not be entitled to a renewable certificate in any field unless it has been satisfactorily addressed.
 - (a) The individual may apply to the Commission, at the request of an employing Georgia school system/agency, for a one-year nonrenewable certificate. During that time, the individual must demonstrate that the performance deficiency has been satisfactorily addressed and the employer must verify this.
 - (b) After the performance deficiency has been properly addressed and verified by the employer, the individual may then apply for a clear renewable certificate.
- (9) For certificates that expire June 30, 2001, or after, in order to receive a renewal, an applicant must demonstrate that he or she has worked in a classroom for not less than five days during each school year beginning on or

after July 1, 2000, or demonstrate that he or she has completed a PSC-approved teacher-training course. This is in accordance with O.C.G.A. Section 20-2-200.

- (a) The individual may apply to the Commission for a one-year nonrenewable certificate at the request of an employing Georgia school system/agency. During this time, the individual must demonstrate he or she has completed a PSC-approved training course.
- (b) When the PSC-approved training course requirement has been met, the individual may apply for clear renewable certification.

Contracts

According to Section 20-2-211 (2001) of the O.C.G.A., contracts for certified professional personnel, including principals and teachers, in Georgia must be in writing and signed in duplicate by the professional personnel and by the executive officer of the local unit of administration on behalf of the governing board. Each local governing board must tender a new contract for the ensuing school year by April 15 of the current school year. It is also required that each local school system have a job description for each certified professional personnel classification, policies and procedures regarding recruitment and selection of this personnel, and shall follow these policies and procedures. As a part of these policies and procedures, there shall be no discrimination on the basis of sex, race, religion, or national origin. All available certified positions must be announced in writing to the appropriate colleges and universities in the state and to the Department of Education.

Equal Protection – Discrimination in Employment

As discussed earlier in the background information regarding equal protection and discrimination in employment, there are constitutional protections under the Fourteenth Amendment's Equal Protection and Due Process Clauses and protections through several federal statutes. Discrimination in employment in Georgia is specifically addressed in Section 45-19-21 of the Official Code of Georgia. It states:

- (a) The general purposes of this article are:
- (1) To provide for execution within public employment in the state of the policies embodied in Title VII of the federal Civil Rights Act of 1964 (78 Stat. 241), as amended by the Equal Employment Opportunity Act of 1972 (86 Stat. 103), as from time to time amended, the federal Age Discrimination in Employment Act of 1967 (81 Stat. 602), as from time to time amended, and the federal Rehabilitation Act of 1973 (87 Stat. 355), as from time to time amended;
 - (2) To safeguard all individuals in public employment from discrimination in employment; and
 - (3) To promote the elimination of discrimination against all individuals in public employment because of such individuals' race, color, religion, national origin, sex, disability, or age thereby to promote the protection of their interest in personal dignity and freedom from humiliation; to make available to the state their full productive capacities; to secure the state against domestic strife

and unrest which would menace its democratic institutions; to preserve the public safety, health, and general welfare; and to further the interests, rights, and privileges of individuals within the state.

- (b) This article shall be broadly construed to further the general purposes stated in this Code section and the special purposes of the particular provision involved.
- (c) Nothing in this article shall be construed as indicating an intent to exclude local or federal laws on the same subject matter, which laws are not inconsistent with this article.
- (d) Nothing contained in this article shall be deemed to repeal any other nonconflicting law of this state relating to discrimination because of race, color, religion, national origin, sex, disability, or age.

The federal statutes provide that it is unlawful to discriminate in compensating, hiring, or promoting employees based on the individual's race, color, religion, sex, or national origin. It is also unlawful to limit, segregate, or classify employees or applicants for employment in ways that would deprive them of employment opportunities because of the individual's race, color, religion, sex, or national origin. Age discrimination was addressed in the Age Discrimination in Employment Act (ADEA) of 1967 and its amendments (LaMorte, 2002).

In the case of *Kimel v. Florida Board of Regents* (2000), the U.S. Supreme Court ruled that the ADEA was unconstitutional as applied to the states. In this case, university employees filed suit against the Florida Board of Regents for age discrimination in

violation of the ADEA. The state claimed immunity from suit under the Eleventh Amendment. According to the Supreme Court, unless there is a voluntary state waiver of immunity, employees of state agencies can no longer sue under the ADEA. Many states, however, have statutes prohibiting age discrimination. The ADEA still applies to federal agencies and private businesses with 20 or more employees (LaMorte, 2002).

Georgia Fair Dismissal Law

The Georgia Fair Dismissal Law was passed in 1975 (O.C.G.A. 20-2-940 et seq.). It protects board employees from unfair treatment regarding termination of their contract, nonrenewal of a contract, suspension, demotion, and letters of reprimand. Specifically, the individuals covered by the Fair Dismissal Law include tenured educators at all times and non-tenured educators during their term of contract. Administrators hired after April 7, 1997, are no longer entitled to receive tenure (O.C.G.A. 20-2-942). Although the Fair Dismissal Act does not specifically use the word *tenure*, it defines those protected in terms of employees who have worked for three full contract years and been offered a contract for a fourth year.

Educators who have been suspended can only be suspended for 10 days and must have a hearing within that time. They must be given 3 days notice prior to the suspension hearing, are suspended with pay by the superintendent, and are entitled to due process (O.C.G.A. 20-2-940).

The due process requirements protect the rights of the employee and protect them from unfair treatment. Due process requires that a hearing be held before the board of education or before a tribunal of three to five members. Notice of the hearing must be given in person or by certified mail. The employee is entitled to know the cause for the

hearing, the list of expected witnesses, and a summary of the evidence. The employee is entitled to legal counsel and to use the subpoena power of the board. The burden of proof is on the board of education. If they choose to use a tribunal, any expenses incurred are the responsibility of the board. The board must make a decision within 5 days; however, if a tribunal is used, a transcript is provided to the board and they have 10 days to make a decision. They can choose whether or not to act on the recommendation of the tribunal (O.C.G.A. 20-2-940).

In regards to due process, there are eight grounds for dismissal given in the Official Code of Georgia (O.C.G.A.) in Section 20-2-940 (2001). These include:

1. incompetence
2. insubordination
3. immorality
4. inciting or encouraging a student to break a federal or state law or a school board policy
5. willful neglect of duties
6. a reduction in force
7. failure to maintain certification
8. any other good and sufficient cause.

Regarding incompetence, the courts determine what constitutes incompetence after they have considered all of the facts of each case. In general, incompetence is considered as a lack of physical, intellectual, or moral ability; specific lack of legal qualifications for fitness, inadequacy; or insufficiency. Courts have found the following conduct as sufficient to dismiss for incompetence: excessive unexcused tardiness or absences during

the school year; failure to maintain classroom management, control or discipline; failure to meet the job descriptions expected leadership; lack of knowledge needed for competent instruction or inability to convey such knowledge; refusing to allow supervisory personnel in the classroom; and willful neglect of duty (Dunklee & Shoop, 2002).

In order for insubordination to be used as a cause for dismissal, the alleged conduct must be proven and there must be proof of the existence of the rule or order that was allegedly violated. It must be shown that the teacher did not attempt to comply and that there was no bias or discrimination against the teacher. It is also important that the rule or order be lawful and reasonable and harm from the violation must be shown (Dunklee & Shoop, 2002).

The definition of immorality tends to be subjective and determined by the local communities. The courts modify guidelines and definitions as the values in society change. In general, courts have ruled that the conduct of a teacher's private life must remain private and they have the duty to keep their private lives private. If, however, their private behavior affects their professional responsibilities or reasonably impairs their capabilities, the conduct ceases to be private. A clear relationship must be shown between the conduct and the job performance or effectiveness (Dunklee & Shoop, 2002).

There are several examples of willful neglect of duty. For example, a teacher failing to administer an Individualized Education Program, failing to comply with lesson plan policy, sleeping in class, and excessively being tardy are all considered willful neglect of duty (Dunklee & Shoop, 2002).

The phrase *any other good and sufficient cause* is commonly found in many state statutes as a reason for dismissal. According to the court in *diLeo v. Greenfield* (1976), the question of the vagueness of the phrase was reviewed and the court agreed that it was too general (LaMorte, 2002).

An important provision regarding tenure occurred with the A Plus Education Reform Act of 2000. This Act effectively removed tenure for anyone hired on or after July 1, 2000. It also provided, however, that any individual who is dismissed or not renewed may request a reason in writing for their dismissal or nonrenewal.

It is important that an educator be familiar with the Georgia Fair Dismissal Law and the due process requirements associated with it in order to protect their rights. Administrators should especially be aware of the due process requirements to be certain they are acting within the boundaries of the law at all times.

The Professional Standards Commission: Code of Ethics

The Professional Standards Commission adopted the Code of Ethics on July 1, 1999. The purpose of the Code of Ethics is to define the professional behavior of educators; act as a guide to ethical conduct; protect the safety, health, and welfare of all individuals; and provide accountability.

There are three parts to the Code of Ethics. They include Canons, Ethical Considerations, and Standards. The Canons are aspirations for educators. The Ethical Considerations are non-binding but serve as a guide in interpreting the Standards. The Standards are binding for employees and explain what is prohibited and what is required in their employment. The ten Standards according to the Professional Standards Commission are:

Standard 1: Criminal Acts - An educator should abide by federal, state, and local laws and statutes. Unethical conduct includes the commission or conviction of a felony or misdemeanor offense, including DUI/BUI, but excluding minor traffic violations such as speeding, following too closely, improper lane change, etc. As used herein, "conviction" includes a finding or verdict of guilt, a plea of guilty, or a plea of *nolo contendere*.

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

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: 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 being on school premises or at a school-related activity involving students while under the influence of, possessing, using, or consuming alcohol. 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).

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: falsifying, deliberately misrepresenting, or omitting 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; falsifying, deliberately misrepresenting, or omitting information regarding compliance reports submitted to federal, state, and other governmental agencies; falsifying, deliberately misrepresenting, or omitting information regarding the evaluation of students and/or personnel including improper administration of any standardized tests (changing test answers, copying or teaching identified test items, unauthorized reading of the test to students, etc.); falsifying, deliberately misrepresenting, or omitting reasons for absences or leaves; and falsifying, deliberately misrepresenting, or omitting information submitted in the course of an official inquiry/investigation.

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: misusing public or school-related funds or property; failing to account for funds collected from students or parents; submitting fraudulent requests for reimbursement of expenses or for pay; and co-mingling public or school-related funds with personal funds.

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: soliciting students or parents of students to purchase equipment, supplies, or services from the educator in a private remunerative capacity; accepting gifts from vendors or potential vendors for personal use or gain where there may be the appearance of a conflict of interest; tutoring students assigned to the educator for remuneration unless approved by the local board of education or superintendent.

Standard 7: Confidential Information - An educator should comply with state and federal laws and local school board policies relating to the confidentiality of student records, unless disclosure is required or permitted by law. Unethical conduct includes but is not limited to 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.

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

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 the failure to make a required report.

Standard 10: Professional Conduct - Professional Conduct - An educator should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that seriously impairs the certificate holder's ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare, discipline, or morals of students (inappropriate language, physical altercations, inadequate supervision, inappropriate discipline, etc.).

The Code of Ethics interacts with the Georgia Fair Dismissal Law in that it provides standards that can be used for dismissal from a position. The standards are binding for educators and can be used as just cause for dismissal if they are violated.

As with the Georgia Fair Dismissal Law and the grounds for dismissal, educators need to be familiar with the Code of Ethics and its implications for those employed in education. Knowledge is powerful, but lack of knowledge can lead to an educator losing their position or ending their career.

Georgia A Plus Reform Act (2000)

The Georgia A Plus Educational Reform Act of 2000 has made several changes regarding a variety of areas in education. Many of these changes directly affect the principal regarding teacher employment and evaluations. Changes in Sections 11, 31, and 32 will be discussed, along with specific implications for local systems and school principals in dealing with teacher employment and annual teacher evaluations.

Accountability

Section 11 of the Georgia A Plus Educational Reform Act of 2000 (Code Section 20-2-131 in the Official Code of Georgia) discusses the needs recognized by the General Assembly of Georgia and is a revision on the Quality Basic Education Objectives and Purposes. In part, it recognizes the need to provide equitable quality education for all children and youth in Georgia, establishing and maintaining statewide standards, motivating and attracting highly competent personnel, and providing the public with information regarding the achievement of the public school students in Georgia.

Some of the changes in Section 11 due to the Georgia A Plus Educational Reform Act of 2000 include providing an accountability system to ensure all students receive a

quality education program, providing a seamless educational system, providing a safe school environment, providing access to nursing services, providing academic intervention programs to assist students who are performing below grade level, and providing advice and assistance to students in planning their academic and work goals. Additional changes include providing an evaluation process for school system personnel to assure quality performance, providing an environment that encourages parent and community participation in the schools, and providing for parents and the community to participate in establishing school programs, policies, and management.

Within this section, the change that most directly relates to principals and teacher employment is the establishment of the evaluation process for all school personnel. The purpose of this process is to assure the public that all students are receiving quality educational services and that the school personnel are performing at an adequate level. The local system is responsible for the evaluation instrument and local guidelines regarding the evaluations. The school principal needs to review the evaluation process that has been established at the local level in order to make certain they are following the specific guidelines that have been established. It is his or her responsibility to ensure all school personnel have been evaluated appropriately.

Another change that may affect teacher employment is the provision of an accountability system to ensure that students are receiving a quality education. The local school system should develop a process to assess that students are receiving quality instruction. Within this accountability system, principals must make certain that teachers are providing quality instruction for the students. If a teacher is not accountable or does not provide adequate instruction as outlined by the local system, it is the responsibility of

the principal to deal with the individual teacher and correct the problem in whatever manner is considered appropriate.

Continuing Education Requirements

Section 31 of the Georgia A Plus Educational Reform Act of 2000 (Code Section 20-2-201 in the Official Code of Georgia) relates to the course requirements and in-service or continuing education for certified professional personnel. Any person certified as a teacher, principal, or guidance counselor must have completed five or more quarter hours in the identification and education of children with special needs. The Professional Standards Commission must approve these hours. In addition to this, there are two specific changes in this section that relate to teacher employment.

First, universities and colleges that have teacher preparation programs for pre-kindergarten through grade 12 must require students in their program to be proficient in computer skills and other applications related to instructional technology. This includes desktop computers, applications, integrating with teaching and the curriculum, and using them with individualized instruction and classroom management. The universities and colleges must provide a test to assess the students' proficiency in these areas.

Second, all personnel certified by the Professional Standards Commission must receive 12 clock hours of in-service or continuing education each calendar year through their local unit of administration, or meet requirements of the Southern Association of Colleges and Schools. The programs will be designed to address needs that have been determined through evaluation instruments and will focus on directly improving student achievement. Local units of administration must maintain records of attendance.

This change directly relates to the principal and teacher employment because it is the responsibility of the principal to maintain these records and ensure that all school personnel have been provided the opportunity to participate in the 12 clock hours of in-service or continuing education.

Annual Performance Evaluation

Section 32 of the Georgia A Plus Educational Reform Act of 2000 (Code Section 20-2-210 in the Official Code of Georgia) discusses the annual performance evaluation of certified professional personnel. This section requires that evaluation records be a part of the personnel evaluation file and be confidential. Personnel with deficiencies or other needs shall have professional development plans designed to diminish these deficiencies or needs. Local units of administration may use the state board's model annual evaluation instrument for each classification of professional personnel that is certified by the Professional Standards Commission. This section also discusses the need to have teachers complete professional development to improve classroom management skills or other skills if they remove more than two students from their class enrollment within a year as allowed under subsection (b) of Code Section 20-2-738 and a placement review committee returns these students to the class.

There are several additions in Section 32 regarding teacher evaluations. These additions directly affect the local school system as well as the school principal. It is imperative that each requirement be met.

First, the annual teacher evaluations must consider the teacher's role in meeting the school's student achievement goals; include observations by the principal or assistant principal during instruction, consider teacher participation in professional development

opportunities; consider the teacher's communication and interpersonal skills; and take into account the timeliness, attendance, adherence to school and local procedures, and personal conduct while performing school duties. It is the responsibility of the principal to make certain each of these areas is addressed as a part of the teacher evaluation process.

Second, student achievement must be taken into consideration for teacher evaluations using various student achievement assessments. If results of these assessments are not available at the time of the evaluation, the results of the evaluation should be based on information that is available at that time. An addendum to the teacher's cumulative evaluation record shall be completed once results of student assessment are available. The principal must make certain student achievement is included in the evaluation.

Third, the local school system superintendent should identify trained evaluators. These evaluators are required to complete the annual evaluation for each certified personnel by April 1 of each year. It is the responsibility of the superintendent to ensure compliance with this; however, the principal has the responsibility at the school level to make certain they have completed and submitted all evaluations by the appropriate deadline.

The final change in Section 32 allows for principals and assistant principals to be evaluated by the teachers in their school. These evaluations are confidential and may be required by the local school system. This would be in addition to the evaluation that is required by a trained evaluator.

It is evident that the Georgia A Plus Educational Reform Act of 2000 has made several changes that school systems, principals, and teachers should be aware of in order

to properly carry out their duties as educators. The changes outlined above directly affect the local school system and the principal regarding teacher employment and the teacher evaluation process. Knowledge of these requirements assists in successful compliance with the laws and in best serving the educational needs of Georgians.

Tort Liability

Educators have the responsibility for the students under their care. Tort law provides for compensation for injuries or harm sustained in school. This requires educators to take the necessary steps in order to provide a safe and orderly environment for the students (McKinney, 1991).

In Georgia, boards of education are authorized to purchase policies of liability insurance or contracts on indemnity to protect employees against damages that arise out of the performance of their duties. This includes those based upon negligence, violation of contract rights, or violation of civil, constitutional, common-law, or other statutory rights. The amount of the insurance or indemnity is at the discretion of the board (O.C.G.A. 20-2-991).

The purchasing of liability insurance does not automatically waive sovereign immunity for districts or employees. The Georgia Court of Appeals has stated, however, that the state law waives sovereign immunity for damages connected with the government's use of a motor vehicle when liability insurance has been purchased. In *Brock v. Sumter County School Board, et al.* (2000), a 7-year old was killed by an oncoming vehicle when she ran out into the road while waiting for her school bus. The parents claimed the bus was late and that the school board and several county employees were guilty of negligence. It was found that there was no connection between the use of

the bus and the incident. In fact, the incident occurred ten minutes before the scheduled stop. There was no evidence of district employee violations of policy; therefore, the claims against the district and the employees were dismissed.

Some of the areas of greatest danger for liability of school personnel exist in such areas as laboratories, shops, and in athletic or physical education activities. This includes playground supervision. When supervising students on the playground, employees have the legal responsibility to see that students do not engage in hazardous or dangerous activities. Supervising teachers are expected to exercise reasonable care to protect the children they are supervising (Hamilton, 1956).

Incidents on the playground have also led to cases that involve sovereign immunity. In *Crisp County School System v. Brown* (1997), a student broke her arm when she fell from the monkey bars while attempting to complete an obstacle course during her gym class. The student told the teacher she did not think she could cross the monkey bars but her gym teacher told her to try anyway.

The parents sued the school system and the board of education stating they had failed to circulate sufficient rules regarding the supervision of students with physical and mental limitations. They alleged the gym teacher had also been negligent in supervision. The school system contended it was entitled to sovereign immunity but the trial court denied the motion.

The Georgia Court of Appeals reversed the decision and found that the school system was immune from suit. The court also found that public officers and employees of the school system are entitled to sovereign immunity when they are sued for

discretionary acts dealing within the scope of their employment and when there is no malice or intent to injure.

Liability related to the disciplining of students or reporting misconduct has been addressed in Section 20-2-1000 of the O.C.G.A. It states in part:

(b) No educator shall be held liable for and civil damages for, or arising out of, any act or omission concerning, relating to, or resulting from the discipline of any student of the reporting of any student for misconduct, except for acts or omissions of willful or wanton misconduct.

(c) If a judgment or finding is rendered in favor of a defendant educator... resulting from the discipline of such student or if the complaint is found to be nonmeritorious, frivolous, or without just cause, all reasonable expenses incurred by the defendant educator in defending such action or complaint shall be assessed by the court, agency, or such tribunal against the plaintiff and shall be paid by the plaintiff. Any educator shall have a right to bring an action or a counterclaim against the plaintiff in any such action or proceeding for any damages suffered by the educator....

(d) If any civil action is brought against any educator or any report or complaint is made or filed against any educator...arising out of or relating to the discipline of such student, it shall be the duty of the county or board of education employing such educator to provide counsel for the educator, if requested by the educator, unless such board of education determines, after an independent investigation of the report or complaint, that the act or omission of the educator constituted willful or wanton misconduct or

constituted gross misconduct in violation of the express written policies of the board of education....The provision of counsel to such educator shall be for an educational purpose and any funds available to the board of education may be expended for such purpose....

Educators may be held liable for depriving a person of their rights, privileges, or immunities which are secured by the Constitution and laws (42 U.S.C. § 1983). In the case of *Wood v. Strickland* (1975), which was previously discussed, it was shown that students may not be deprived of their due process rights. The majority opinion stated that ignorance of constitutional law that pertains to school discipline is not an excuse (LaMorte, 2002). The Court also ruled that school officials are not immune from lawsuits in federal courts and can be subjected to lawsuits in state courts if the state law allows it. If the school official's actions were undertaken in good faith, he or she cannot be held liable in federal court. However, if they knew or should have known that the action taken would violate a student's constitutional rights, or if the action had malicious intent, meant to cause injury, or deprived a student of their rights, the school official may be held liable (Morris, 1980).

Legal Responsibilities Regarding Students

Freedom of Expression

The restriction of free speech can be justified if it is necessary in order to maintain an orderly school environment. The First Amendment and the Equal Protection Clause of the Fourteenth Amendment do not allow the suppression or restriction of free speech based solely on the content or viewpoint. (Valente & Valente, 2001).

The rights of students to express themselves was addressed in *Tinker v. Des Moines Independent Community School District* (1969) which was previously discussed. The Court held that it is unconstitutional to discipline students for peaceful symbolic expressions unless it materially interferes with, or disrupts the school's educational process (Zirkel et al., 1995).

The issue of the right of a student to refrain from participating in the Pledge of Allegiance to the American flag was addressed in *West Virginia Board of Education v. Barnette* (1943). The Court ruled that saluting the flag was symbolic speech and could not be required (Dunklee & Shoop, 2002). In Georgia, there is a statutory provision that states:

Each student in the public schools of the State of Georgia shall be afforded the opportunity to recite the Pledge of Allegiance to the flag of the United States of America during each school day. It shall be the duty of each local board of education to establish a policy setting the time and manner for recitation of the Pledge of Allegiance. Said policy shall be established in writing and shall be distributed to each teacher within the school. Ga. Code. Ann. § 20-2-286 (1976).

Since students are not only being taught academic subjects but also how to participate in a free, democratic society, their freedom of expression must not be taken away by the government or officials of the government (LaMorte, 2002). School officials, however have the responsibility to maintain an orderly school environment and the restricting of free speech, when disruptive to this environment, is allowed (Valente & Valente, 2001).

Discipline

At times educators are faced with the question of how to deal with unacceptable student conduct. In all cases, the discipline must be reasonable and individual rights may not be violated. The doctrine *in loco parentis* supports the discipline of students by school officials; however, a student's liberty or property rights may not be threatened and the punishment may not be arbitrary or unreasonable (Fischer et al., 1999). According to Section 20-2-215 of the O.C.G.A., it states in part:

Classroom aides and paraprofessionals shall have, while performing assigned duties, the authority of *in loco parentis*, except for the administration of corporal punishment; provided, however, that such aides and paraprofessionals have at least the minimal training or experience, or both, prescribed by the Professional Standards Commission to have such authority and that such aides and paraprofessionals are under direct supervision of classroom teachers or other certificated professional personnel on a daily basis....

As noted in the *Goss v. Lopex* (1975) decision, students have the right to due process. Even when the disciplinary violation is minor and results in a short suspension, due process procedures must be followed. At the very least, students must receive notice and be afforded some kind of hearing, even in minor disciplinary cases. In serious cases, more extensive procedures may be required. A written notice must be given specifying the charges against the student, the time and place of the hearing, and the procedures to be followed at the procedure must be described. The evidence used, the names of witnesses, and the substance of the witnesses' testimony must be made known to the

student. Students may cross-examine witnesses and present witnesses or evidence on their own behalf. A written or taped recording of the proceeding, along with findings and recommendations from the hearing must be made available to the student. Students also must be aware of their right to appeal (Fischer et al., 1999).

There are two situations where due process is not a prerequisite. First, trivial routine disciplinary matters in school or minor infractions of rules may result in minor punishments such as brief detentions, extra work, or being sent to the principal's office. In these situations, the legal maxim *de minimis non curat lex* (the law does not deal with trifles) is applied. Second, in emergency situations where action is required to preserve the safety of persons or property, due process is not a prerequisite. The only requirement is that fair procedures be followed as soon as possible following the situation (Fischer et al., 1999).

When students fail to follow the rules they may be excluded from school (O.C.G.A. 20-2-751). If the exclusion is for ten days or less, it is considered a suspension. If the exclusion is for the remainder of a quarter, semester, academic year, or permanently, it is considered expulsion. This usually occurs for repeated major infractions of school rules or being convicted of a crime. Disciplinary transfers are also used when students are transferred to a school other than the one they are attending (LaMorte, 2002).

At times, student disciplinary issues lead to students being placed in alternative educational settings. Regarding such alternative placement, the O.C.G.A. addresses the issue in Section 20-2-735. It states in part:

- (a) No later than July 1, 2000, each local board of education shall adopt policies designed to improve the student learning environment by improving student behavior and discipline....
- (b) Student standards of behavior developed pursuant to this subpart shall be designed to create the expectation that students will behave themselves in such a way so as to facilitate a learning environment for themselves and other students, respect each other and school district employees, obey student behavior policies adopted by the local board of education, and obey student behavior rules established by individual schools.
- (f) It is the policy of this state that it is preferable to reassign disruptive students to alternative educational settings rather than to suspend or expel such students from school.

In Georgia, teachers have recently been given additional means to handle repeated or excessive discipline problems. A provision of the A Plus Educational Reform Act of 2000 allows teachers to have more control in their classroom in regard to students who are disruptive and interfere with the teaching and learning in the classroom. Section 20-2-738(c) of the O.C.G.A. states that:

- (c) On and after July 1, 2000, a teacher shall have the authority to remove from his or her class a student who repeatedly or substantially interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn, where the student's behavior is in violation of the student code

of conduct, provided that the teacher has previously filed a report pursuant to Code Section 20-2-737 or determines that such behavior of the student poses an immediate threat to the safety of the student's classmates or the teacher. The teacher shall file with the principal or the principal's designee a report describing the student's behavior, in one page or less, by the end of the school day on which such removal occurs or at the beginning of the next school day. The principal or the principal's designee shall, within one school day after the student's removal from class, send to the student's parents or guardians written notification that the student was removed from class, a copy of the report filed by the teacher, and information regarding how the student's parents or guardians may contact the principal or the principal's designee.

If a student is removed from class, they will be given written or oral notice of the grounds for his or her removal. The student will have the opportunity to give an explanation. If the principal seeks to allow the student back into the class and the teacher does not consent, an appropriate, temporary placement will be made which provides the least interruption to the student's education. Steps will then be taken to convene a meeting of a placement review committee by the end of the second day following the removal of the student. A decision will be given by the end of the third day regarding the placement of the student (O.C.G.A. 20-2-734).

The placement review committee will consist of two teachers, chosen by the faculty, with one teacher as an alternate member, and one member of the professional staff,

chosen by the principal. The members of the committee will be provided training by the local board of education regarding the provisions of the law, procedural requirements, local board policies, and the student code of conduct (O.C.G.A. 20-2-734).

The placement review committee may return the student to the class or refer the student to the principal for further action. If the placement committee determines the student should be returned to the class, the principal shall follow through with their decision. Additional disciplinary actions may take place at that time, depending on any violations of the rules or code of conduct by the student (O.C.G.A. 20-2-734).

Search and Seizure

In *New Jersey v. T.L.O.* (1985), the U.S. Supreme Court held that the Fourth Amendment does not require school officials to show probable cause or obtain a warrant to search a student under their authority. Two things must be considered to ensure that the search is constitutional. First, there must be reasonable grounds for suspecting the search will turn up evidence that a law or rules of the school have been violated at the inception of searching the student. Second, the scope of the search must be reasonable in its relation to the objectives of the search, the age and sex of the student, and the nature of the infraction (Zirkel et al., 1995).

Courts recognize that student lockers and vehicles on campus should not contain anything illegal or hazardous. Reasonable suspicion, however, must be present before a search is conducted. The U.S. Supreme Court, in *T.L.O.* (1985), ruled that students in a school environment have a lesser expectation of privacy than the general population (LaMorte, 2002).

Regarding searches with trained dogs, it is permissible for search dogs to be used with lockers or vehicles. Trained dogs, however, cannot sniff individual students, unless there are reasonable grounds to suspect that particular student (Fischer et al., 1999). When considering or conducting search and seizure educators must be certain to follow the requirements of the Fourth Amendment (Hudgins & Vacca, 1995).

Student Records

Due to abuses in the use of student records, Congress passed FERPA in 1974. There are five important features of FERPA that educators need to know. First, school districts must inform parents each year of their rights under the act. Second, parents are guaranteed the right to inspect and review the educational records of their children. Third, procedures are established for parents to challenge the accuracy of student records. Fourth, the confidentiality of student records is protected by preventing disclosure to outsiders without parental consent. Fifth, parents are entitled to file complaints with the U.S. Department of Education when there are alleged failures to comply with the act (Fischer et al, 1999).

According to FERPA, parents have the right to be informed about the location and kinds of records maintained by the school and the officials responsible for the records. They are also entitled to receive and interpretation or explanation of the records if they request it. If a request is made, it must be complied with within a reasonable time, but no more than 45 days after the request. Even if a parent is a noncustodial parent, they have these rights unless prohibited by a court order. Although schools must allow parental access to student records, they may deny a request for a copy of the records if there is a legitimate reason (Fischer et al., 1999).

Parents do not have the right to see personal notes of teachers and administrators as long as the notes are in the sole possession of the educator and not shared with others. They also do not have the right to see records of a law enforcement unit of the school if the information is solely maintained for police purposes or job-related records of students who are employed by the school (Fischer et al., 1999).

In order for information to be disclosed to outsiders, the school must have the written consent of the parent. It must be signed, dated, include the specific records to be released, state the purpose, and state the individual or group to whom the disclosure may be made. Schools must keep a record of all requests and the legitimate reason for the request (Fischer et al., 1999).

Identifiable individual student information must be kept confidential. This is addressed in Section 20-14-40 (2001) of the O.C.G.A. It states:

All identifiable individual student performance data and information and reports received by the office, the Department of Education, and the State Board of Education under this part from schools or school systems shall be deemed confidential and may not be disclosed.

Although some information regarding students may be disclosed, certain guidelines must be followed. The school district must publish information yearly regarding directory information that may be released regarding students. Schools must honor the objection of parents if they do not want directory information regarding their child to be released (Essex, 2002).

Educators must be aware that access to student records applies to the cumulative file and all other student records. It is also important to remember that noncustodial

parent have a right to view the student files unless there is a court order prohibiting such action (Fischer et al., 1999). Concerning confidentiality, there are exceptions of privileged access and uses of student records for individuals that have a recognized interest in the records. This applies to school board members, teachers, medical professionals, and law enforcement professionals (Valente & Valente, 2001). Although FERPA requires additional administrative responsibilities of the schools, it also has led to an improved quality and accuracy of student records (Fischer et al., 1999).

CHAPTER 4
SUMMARY OF LEGAL PRINCIPLES, IMPLICATIONS FOR FURTHER STUDY,
AND RECOMMENDATIONS

The purpose of this study has been to identify, examine, and analyze legislative and judicial decisions that directly relate to the legal rights and responsibilities of Georgia public school educators. The study identified and discussed important constitutional law, statutory law, and judicial interpretations that directly relate to Georgia educators. The following legal principles define the selected legal rights and responsibilities of Georgia public school educators.

Summary of Legal Principles

Education of Students with Disabilities

Concerning the education of students with disabilities, this study found that:

1. The Individual with Disabilities Act of 1997 (IDEA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) serve as the primary legislation which provides children with substantive and procedural rights and ensure that children with disabilities receive a free appropriate public education (FAPE).
2. The 1997 IDEA requires that special education and related services be provided to meet each individual's needs. It requires that educators know who is eligible, how to identify and evaluate students, what are substantive educational rights, how to implement an individualized education program (IEP), how to

appropriately educate and place students, what are procedural protections, how to lawfully discipline students with disabilities, what are the transition services that are provided, the role of graduation and competency exams, and the issue of cost.

3. In order to be eligible for the IDEA, a student must have a disability and, due to their disability, they must require special education and related services. It is the duty of the state to identify children with disabilities. Although some children are identified through hearing tests, vision tests, or other mass screenings, educators may refer a child suspected of needing services for an evaluation, but the school must obtain parental consent. If the parents refuse, the school must still provide a FAPE, and due process proceedings may be used to obtain permission for an evaluation from a hearing officer.
4. The IDEA also ensures that the parents will receive notification, which describes the evaluation process that will be used with the child. A team of qualified professionals and the child's parent determines the child's eligibility. Parents receive copies of the evaluation report and documentation of eligibility determination. At the request of the parent or teacher, or if conditions warrant it, local educational agencies must reevaluate the student. It is also required that each disabled student be reevaluated at least every three years. The child's IEP is reviewed and additional data is gathered. It is determined whether the child has a disability, the educational needs of the child, the present performance of the child, whether special education or related services are required, and whether additions or modifications to the existing program need to be made in order to help the child meet the goals according to the IEP.

5. According to the United States Supreme Court, an *appropriate* education as required by the IDEA is meant to provide an opportunity for the child to achieve passing grades and advance to the next grade. The IEP and the requirements for an appropriate education are meant to complement each other. In determining appropriate placement, the student should be placed in the least restrictive environment (LRE), which prefers the regular classroom and education with nonhandicapped students whenever possible. This environment should take into consideration the academic, social, and physical needs of the student.
6. In disciplining students with disabilities, there is a *stay put* provision imposed by the IDEA which requests that the child remain in the current placement unless the school can establish before a magistrate that the student poses a serious threat to safety or engages in other types of serious misconduct. An important consideration when disciplining a student with a disability is whether the behavior is a manifestation of the disability. If the behavior is determined to be a manifestation of the student's disability, the student generally cannot be punished for that behavior. Determining manifestation is only required if the student receives a disciplinary change of placement which involves being removed for more than 10 consecutive days or from a series of removals that constitutes a pattern of removal.
7. The placement of the child may be reviewed and changed, and the school still has the option of suspending the child for 10 school days or less. If the behavior is not a manifestation of the student's disability, they may be disciplined in the manner that other students are disciplined.

8. The IDEA was amended in 1990 to require the provision of transition services for children with disabilities. This was done since some special education students have difficulties transitioning from school to work, to independent living, or to further education. The student's needs, preferences, and interests should be taken into consideration when determining appropriate transition services.
9. A child with a disability is eligible for graduation after completing an appropriate IEP. It may be required that students with disabilities pass competency exams in order to obtain their high school diploma. Although it is possible that some students, due to their disabilities, may not be able to pass the exams, it may still be required as long as the students were given notice of what was generally contained in the exam and they had the opportunity to learn the academic content.
10. The courts have held that it is the responsibility of the public schools to provide appropriate education even when the cost is great. This includes providing services such as testing, guidance, and other special education and related services. The services provided do not have to be the best available services; however, the services must be appropriate.
11. Section 504 of the Rehabilitation Act of 1973 was a comprehensive civil rights legislation that protected individuals with disabilities. Since it applies to entities that receive federal funds, the majority of public schools are included. Section 504 has a broader definition of a disability; therefore, many individuals are eligible for services under Section 504 that are not eligible under the IDEA.
12. Qualified individuals with disabilities cannot be discriminated against or excluded solely because of their disability. When possible, reasonable accommodations

must be made. Students with HIV or AIDS are protected from discrimination under Section 504 and the courts have favored their inclusion in the mainstream public school.

13. Due process procedural safeguards are provided to students under Section 504. These safeguards include a written notice to parents, an opportunity for parents or guardians to examine relevant records of the student, an impartial hearing with all involved parties, and a procedure for review. Unlike the IDEA, however, parental consent is not required for an initial evaluation or for the accommodation plan.
14. Although the Americans with Disabilities Act of 1990 (ADA) does not specifically address educational policy issues, there are some aspects which impact schools. The act excludes a person who is using drugs or who is disabled solely because of a drug or alcohol dependency as an *individual with a disability*. The ADA also requires that the schools make public accommodations for those wanting to attend school functions and that these accommodations be barrier-free for individuals with disabilities.

Terms and Conditions of Teacher Employment in Georgia

Concerning the terms and conditions of teacher employment in Georgia, this study found that:

1. In Georgia, teachers and administrators must be certified by the state. The governing agency for certification is the Professional Standards Commission. Renewal of certification requires 10 hours of college credit or staff development course work, a qualifying score on appropriate assessments when required, and demonstration of satisfactory proficiency through a PSC-approved test of

computer skill competency or completing a PSC-approved training/course equivalent by June 30, 2006.

2. Contracts for certified professional personnel in Georgia, including principals and teachers, must be in writing and signed in duplicate by the professional personnel and by the executive officer of the local unit of administration on behalf of the governing board. New contracts for the ensuing year must be tendered by April 15 of the current school year. There can be no discrimination on the basis of sex, race, religion, or national origin. Equal protection and due process for individuals are covered under the Fourteenth Amendment and through several federal statutes.
3. The Georgia Fair Dismissal Law protects board employees from unfair treatment regarding termination of their contract, nonrenewal of their contract, suspension, demotion, and letters of reprimand. Tenured teachers and non-tenured teachers under contract are covered. Due process requirements protect the rights of the employee. This includes the right to a hearing before the board of education or a tribunal of three to five members; notice of hearing; and knowledge of the cause for the hearing, list of expected witnesses, and a summary of the evidence.
4. The Official Code of Georgia gives eight grounds for dismissal. They include:
 - a. Incompetence
 - b. Insubordination
 - c. Immorality
 - d. inciting or encouraging a student to break a federal or state law or a school board policy

- e. willful neglect of duties
 - f. a reduction in force
 - g. failure to maintain certification
 - h. any other good and sufficient cause.
5. The Professional Standards Commission adopted the Code of Ethics in 1999. This code defines the professional behavior of educators; acts as a guide to ethical conduct; protects the safety, health, and welfare of all individuals; and provides accountability. The Code of Ethics interacts with the Georgia Fair Dismissal Law in providing standards that can be used for dismissal from a position. The standards are binding for all educators and it is important for all personnel to be aware of each standard.
6. The Georgia A Plus Educational Reform Act of 2000 made changes that directly affect educators. The Act requires universities and colleges that have teacher preparation programs to require students to be proficient in computer skills and other applications related to instructional technology. An additional requirement for all personnel certified through the Professional Standards Commission is the completion of 12 clock hours of in-service or continuing education each calendar year through the local unit of administration. An additional provision of the act is a system of accountability for all educators.

Tort Liability

Concerning tort liability, this study found that:

1. Tort law provides for compensation for injuries or harm sustained in school. The most common tort educators are involved with is negligence, which is a failure to

act or protect others from unreasonable risks of harm. Negligence can only be established if the individual has the duty to protect another, the individual breaches the duty by failing to exercise an appropriate standard of care, there is a causal connection between the resulting injury and the negligent conduct, and there is an actual loss resulting in the physical or mental injury.

2. Intentional torts are not as common as negligence. They include assault, battery, defamation, libel and slander, mental distress, false imprisonment, and trespassing on personal property. Strict liability is the least often tort found in education. It involves an injury resulting from creating an unusual hazard, such as the storage of explosive materials.
3. Sovereign immunity exists for educators and is not waived when boards of education purchase liability insurance. Courts have held that school systems and employees are immune from suit when they are performing their duties and have not demonstrated neglect. Employees, however, may be held liable for depriving a person of their rights, privileges, or immunities which are secured by the Constitution and laws.

Responsibilities Regarding Students

Concerning responsibilities regarding students, this study found that:

1. The First Amendment and the Equal Protection Clause of the Fourteenth Amendment do not allow for the suppression or restriction of free speech based solely on the content or viewpoint. Students cannot be disciplined for peaceful symbolic expressions unless it materially interferes with, or disrupts the school's

educational process. In addition, students are not required to participate in the Pledge of Allegiance to the American flag.

2. Student rights regarding discipline must also be considered. The discipline associated with unacceptable student conduct must be reasonable. Individual rights may not be violated and due process must be provided. In Georgia, teachers have been given additional means to handle excessive or repeated discipline problems. When necessary, students who are disruptive and interfere with the teaching and learning in the classroom may be removed from the class. Specific guidelines are given in the Georgia A Plus Educational Reform Act of 2000.
3. Search and seizure is an additional concern related to student rights. In order to ensure that a search is constitutional, there must be reasonable grounds for suspecting the search will turn up evidence that a law or rules of the school have been violated and the scope of the search must be reasonable in its relation to the objectives of the search, the age and sex of the student, and the nature of the infraction. In all searches, requirements of the Fourth Amendment must be followed.
4. Student records are also protected under the Family Educational Rights and Privacy Act (FERPA). School districts must inform parents each year of their rights under this act. The parents are guaranteed the right to inspect and review the educational records of their children and procedures are established to allow parents to challenge the accuracy of the records. Parental consent is required when disclosing information related to student records to outsiders. If there are

alleged failures to comply with the act, parents are entitled to file complaints with the U.S. Department of Education.

Implications for Further Study

As a result of this study, further study is warranted as follows:

1. studies related to the legal rights and responsibilities of Georgia public school educators not addressed in this study;
2. similar studies such as this be conducted in other states.

Recommendations

As a result of this study, the following is recommended:

1. that education concerning the selected legal rights and responsibilities of Georgia public school educators be made a part of the undergraduate requirements for colleges and universities with teacher preparation programs;
2. that local boards of education provide inservice for all employees regarding their legal rights and responsibilities as public school employees;
3. that a system be set up to update public school employees regarding changes in the law pertaining to their rights and responsibilities as public school educators.

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