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Office Hours: Thursdays 11:30 a.m.-1:30 p.m.  
and by appointment

## **Education Law Spring 2016**

### **Overview and Learning Objectives**

This course engages some of the most important legal issues shaping the American public educational system today. Many readings come from a textbook titled “Educational Policy and the Law”; the approach this textbook takes, and the approach we will take as well, is to examine the relationship between law and education policy. Does the law constrain various policy options? Does the law open up creative policy approaches? A nuanced understanding of the legal regulation of K-12 schools allows lawyers to better advise their school district clients, and allows policymakers and scholars to better frame research questions and propose new policy approaches. This semester we will engage issues at the federal level and also in our own state.

Throughout the course, students will hone their ability to parse and analyze legal doctrine to ascertain what is (and is not) binding precedent; assess how precedent impacts clients’ legal and non-legal goals and constraints; construct solutions for school districts that minimize legal exposure while also maximizing clients’ institutional purpose and aspirations; and evaluate strategies for students that use law as a means to minimize existing disparities. The semester will culminate in a one-day conference about education law in Detroit, which the class will organize and host. The major written assignment will engage an education law reform topic that is connected to what we have covered at some point during the semester.

All students are expected to be on time to class, to engage not only the legal issues (cases and statutes) but also the social context, and to contribute positively to their own and their classmates’ learning experiences.

### **Materials**

We will use the fifth edition of *Educational Policy and the Law* by Mark Yudof, Betsy Levin, Rachel Moran, James Ryan, and me. The fifth edition is significantly different than the fourth edition; do *not* purchase the fourth edition. If the reading assignment from

the textbook includes notes and comments, read and think about those materials as well as the judicial decision excerpts.

Recognizing that the textbook is expensive, that the class will use substantial outside materials, and this is a two-credit class, I have put two copies of the fifth edition on reserve in the law library. You may wish to purchase your own copy of the book to keep if you hope to practice or continue research in this area. I donate any profits I make as a result of students in this class purchasing this book to an MSU-Law student scholarship fund.

### **Requirements and Grading**

The requirements for all students are as follows:

- Paper topic due 2/9, 9 a.m.
- Two-page (double spaced) outline of final paper due 3/1, 9 a.m.
- Draft of final paper due 4/12, 9 a.m.
  - This is mandatory for JD students fulfilling their ULWR through the course. JD students not fulfilling their ULWR and Ed Policy students may choose whether or not to submit a draft.
- Final paper due 5/12, 9 a.m. (75% of grade)
  - JD students not fulfilling their ULWR and Ed Policy students should submit papers with a 3,500-4,000 word count.
  - JD students who are fulfilling their ULWR should submit papers with a 5,500-6,000 word count.
  - For ULWR purposes, the graded written assignments (final paper and TWEN postings) must total 7000 words, and not exceed 7500 words. The portfolio should include this calculation.
- Five 250-300 word TWEN postings throughout the semester, submitted by 9 a.m. the day of class, see below (10% of the grade)
- Class participation, including conference organizing and participation (15% of grade)
- The final paper and TWEN postings will be submitted as a portfolio (in one document) on 5/12 by 9 a.m.

### TWEN postings

Each TWEN posting should add something to the readings for that day, whether a connection to contemporary events, an analysis of or personal perspective on the cases, or a connection between that day's readings and previous readings. Think of these as op-ed pieces in a newspaper. Do not summarize the readings or merely agree with one judge's or justice's opinion in a case.

- Each posting should be between 250-300 words and must be posted by 9 a.m. the day of class.

- The posting must be about that day's reading assignment.
- You may choose which six assignments you will post about, but will not receive credit for posting more than once for the same day's assignment.

Extensions will not be granted on any of these deadlines absent extraordinary circumstances.

All written assignments must be submitted via the class TWEN page. The paper portion of the grade will be composed primarily of the final paper grade. The only exception to this is that failure to submit any of the required paper-related assignments (topic, outline, etc.) in a timely fashion, or failure to comply with the expectations set forth above, will result in a deduction on the paper grade.

A student who misses more than two classes for any reason may have his or her final grade reduced. A student who posts or submits plagiarized material or who violates the law college's academic integrity policies will fail the class and appropriate disciplinary action will be initiated.

#### Expectations for Specific Assignments

A paper topic proposal should:

- In one paragraph, summarize the issue you intend to engage and the argument you hope to make. A term paper should make an argument or provide a novel descriptive perspective; if the latter, the paper should explain the significance of that newly-articulated view.

The outline for a paper should:

- Be in traditional outline format (using I.A.1.a., etc., headings; using phrases or short sentences; not using full paragraphs of prose).
- Indicate the approximate page length of each section and sub-section.
- Include a variety of sources in the bibliography. The number of any type of sources will vary depending on the topic.

The rough draft of a paper should:

- Be at least 10-12 pages of double-spaced text.
- Demonstrate progress towards satisfying the expectations of the final draft.

The final draft of a paper should:

- Include a cover page with the author's name and paper title.
- Include a word count at the end of the document.
- Cite to primary legal sources as relevant (judicial decisions, state or federal constitutions, state or federal statutes) and fully engage academic literature on the topic in law journals as well as education and public policy journals

### **Emergency Procedures**

In the event of an emergency arising within the classroom, I will notify you of what actions may be required to ensure your safety. It is the responsibility of each student to understand the evacuation, “shelter-in-place,” and “secure-in-place” guidelines posted in each facility and to act in a safe manner. You are allowed to maintain cellular devices in a silent mode during this course, in order to receive emergency SMS text, phone or email messages distributed by the university. When anyone receives such a notification or observes an emergency situation, he or she should immediately bring it to my attention in a way that causes the least disruption. If an evacuation is ordered, please ensure that you do it in a safe manner and facilitate those around you who may not otherwise be able to safely leave. Also, if a shelter-in-place or secure-in-place is ordered, please seek areas of refuge that are safe depending on the emergency encountered and provide assistance if it is advisable to do so. [This language is slightly modified from the suggested procedures provided by the MSU Police.]

### **Reading assignments and discussion questions**

- 1/12 Class 1: Schooling and the State, Part I: Yudof pp. 1-34; Michigan/Detroit education sources of your choice
- Who are the different parties who have an interest in public education and what is the interest each one has?
  - Are there any parties with significant interests who do not appear in our readings from today?
  - What have we learned about education in Michigan & Detroit? What else do we want to know?
- 1/19 Class 2: Schooling and the State, Part II: Yudof 885-892, 923-925, 935-941; Bowman *State Takeovers of School Districts* (posted on TWEN); read current media coverage of the reform plan re. Detroit, sources of your choice
- How have the roles of the federal, state, and local government in education changed over time? What motivated these changes? What do you think the roles should be?
  - State law has changed somewhat since 2013, but the emergency manager structure remains in place. What are advantages and disadvantages of this approach? What should the law require/ permit/ forbid in situations where districts are in fiscal crisis?
  - What are the various options on the table for the future governance structure of the Detroit Public Schools?

- 1/20 Class 3: Detroit Public Schools: Finances, Accountability, and Governance (this is a Wednesday)
- This is a forum hosted by the MSU Institute for Public Policy and Social Research (IPPSR); it takes place on Wednesday, January 20, from 11:30 a.m. – 1:30 p.m. in the Anderson House Office Building in Lansing. There is no charge for admission.
  - You may either attend the live forum or view the recording that will be posted on the IPPSR website.
- 1/26 Class 4: Education Rights and School Finance in Michigan, Part I; Yudof pp. 957-964; excerpt from Bowman *A Mere Access Right* (posted on TWEN); *Governor I*, 203 N.W.2d 457 (1972); *Governor II*, 212 N.W.2d 711 (1973)
- *We will begin our conference planning in earnest during this class session; it will continue throughout the semester.*
  - What are advantages and disadvantages of judicial reform of government institutions versus legislative reform?
  - How do we fund K-12 schools in Michigan? How should we fund them?
  - What contributes to school districts' fiscal health, or lack thereof?
  - Which judicial opinions do you find most convincing re. the contours of the right to education in Michigan's constitution? If you choose minority opinions, what would be different if those were the majority opinions? If you choose majority opinions, how do you defend the practical results of those outcomes?
- 2/2 Class 5: Education Rights and School Finance in Michigan, Part II; Arsen et al, *Which Districts Get Into Trouble and Why*, available at: <http://education.msu.edu/epc/library/papers/Arsen-Which-districts-get-into-financial-trouble-and-why.asp> ; other materials to be determined
- To revisit a question from last week, what contributes to school districts' fiscal health, or lack thereof?
  - How should this education policy research inform statutory reform? How should it interface with institutional reform litigation in Michigan?
  - What are advantages and disadvantages of judicial reform of government institutions versus legislative reform?
- 2/9 No class (accounted for via the 4/22 conference)
- 2/9 Paper topics due
- 2/16 Class 6: Education Rights and School Finance, The Federal Context and National Perspective; Yudof pp. 799-832
- In what ways do Supreme Court opinions limit courts' jurisdiction over educational reform?

- Why is it in the government's interest to pay for individuals' education? What would happen if the government's financial support decreased or vanished entirely?
- How might things be different if *Rodriguez* had come out the other way?
- How should K-12 schools be funded?

- 2/23 Class 7: Foundational school desegregation cases and statutes, Yudof pp. 407-420, & Racial equality today, Yudof pp. 444-449, 498-511, 663-667, 699-701
- What is the harm the Court is most concerned with in *Brown*?
  - Does *Brown* take a color-blind approach, a color-conscious approach, or both? Cite specific language from the case.
  - What was the social and legal significance of the portions of the Civil Rights Act related to school desegregation litigation?
  - Orfield's use of the term "segregation" is standard for social scientists. What does he mean by "segregation" and does/how does his meaning differ from the term as used in a legal context?
  - What is the significance of existing achievement gaps?
  - In what ways does/has law perpetuate(d) the gaps, and in what ways does/has it help(ed) to shrink them?
- 3/1 Outlines due
- 3/1 Class 8: Class 9: Constitutional standards in school desegregation, pp. 420-446
- What is the difference between school desegregation and school integration? What does the law require regarding each?
  - Focusing on *Brown* and the cases from today's reading, how would you describe the arc of school desegregation jurisprudence?
  - Why might school districts under court supervision seek unitary status? Why might they try to prolong court supervision?
- 3/8 NO CLASS—SPRING BREAK
- 3/15 Michigan's *Milliken* Case; skim *Milliken v. Bradley*, 418 U.S. 717 (1974); read Jones, *Judicial Betrayal* (posted on TWEN); read either Baugh, *School Desegregation in Metropolitan Detroit* (posted on TWEN), or Clotfelter, *Prospects for Racial Diversity* (posted on TWEN)
- How has the Supreme Court's decision in *Milliken* played out in a practical sense in Michigan and other places?
  - To what extent are the Michigan Supreme Court's views on the role of the state in the *Governor I* and *Governor II* cases consistent with the Supreme Court's views on the role of the state in *Milliken*?

- 3/22 Class 10: The Diversity Debate, Yudof pp. 455, 467-498; Socio-economic integration
- Once again there is not a clear majority; what tests/ principles can you find five votes for in *Parents Involved*?
  - SES (socioeconomic status) integration enjoys greater public support in the US than racial/ethnic (color-conscious) integration. Why is this?
  - Compared to racial/ethnic integration, are SES integration policies easier or more difficult to defend in court?
  - In what ways does this connect to the *Milliken* decision, and to Michigan?
- 3/29 Class 11: Synthesis, reading to be determined
- 4/5 No class (accounted for via the 4/22 conference)
- 4/12 Rough drafts due (required for JD students completing their ULWR, optional for all other students)
- 4/12 Class 12—Part 1: Prepare for Conference
- We will only meet for half of the class session. There is no assigned reading.
- 4/19 Class 12—Part 2: Prepare for Conference
- We will only meet for half of the class session. There is no assigned reading.
- 4/22 Class 13 & 14: DAY-LONG CONFERENCE at MSU-Law (this is a Friday)
- 5/12 5 p.m. Portfolio due, including final paper