Course 14: Educational Law
COURSE DESCRIPTION:

Professional-technical instructors function in a complex environment, one influenced not only by instructional variables, but also by social, economic, political, and legal ones. This module of instruction helps the professional-technical instructor understand how law affects the school environment. The course has a strong emphasis on applying legal concepts to situations typically found in secondary and postsecondary settings. The instructor-learner will learn how legal principles from local, state and federal sources should guide professional practice.

LEARNING OUTCOMES: The instructor-learner will:

- Identify and apply principles of school law (local, state and federal) to specific educational contexts.
- Identify and apply the Revised Code of Washington and Washington Administrative Code to specific educational contexts.
- Analyze his/her own educational situation and establish a plan to ensure he/she engages in practices consistent with local, state and federal law.

OUTCOMES ASSESSMENTS:

- Ask and answer whether there are legal implications whenever confronting important decisions specific to educational contexts and decide what course of action to take when dealing with issues having legal implications.
- Conduct research relative to facts and legal issues.
- Analyze cases and case studies as they apply to rules of law in specific educational situations and critique analyses by other individuals and groups.
- Present an analysis of his/her own work setting relative to legal educational issues.

PERFORMANCE INDICATORS:

- Key facts of a case are accurately identified and summarized.
- Legal precedents and citations are correctly identified as applicable to a given set of facts.
- The selected rule of law is applied appropriately and persuasively to a specific case.
- Decisions are effectively defended using a combination of facts, legal citations, and argumentation.
- Critiques of the decisions of others are made using a combination of facts, legal citations, and argumentation.
**KNOWLEDGE AND SKILLS:** The instructor-learner will:

- Research facts and legal precedent/citations.
- Perform various roles in group analysis and reporting process, e.g., researcher, recorder, facilitator, spokesperson.
- Ask probing questions in small and whole-group settings.
- Analyze his/her own work setting relative to legal issues.
- Write a defensible analysis in response to case studies.
- Deliver a formal presentation that incorporates an analysis of legal issues.
- Use legal terminology appropriately.
- Share anecdotal information with others.

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<th>Essential Content</th>
<th>Discussion Topics and Key Points</th>
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<td>• Constitutional law, both state and federal.</td>
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<td>• Statutory law, both state and federal.</td>
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<td>• Administrative law, e.g. Washington Administrative Code.</td>
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<td>• Case law and vital role of precedent</td>
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<td>Public Education Agencies: Programs and Services</td>
<td>• Admission and attendance requirements.</td>
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<td>• Course of study and learning materials, including selection and use.</td>
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<td>• Student services: what's required and what isn't?</td>
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<td>Education and Religion</td>
<td>• First Amendment protection: “establishment” clause and “free exercise” clause.</td>
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<td>• Types of conflicts: curriculum challenges, prayer, bible study.</td>
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<td>• Services to private, sectarian schools.</td>
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<td>General Principles of Torts of and Liability</td>
<td>• Duty of care and “reasonable person standard,” including variables such as relationship, age of parties, degree of danger and necessity of risk.</td>
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<td>• Proximate causation must be shown.</td>
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<td>• General defenses that would prevent or diminish the award of damages: privileged conduct, victim fault, waiver of claims, lack of authority.</td>
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<td>Torts in School Settings</td>
<td>• Corporal punishment is prohibited in Washington State.</td>
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<td>• Premises liability requires adherence to safety standards.</td>
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<td>• Supervision liability: negligent supervision most common.</td>
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<td>• Defamation: elements of proof are: statement of fact is untrue, known to be untrue by communicator, communicated to third party, results in injury to wrongly characterized person.</td>
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<td>Employees’ Rights and Obligations</td>
<td>• Certification requirements.</td>
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<td>• Tenure; continuing contracts.</td>
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<td>• Collective bargaining.</td>
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<td>• Dispute resolution.</td>
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<td>• Progressive discipline, adverse effect, suspension, termination, reduction in force.</td>
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<td></td>
<td>• Discrimination prohibited: gender, ethnicity, age, disability; Americans with Disabilities Act (ADA) and Section 504 require reasonable accommodations.</td>
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<td>• Must respect intellectual property through obedience to copyright laws and fair use doctrines.</td>
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<td>Personal Civil Rights of Teachers</td>
<td>• Procedural rights include due process and is similar to that enjoyed by all citizens, but with some special rules.</td>
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<td>• Substantive rights include freedom of expression (academic freedom) and privacy.</td>
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### Essential Content

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<td><strong>Student Rights and Discipline</strong></td>
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<td>• Procedural rights include due process and is similar to that enjoyed by all citizens, but with some special rules.</td>
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<td>• Substantive rights include security, safety, freedom of expression, privacy.</td>
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<tr>
<td>• Occupational Safety and Health Administration guidelines define safe practices around machinery and equipment.</td>
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<td>• Family Educational Rights and Privacy Act (FERPA) protects privacy of and access to students records.</td>
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<td>• Special rights for students with disabilities through ADA and 504.</td>
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<td><strong>Copyright Laws for Educational Use</strong></td>
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<td>• “Fair use” policies.</td>
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<td>• Requests for permission prior to publishing.</td>
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<td>• Contacting publishers of the work you wish to copy.</td>
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<td>(See attached support materials.)</td>
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<td><strong>Remedies for Discrimination</strong></td>
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<td>• Ethnic: segregation and affirmative action, testing an placement, limited English proficiency.</td>
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<td>• Gender: segregated schools, abuse and harassment, discrimination prohibited.</td>
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<td>• Alien children and employees: children have right to an education; adults don’t necessarily have right to employment in educational institutions.</td>
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<td>• Income: protection only against overt discrimination.</td>
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<td>• Enforcement provided through Office of Civil Rights (OCR).</td>
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### Learning Activities:
- Discuss legal issues in small groups and with entire class. Participate in small and large group discussions, performing assigned roles, e.g., facilitator, recorder, spokesperson, timekeeper.
- Conduct research in periodicals to find examples of school law applications.
- Analyze actual and hypothetical case studies:
  - Orally within small groups.
  - Orally in total class setting.
  - In writing, according to assignment guidelines.
- Research and write an analysis of a specific legal issue or situation in learner’s specific educational setting. Present findings orally to class.

### Support Material:
- Case Study Analysis work sheet
- Case studies illustrating issues of teacher liability (#1- #4)
- Code of Professional Conduct for Education Practitioners: a collection of administrative rules pertaining to professional conduct. Prepared by Washington Education Association
- Letter from former US Secretary of Education Richard Riley regarding religious expression in public schools
- Copyright Issues for the Electronic Age, ERIC Digest
- Copyright Law Resources, including websites
- Copyright Questions Most Often Asked on Campus
- Questions and Answers on Copyright for the Campus Community, Include Software and Internet Issues
- OSHA’s “Top 25 Hit List” of safety infractions in the workplace
- FERPA (Overview from US. Department of Education)
- Overview of ADA, IDEA and Section 504, ERIC Digest
- Questions/Answers on Disability Discrimination under Section 504 and Title II
WEBSITES
Access to updated Washington statutes (RCWs) and administrative regulations (WACs): http://slc.leg.wa.gov/
Education Week website, a source of current events relating to school law: http://www.edweek.org
Legal rights and responsibilities of certificated school employees: http://www.wa.nea.org/publicat/legal/Certlrr2.htm
Student rights: http://www.aclu-wa.org/issues/students/Rights.of.Students.9.00.html
Rights of students as reported by the Office for Civil Rights: http://www.ed.gov/offices/OCR/know.html
Guidelines for reporting child abuse: http://www.oz.net/vr/charity/cps/cps.htm
Remedies for discrimination, the ADA “home page:” http://www.usdoj.gov/crt/ada/adahoml.htm
Technical assistance site for ADA: http://www.adata.org/

PRIMARY TEXT

ADDITIONAL RESOURCES
Ethics is for Everyone! An Introduction to the State’s Ethics Law. Free from Washington State Ethics Board (360) 586-3265

GLOSSARY OF SCHOOL LAW TERMS:
Affidavit: a written statement that is sworn in the presence of an authorized official to be true; used as legal evidence.
Americans with Disabilities Act (ADA): federal law protecting the rights of employees of all government agencies, including educational institutions.
Brief: concise, written document regarding a legal issue; usually presented by an attorney in court.
Cause of Action: legal grounds for initiating a legal action seeking a remedy, e.g. a lawsuit.
Caveat: a warning to take care or be careful.
Conflict of Interest: a conflict between two roles or interests of the same individual, which might cause others to question the objectivity of the individual's judgment.
Continuing Contract: term used to describe the full due process protection enjoyed by eligible certificated educational employees in Washington State.
Defamation of Character (Libel/Slander): the act of causing injury to the good name of another person. Libel is in written form; slander via speaking.
Deposition: a record of written testimony that is given under oath when such testimony is not given in a court or trial.
Dicta: portions of judicial opinions not essential to the decision itself and, therefore, not legally binding as precedent.
Disability: a mental or physical impairment substantially limiting a major life activity.
Due Process: (see Procedural Rights)
Duty of Care: that duty which a reasonable person, using ordinary prudence, would exercise to protect the safety of others.
Establishment Clause: the portion of the First Amendment to the US Constitution that prohibits any government agency from showing favoritism toward any religion.

Family Educational Rights and Privacy Act (FERPA): federal law that governs access to records of students in any educational agency receiving federal funds.

Free Appropriate Public Education (FAPE): from disability law, a term used to describe what accommodations must be provided to meet legal requirements of ADA, IDEA or Section 504.

Establishment Clause: the portion of the First Amendment to the US Constitution that prohibits any government agency from discriminating against or showing hostility toward any religion.

Holding: a court's decision based on the facts presented.

Individuals with Disabilities Education Act (IDEA): a federal law that confers a complex set of rights to children with disabilities, age 3-21. IDEA is the law governing what most refer to as “special education.”

Judgment: the final decision in a legal proceeding.

Jurisdiction: the legal authority to render judgment in specific types of disputes.

Mitigation of Damages: duty of an injured party to take action minimizing the damage caused by another party.

Motion: request for a court ruling.

Office for Civil Rights (OCR): the federal government agency responsible for enforcing laws and regulations pertaining to disabilities.

Occupational Safety and Health Administration (OSHA): federal agency responsible for enforcing rules promoting safe working conditions. In Washington State, WISHA.

Plaintiff: party who brings a civil action or lawsuit.

Prima Facie: a case with sufficient evidence to require rebuttal by argument or evidence.

Prior Restraint: prohibition of particular types of speech in advance.

Probable Cause: reasonable cause to believe that a particular action took place.

Procedural Rights (Due Process): right to be free from certain criminal or civil consequences unless legally defined procedures take place.

Proximate Cause: an action that results in injury to a party; there would have been no harm if not for that action.

Public Employee Relations Commission (PERC): in Washington State, the agency which enforces rules and regulations governing employee relations in government agencies, including schools.

Reduction in Force (RIF): dismissal of employees due to financial shortfall of the employer.


Section 504: part of the Rehabilitation Act of 1973, it prohibits discrimination because of disability in the education of students.

Standard of Care: criteria used to determine if necessary care has been taken to protect the safety of those on a premises.

Stare Decisis: doctrine of past precedent or deciding cases based on previous rulings in similar circumstances.

Substantive Rights: specific, clearly identifiable rights to be enjoyed, as opposed to procedural rights.

Tenure: status conferred upon a college instructor, after institutional criteria have been met, ensuring certain rights in relation to employment.

Title IX: federal law prohibiting discrimination on the basis of gender in educational settings.

Tort: a wrongful act for which an injured party can recover damages in a civil action.

Unilateral: relating to action by one party only.

Washington Administrative Code (WAC): rules and regulations governing state agencies and practices; in education, those enforced by the State Board for Community College Education and the Superintendent of Public Instruction.

Writ: official order by a court; requires specific action.
Support Materials for Course 14: Educational Law
Case Study Analysis
Submitted by Marty Hawkins. Synergy Consulting, Federal Way, WA

Summarize (in 1 or 2 sentences) the facts of the case.

What are the legal issues (in question form)? Cite the legal references, e.g., RCW or WAC.

Is there additional information you might need to evaluate the situation? What bearing would that information have on the outcome?

In your opinion, would the teacher in question be liable? Why or why not?

Is there anything the teacher could have done to reduce or remove liability?
THE CASE OF THE DECA DOPER

Ms. Sanders is a marketing education instructor in an urban area. Her students have recently completed a gift wrap sale to help finance their attendance at the Area DECA Conference. All students who attend the conference earn bonus points toward their class grade.

Friday was the last day for students to turn in the money earned by selling gift wrap and have the sales count toward their conference registration. This deadline had been explained in writing to students and several times by verbal reminders. All parents had been sent a newsletter thoroughly explaining what students must do to qualify for a share of the money earned from the gift wrap sale, including the deadline. On Friday, Melvin, a student who had worked hard to prepare for his competitive event, approached Ms. Sanders and asked if he could have an extension to turn in his money. He had left the money at home. Ms. Sanders said absolutely not; there would be no extensions of the deadline. “Meeting deadlines is a workplace skill and we run this class like a workplace,” stated the teacher.

Trying a different approach, the student asked Ms. Sanders if he could go home and get the money. Ms. Sanders said no. “But I completed today’s assignment, and I’d only be gone for a few minutes,” said Melvin. A fellow student, Jerrod, chimed in, “Yeah, he’s worked hard for this competition. I’ll drive him home.” Ms. Sanders relented, but instructed the students to first go to the office to get a pass.

The students agreed and left to run the errand. However, they failed to visit the office first, instead heading straight for the parking lot. After getting Melvin’s money from home, the students drove into a wooded area and began smoking pot. A police officer on a routine patrol discovered the pot-smoking duo. He arrested them and notified the school and the parents. The parents, upon learning the news, immediately filed a complaint against the teacher for negligent supervision and threatened to sue the teacher and the school.

What is Ms. Sanders’s liability?

THE CASE OF THE TALKATIVE TEACHER

Brad was told by the basketball coach that he “might as well not bother to turn out for the freshman squad because his medical condition posed a threat to other players.” The condition was AIDS. When Brad complained to the principal about his exclusion, the principal investigated and discovered that another teacher, Ms. Crabapple, had informed him of the condition. Apparently, Ms. Crabapple had examined Brad’s student file to find a test score and discovered a nurse’s report about the medical condition.

Brad’s parents challenged his exclusion from basketball and threatened to sue the teacher and coach.

What is Ms. Crabapple’s liability?
Case Studies Regarding Teacher Liability - #2

THE CASE OF THE LACERATED LIMB

Jeff transferred into the school two weeks ago and enrolled in a carpentry class taught by Mr. D’Amato, who was a veteran vocational teacher with 19 years of experience. Prior to entering the teaching profession, Mr. D’Amato had operated his own construction company for 9 years. Two years earlier he had been named Teacher-of-the-Year at his school.

Mr. D’Amato had eased Jeff into class activities, as he had no previous experience in carpentry. He was not allowed to operate any power equipment until authorized by the teacher. Such authorization had not yet been granted. While observing another student working on framing a wall, Jeff volunteered to saw some boards for his fellow student. As he was sawing a 2x4 with a power skill saw, he dropped the saw, and it fell on his tennis-shoe clad foot, severing the top half of two toes.

The severed appendages were successfully re-attached, but at considerable pain and expense. Jeff’s parents sued both the school district and the teacher.

What is Mr. D’Amato’s liability?

THE CASE OF THE COMPUTER CRASH

Jessica was a student in a drafting class. While she was working on a CAD project, her teacher Mr. Barnhart, left the classroom momentarily when called out by another student. During Mr. Barnhart’s absence, Jessica's mouse stopped working. Knowing that several older, surplus computers were being stored in a back room, she went searching for another mouse to try. While in the storeroom, she climbed on top of two boxed computers to reach for a box of old mouses (mice?) on the uppermost of three wall-mounted shelves.

While standing on the boxes, she lost her balance and, in an attempt to stop her fall, grabbed a monitor on the second shelf. The monitor not only failed to halt her momentum, but was also dislodged and came hurtling toward Jessica, causing her to totally lose her balance and fall backward, hitting her head on the edge of the counter.

Jessica was rushed to the emergency room and treated for a concussion. The gash required 14 stitches to close. Jessica’s guardian, a single dad, was self-employed and had no medical insurance. He wrote a letter to Mr. Barnhart, asking that she pay $1,000 in medical costs and threatening to sue for damages.

What is Mr. Barnhart’s liability?
Case Studies Regarding Teacher Liability - #3

THE CASE OF THE RISKY RIDE HOME
Peter McCoy was an FBLA advisor whose students had just returned from an overnight stay at a state conference. When the school bus arrived back at the high school at 8:30 in the evening, parents of the students streamed in to pick up their sons and daughters to drive them home. A few students, by prior arrangement, drove their own cars home. One girl, however, remained with no ride in sight. Mr. McCoy, not wanting to leave the female student alone at the school, waited for the anticipated pickup from the parents. After 30 minutes, there were no parents in sight. He used his key to open the school and allowed the student to call her parents at home. However, there was no answer.

The teacher decided to drive the girl home. As he made his way through residential streets, the student began flirting with him. When he pulled into the driveway and stopped the car, the young girl leaned over the console and put her arms around him. “I’ve always admired you so much; I just want to get close to you.” Mr. McCoy was astonished when she suddenly put her arms around him and kissed him on the lips. He immediately pushed her away and told her emphatically that she was out of line. “You can’t do this and I can’t do this,” he said. “Now get out of the car and go inside.” She uttered a profanity and bolted from the car, ran to the front door and entered her home. Mr. McCoy sat for a few moments in stunned silence and drove home.

The next morning at school, Mr. McCoy was called into the principal’s office and was told the female student had accused him of fondling her and making sexual advances in his car.

What is Mr. McCoy’s liability?

THE CASE OF THE FALLING FOODS STUDENT
Jennifer Dugan emerged from her classroom office after using the phone during her foods class to find one of her students sprawled on the floor. As she approached the fallen student, she heard him moan and saw him holding his arm. “What happened? Are you OK,” she asked the student? He responded that he thought his arm was broken. Fellow students explained that the injured student had slipped on a wet spot on the floor. “Damn it,” exclaimed Ms. Dugan, “I reported that leak two days ago and nobody came out to fix it.” Ms. Dugan called the parents and the office to report the mishap.

What is Ms. Dugan’s liability?
Case Studies Regarding Teacher Liability - #4

THE CASE OF THE DISAPPOINTED DRAFTING STUDENT

Harold Steiner arranged to take his Engineering Technology classes on a two-day retreat to an environmental camp for leadership training. Students were required to pay $25 each to help defray the expenses, and all were required to bring a parental permission form. When Shawn, a special education student with a health impairment (hemophilia) turned in his money and parental permission form, he also gave Mr. Steiner a note from his mother explaining the precautions necessary for an overnight stay. These safeguards included a request to have a school nurse on the premises in case of an accidental cut or bruise, which could have serious ramifications.

Mr. Steiner, not wanting to risk the safety of the child, told Shawn it would be better if he didn’t travel with the class. Shawn was disappointed when he was assigned to the library for the school day his classmates were at camp.

Two weeks after the leadership camp, Mr. Steiner was informed by his principal that a civil rights complaint had been filed by Shawn’s parents, alleging discrimination because of his disability.

What is Mr. Steiner’s liability?

THE CASE OF THE FACULTY FRIEND

George Kurius is a career center specialist who was working with a group of 9th grade students. One student, Sarah, stayed behind when her class left to ask Mr. Kurius some questions about her career interest inventory. Sarah was the daughter of a family who socialized with the teacher. He then noticed several bruises on and around her face and her arm was hanging limply. When he asked her if she was OK, she said, “Oh, I had another argument with my father - he loses control sometimes. I have to go to class; see you later.” She immediately left the center.

At lunch that day, Mr. Kurius shared the experience with several faculty members. The reaction was one of disbelief. The father in questions was active in the booster club and had a sterling reputation. As one teacher said, “That Sarah has been in trouble before; I wouldn’t trust her as far as I could throw her.” Another offered, “I wouldn’t repeat these charges without more evidence - it could ruin a good man’s reputation.” Mr. Kurius decided there were too many questions to bring up the issue with the principal or go to the father.

What is Mr. Kurius’ liability?
**THE CASE OF THE CRAZED CLASSMATE**

Ms. Marsha Mellow was teaching her auto technology class when a student approached her to complain that another student, Tom, was being “hyper” and “running around with a screwdriver.” Ms. Mellow, who was in the process of evaluating a student’s procedure on a brake replacement, responded, “Hey, I’m pretty busy here. You tell Tom if he doesn’t settle down, I’ll give him detention.”

A few minutes later, Theresa, a sophomore, let out a yelp and screamed, “Tom, you %##%@##! !!! Look what you did! !” When Ms. Mellow looked up, she saw blood running down Theresa’s face and a two-inch cut on her forehead. When she asked what happened, several students explained that Tom was “jousting” with a screwdriver, pretending to attack other students, when he accidentally cut Theresa. The teacher conducted an investigation and filed an accident report. The next week, Ms. Mellow was informed there was a parent conference with the principal to respond to a complaint alleging “lax supervision.”

What is Ms. Mellow’s liability?
CODE OF PROFESSIONAL CONDUCT: CHAPTER 180-87 WAC

WAC 180-87-005 PURPOSE. The sole purpose of this chapter is to set forth policies and procedures related to reprimand, suspension, and revocation actions respecting certification of education practitioners in the state of Washington for acts of unprofessional conduct. It is recognized that grounds for the discharge, nonrenewal of contracts, or other adverse change in contract status affecting the employment contracts of education practitioners are broader than stated herein. The grounds set forth as unprofessional conduct in this chapter shall not limit discharge, nonrenewal of contracts, or other employment action by employers of education practitioners.

WAC 180-87-010 PUBLIC POLICY GOALS OF CHAPTER. The public policy goals of this chapter are as follows:

1. To protect the health, safety, and general welfare of students within the state of Washington.
2. To assure the citizens of the state of Washington that education practitioners are accountable for acts of unprofessional conduct.
3. To define and provide notice to education practitioners within the state of Washington of the acts of unprofessional conduct for which they are accountable pursuant to the provisions of chapter 180-86 WAC.

PROFESSIONAL ACCOUNTABILITY

WAC 180-87-015 ACCOUNTABILITY FOR ACTS OF UNPROFESSIONAL CONDUCT. Any educational practitioner who commits an act of unprofessional conduct proscribed within this chapter may be held accountable for such conduct pursuant to the provisions of chapter 180-86 WAC.

ADMINISTRATIVE PROVISIONS

WAC 180-87-020 APPLICABILITY OF CHAPTER TO PRIVATE CONDUCT. As a general rule, the provisions of this chapter shall not be applicable to the private conduct of an education practitioner except where the education practitioner’s role as a private person is not clearly distinguishable from the role as an education practitioner and the fulfillment of professional obligations.
WAC 180-87-025 EXCLUSIVITY OF CHAPTER. No act, for the purpose of this chapter, shall be defined as an act of unprofessional conduct unless it is included in this chapter.

WAC 180-87-030 PROSPECTIVE APPLICATION OF CHAPTER AND AMENDMENTS. The provisions of this chapter shall take effect ninety calendar days after adoption and shall apply prospectively to acts of unprofessional conduct committed after such effective date. Unless provided to the contrary, any revision shall take effect six months after adoption and shall apply prospectively from such effective date.

WAC 180-87-035 EDUCATION PRACTITIONER-DEFINITION. As used in this chapter, the term ‘education practitioner’ means any certificate holder licensed under rules of the state board of education to serve as a certificated employee.

WAC 180-87-040 STUDENT-DEFINITION. As used in this chapter, the term “student” means the following:
1. Any student who is under the supervision, direction, or control of the education practitioner.
2. Any student enrolled in any school or school district served by the education practitioner.
3. Any student enrolled in any school or school district while attending a school related activity at which the education practitioner is performing professional duties.
4. Any former student who is under eighteen years of age and who has been under the supervision, direction, or control of the education practitioner. Former student, for the purpose of this section, includes but is not limited to drop outs, graduates, and students who transfer to other districts or schools.

WAC 180-87-045 COLLEAGUE-DEFINITION. As used in this chapter, the term “colleague” means any person with whom the education practitioner has established a professional relationship and includes fellow workers and employees regardless of their status as education practitioners.

ACTS OF UNPROFESSIONAL CONDUCT

WAC 180-87-050 MISREPRESENTATION OR FALSIFICATION IN THE COURSE OF PROFESSIONAL PRACTICE. Any falsification or deliberate misrepresentation, including omission, of a material fact by an education practitioner concerning any of the following is an act of unprofessional conduct:
1. Statement of professional qualifications.
2. Application or recommendation for professional employment, promotion, certification, or an endorsement.
3. Application or recommendation for college or university admission, scholarship, grant, academic award, or similar benefit.
4. Representation of completion of inservice or continuing education credit hours.
5. Evaluations or grading of students and/or personnel.
6. Financial or program compliance reports submitted to state, federal, or other governmental agencies.
7. Information submitted in the course of an official inquiry by the superintendent of public instruction related to the following:
   a. Good moral character or personal fitness.
8. Information submitted in the course of an investigation by a law enforcement agency of by child protective services regarding school-related criminal activity.
**WAC 180-87-055 ALCOHOL OR CONTROLLED SUBSTANCE ABUSE.** Unprofessional conduct includes:

1. Being under the influence of alcohol or of a controlled substance, as defined in chapter 69.50 RCW, on school premises or at a school-sponsored activity involving students, following:
   a. Notification to the education practitioner by his or her employer of concern regarding alcohol or substance abuse affecting job performance;
   b. A recommendation by the employer that the education practitioner seek counseling or other appropriate and available assistance; and
   c. The education practitioner has had a reasonable opportunity to obtain such assistance.
2. The possession, use, or consumption on school premises or at school-sponsored activity of a Schedule 1 controlled substance, as defined by the state board of pharmacy, or a Schedule 2 controlled substance, as defined by the state board of pharmacy, without a prescription authorizing such use.
3. The consumption of an alcoholic beverage on school premises or at a school-sponsored activity involving students if such consumption is contrary to written policy of the school district or school building.

**WAC 180-87-060 DISREGARD OR ABANDONMENT OF GENERALLY RECOGNIZED PROFESSIONAL STANDARDS.** Any performance of professional practice in flagrant disregard or clear abandonment of generally recognized professional standards in the course of any of the following professional practices is an act of unprofessional conduct:

1. Assessment, treatment, instruction, or supervision of students.
2. Employment or evaluation of personnel.
3. Management of moneys or property.

**WAC 180-87-065 ABANDONMENT OF CONTRACT FOR PROFESSIONAL SERVICES.** Any permanent abandonment, constituting a substantial violation without good cause, of one of the following written contracts to perform professional services for a private school or a school or an educational service district is an act of unprofessional conduct:

1. An employment contract, excluding any extracurricular or other specific activity within such contract or any supplementary contract.
2. Professional service contract.

**WAC 180-87-070 UNAUTHORIZED PROFESSIONAL PRACTICE.** Any act performed without good cause that materially contributes to one of the following unauthorized professional practices is an act of unprofessional practice.

1. The employment of a person to serve as an employee in a position for which certification is required by rules of the state board of education when such person does not possess, at the time of commencement of such responsibility, a valid certificate to hold the position for which such person is employed.
2. The assignment or delegation in a school setting of any responsibility within the scope of the authorized practice of nursing, physical therapy, or occupational therapy to a person not licensed to practice such profession unless such assignment or delegation is otherwise authorized by law, including the rules of the appropriate licensing board.
3. The practice of education by a certificate holder during any period in which such certificate has been suspended.
4. The failure of a certificate holder to abide by the conditions within an agreement, executed pursuant to WAC 180-86-150, to not continue or to accept education employment.
5. The failure of a certificate holder to comply with any condition, limitation, or other order or decision entered pursuant to chapter 180-86 WAC.

6. PROVIDED, that for the purpose of this section, good cause includes, but is not limited to, exigent circumstances where immediate action is necessary to protect the health, safety, or general welfare of a student, colleague, or other affected person.

WAC 180-87-080 SEXUAL MISCONDUCT WITH STUDENTS. Unprofessional conduct includes the commission by an education practitioner of any sexually exploitive act with or to a student including, but not limited to, the following:

1. Any sexual advance, verbal or physical;
2. Sexual intercourse as defined in RCW 9A.44.010;
3. Indecent exposure as defined in RCW 9A.88.010;
4. Sexual contact, i.e., the intentional touching of the sexual or other intimate parts of a student except to the extent necessary and appropriate to attend to the hygienic or health needs of the student;
5. PROVIDED, that the provisions of this section shall not apply if at the time of the sexual conduct the participants are married to each other.

WAC 180-87-085 FURNISHING ALCOHOL OR CONTROLLED SUBSTANCE TO STUDENTS. Unprofessional conduct includes the illegal furnishing of alcohol or a controlled substance, as defined in chapter 69.50 RCW, to any student by an education practitioner.

WAC 180-87-090 IMPROPER REMUNERATIVE CONDUCT. Any deliberate act in the course of professional practice which requires or pressures students to purchase equipment, supplies, or services from the education practitioner in a private remunerative capacity is an act of unprofessional conduct.

WAC 180-87-093 FAILURE TO ASSURE THE TRANSFER OF STUDENT RECORD INFORMATION OR STUDENT RECORDS. The failure of a principal or other certified chief administrator of a public school building to make a good faith effort to assure compliance with RCW 28A.225.330 by establishing, distributing, and monitoring compliance with written procedures that are reasonably designed to implement the statute shall constitute an act of unprofessional conduct.

WAC 180-87-095 FAILURE TO FILE A COMPLAINT. The intentional or knowing failure of an educational service district superintendent, a district superintendent, or a chief administrator of a private school to file a complaint pursuant to WAC 180-86-110 regarding the lack of good moral character or personal fitness of an education practitioner or the commission of an act of unprofessional conduct by an education practitioner is an act of unprofessional conduct.

OFFICE OF PROFESSIONAL PRACTICES

The Office of Professional Practices, a division under the auspices of the Superintendent of Public Instruction, is charged with enforcement, including discipline of educational practitioners for violation of the Professional Code of Conduct. The office receives, investigates, and makes legal findings regarding complaints. A nine member professional advisory committee reviews appeals from proposed disciplinary actions. Educators who violate the
code may be reprimanded or their license to practice may be suspended or revoked. The Office of Professional Practices also reviews charges that an applicant for or the holder of professional certification lacks good moral character or personal fitness. These standards are set forth in WAC 180-86-013 and address commission of criminal acts and other behavior which endanger children. Commission of criminal acts may not be directly related to professional conduct but they do reflect upon the trustworthiness of serving as a professional educator.

Complaints or requests for additional information regarding K-12 may be addressed to:

Office of Professional Practices  
Dr. Terry Bergeson, Superintendent of Public Instruction  
Old Capitol Building, P.O. Box 47200  
Olympia, WA 98504-7200

Complaints or requests for additional information regarding community and technical colleges may be addressed to:

W. Howard Fischer, Senior Assistant Attorney General  
Chief Education Division  
1125 Washington Street SE  
Olympia, WA 98504-0100  
Phone: 360-586-2789
Nothing in the First Amendment converts our public schools into religion-free zones, or requires all religious expression to be left behind at the schoolhouse door. While the government may not use schools to coerce the consciences of our students, or to convey official endorsement of religion, the public schools also may not discriminate against private religious expression during the school day.

Religion is too important in our history and our heritage for us to keep it out of our schools. It shouldn't be demanded, but as long as it is not sponsored by school officials and doesn't interfere with other children's rights, it mustn't be denied.

President Clinton
July 12, 1995

Dear Superintendent:

On July 12th, President Clinton directed the Secretary of Education, in consultation with the Attorney General, to provide every school district in America with a statement of principles addressing the extent to which religious expression and activity are permitted in our public schools. In response to the President's request, I am sending to you this statement of principles.

In the last two years, I have visited with many educators, parents, students, and religious leaders. I have become increasingly aware of the real need to find a new common ground in the growing and, at times, divisive debate about religion in our public schools. President Clinton and I hope that this information will provide useful guidance to educators, parents, and students in defining the proper place for religious expression and religious freedom in our public schools.

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

600 INDEPENDENCE AVE. S.W. WASHINGTON. D.C. 20202-0100

As the President explained, the First Amendment imposes two basic and equally important obligations on public school officials in their dealings with religion. First, schools may not forbid students acting on their own from expressing their personal religious views or beliefs solely because they are of a religious nature. Schools may not discriminate against private religious expression by students, but must instead give students the same right to engage in religious activity and discussion as they have to engage in other comparable activity. Generally, this means that students may pray in a non-disruptive manner during the school day when they are not engaged in school activities and instruction, subject to the same rules of order as apply to other student speech.

At the same time, schools may not endorse religious activity or doctrine, nor may they coerce participation in religious activity. Among other things, of course, school administrators and teachers may not organize or
encourage prayer exercises in the classroom. And the right of religious expression in school does not include the right to have a “captive audience” listen, or to compel other students to participate. School officials should not permit student religious speech to turn into religious harassment aimed at a student or a small group of students. Students do not have the right to make repeated invitations to other students to participate in religious activity in the face of a request to stop.

The statement of principles set forth below derives from the First Amendment. Implementation of these principles, of course, will depend on specific factual contexts and will require careful consideration in particular cases.

Although most schools have been implementing these principles already, some problems have arisen where people are unaware of, or do not understand, these obligations. It is my sincere hope that these principles will help to end much of the confusion regarding religious expression in public schools and that they can provide a basis for school officials, teachers, parents, and students to work together to find common ground - helping us to get on with the important work of education. I want to recognize again the efforts of religious and other civic groups who came together earlier this year to issue a statement of current law on religion in the public schools, from which we drew heavily in developing these principles.

I encourage you to share this information widely and in the most appropriate manner with your school community. Accept my sincere thanks for your continuing work on behalf of all of America's children.

Sincerely,

Richard W. Riley

U.S. Secretary of Education
Religious Expression in Public Schools

**Student prayer and religious discussion:** The Establishment Clause of the First Amendment does not prohibit purely private religious speech by students. Students therefore have the same right to engage in individual or group prayer and religious discussion during the school day as they do to engage in other comparable activity. For example, students may read their Bibles or other scriptures, say grace before meals, and pray before tests to the same extent they may engage in comparable non-disruptive activities. Local school authorities possess substantial discretion to impose rules of order and other pedagogical restrictions on student activities, but they may not structure or administer such rules to discriminate against religious activity or speech.

Generally, students may pray in a nondisruptive manner when not engaged in school activities or instruction, and subject to the rules that normally pertain in the applicable setting. Specifically, students in informal settings, such as cafeterias and hallways, may pray and discuss their religious views with each other, subject to the same rules of order as apply to other student activities and speech. Students may also speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics. School officials, however, should intercede to stop student speech that constitutes harassment aimed at a student or a group of students.

Students may also participate in before or after school events with religious content, such as "see you at the flag pole" gatherings, on the same terms as they may participate in other noncurriculum activities on school premises. School officials may neither discourage nor encourage participation in such an event.

The right to engage in voluntary prayer or religious discussion free from discrimination does not include the right to have a captive audience listen, or to compel other students to participate. Teachers and school administrators should ensure that no student is in any way coerced to participate in religious activity.

**Graduation prayer and baccalaureates:** Under current Supreme Court decisions, school officials may not mandate or organize prayer at graduation, nor organize religious baccalaureate ceremonies. If a school generally opens its facilities to private groups, it must make its facilities available on the same terms to organizers of privately sponsored religious baccalaureate services. A school may not extend preferential treatment to baccalaureate ceremonies and may in some instances be obliged to disclaim official endorsement of such ceremonies.

**Official neutrality regarding religious activity:** Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the establishment clause from soliciting or encouraging religious activity, and from participating in such activity with students. Teachers and administrators also are prohibited from discouraging activity because of its religious content, and from soliciting or encouraging antireligious activity.

**Teaching about religion:** Public schools may not provide religious instruction, but they may teach *about* religion, including the Bible or other scripture: the history of religion,
comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the 
history of the United States and other countries all are permissible public school subjects. 
Similarly, it is permissible to consider religious influences on art, music, literature, and social 
studies. Although public schools may teach about religious holidays, including their religious 
aspects, and may celebrate the secular aspects of holidays, schools may not observe 
holidays as religious events or promote such observance by students.

**Student assignments:** Students may express their beliefs about religion in the form of 
home and classroom work should be judged 
by ordinary academic standards of substance and relevance, and against other legitimate pedagogical concerns identified by the school.

**Religious literature:** Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. Schools may impose the same reasonable time, place, and manner or other constitutional restrictions on distribution of religious literature as they do on nonschool literature generally, but they may not single out religious literature for special regulation.

**Religious excusals:** Subject to applicable State laws, schools enjoy substantial discretion to excuse individual students from lessons that are objectionable to the student or the students’ parents on religious or other conscientious grounds. School officials may neither encourage nor discourage students from availing themselves of an excusal option. Under the Religious Freedom Restoration Act, if it is proved that particular lessons substantially burden a student's free exercise of religion and if the school cannot prove a compelling interest in requiring attendance, the school would be legally required to excuse the student.

**Released time:** Subject to applicable State laws, schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation or penalize those who do not attend. Schools may not allow religious instruction by outsiders on school premises during the school day.

**Teaching values:** Though schools must be neutral with respect to religion, they may play an active role with respect to teaching civic values and virtue, and the moral code that holds us together as a community. The fact that some of these values are held also by religions does not make it unlawful to teach them in school.

**Student garb:** Students may display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. Religious messages may not be singled out for suppression, but rather are subject to the same rules as generally apply to comparable messages. When wearing particular attire, such as yarmulkes and head scarves, during the school day is part of students’ religious practice, under the Religious Freedom Restoration Act schools generally may not prohibit the wearing of such items.
The Equal Access Act

The Equal Access Act is designed to ensure that, consistent with the First Amendment, student religious activities are accorded the same access to public school facilities as are student secular activities. Based on decisions of the Federal courts, as well as its interpretations of the Act, the Department of Justice has advised that the Act should be interpreted as providing, among other things, that:

**General provisions:** Student religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups. Under the Equal Access Act, a school receiving Federal funds that allows one or more student noncurriculum-related clubs to meet on its premises during noninstructional time may not refuse access to student religious groups.

**Prayer services and worship exercises covered:** A meeting, as defined and protected by the Equal Access Act, may include a prayer service, Bible reading, or other worship exercise.

**Equal access to means of publicizing meetings:** A school receiving Federal funds must allow student groups meeting under the Act to use the school media - including the public address system, the school newspaper, and the school bulletin board - to announce their meetings on the same terms as other noncurriculum-related student groups are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory manner. Schools, however, may inform students that certain groups are not school sponsored.

**Lunch-time and recess covered:** A school creates a limited open forum under the Equal Access Act, triggering equal access rights for religious groups, when it allows students to meet during their lunch periods or other noninstructional time during the school day, as well as when it allows students to meet before and after the school day.
Sample Liability Issues for Teachers:
Legal Summary from a Community College

**WARNING:** Issues of liability and negligence are extremely complex. The information covered in this document is very generic, limited, and not intended to be inclusive. It is imperative that you direct any specific questions or concerns to administrators authorized for contact with the Washington State Attorney General's Office.

Most regulations (e.g., WISHA) which “drive” environmental health and safety deal only with workplace settings and the employer/employee working relationship; you will not find reference to students (exception: work study students are our employees) in the WAC standards and codes. This does not, however, mean that students at the college have no recourse under the law in the event of an injury suffered in the educational setting during the course of their education.

The law prescribes that the duty a college owes to a student is the same as that required of a business visitor or invitee. The duty owed an invitee by a property owner is that of reasonable care in protecting the invitee from injury due to negligence or intentional act. This includes maintaining the premises in a reasonably safe condition, or warning the invitee of any danger which is known or discoverable by a reasonable inspection on the part of the occupier.

**STANDARD OF CARE**

The applicable standard of care that is appropriate and defensible conduct in any given instance will be determined by the facts of the situation and by the laws which govern that activity. One category of tort law penalizes negligence, a kind of substandard behavior. Essentially, the law of torts imposes a duty to exercise a level of care commensurate with the apparent risks involved. The greater the risk or hazard, the more careful one must be. By this standard, the issue of negligence turns on what a prudent person would do under the same or similar circumstances, assuming those practices which are customary and usual in the industry.

**NEGLIGENCE**

In the eyes of the law, negligence may be defined as “conduct that falls below a standard of care established by law to protect others against an unreasonable risk of harm.” In other words, negligence may be construed to have occurred when one’s failure to perform causes unintentional injury to a person who was owed a standard of care. If the standard of care has not been specifically established by statute, the actions or inactions of an individual will be measured against what a hypothetical, reasonably prudent individual would have done under the same circumstances. One important aspect of the conduct of the reasonable person is anticipation. A reasonable person is expected to be aware of the foibles of human nature and be able to anticipate where difficulties might arise.

To constitute actionable negligence there must be:
- a situation giving rise to a legal duty of care,
- failure to perform that duty on the part of the defendant,
- injury and/or damage as a result of that failure to perform.
It is not negligence or a breach of the duty of care on the part of school authorities to permit a potentially dangerous student activity:

- if it is suitable to the student's age and condition (mental/physical),
- if the student is progressively trained and coached to do the activity properly and avoid the danger,
- if the equipment is adequate and suitably arranged,
- if the performance, having regard to its inherently dangerous nature, is properly supervised; and
- if the student has been appropriately warned of dangers.

The standard of care expected of instructors is that of a “reasonable and prudent professional.” This means that the individual must have the competence for the role he/she is performing and is expected to be up-to-date on the “best practices” of the profession.

Courts will hold that the individual must perform as if he/she were fully qualified to do that which he/she has undertaken; that is, he/she must perform in a professional manner. The principles of professional conduct can be divided into three categories; supervision and training (including reasonable warnings given, both verbally and in writing), conduct of the activity, and environmental conditions—maintenance of the physical environment for safety purposes, including equipment, facilities, and areas.

POTENTIAL DEFENDANTS

Liability may attach not only to the institution but also to its officers and employees, in both their official and individual capacities. Therefore:

- The institution may be held liable for claims arising from actions of its employees and agents while acting in good faith during the performance of functions within the course and scope of their employment.
- Officers and directors may be held liable for claims arising from an institutional activity over which they have a reasonable degree of control.
- Mid-level managers may be held liable for claims arising from activities for which they have responsibility.
- Other employees may be held liable for claims arising from transactions in which they participated.

SUPERVISION AND TRAINING

In the instructor/student relationship, supervision and training are closely intertwined. Not only must training and warning of hazards precede supervision, but it is also crucial that training and warning of hazards remain an ongoing element of supervision. Supervision of participants in an activity is one of the critical elements giving rise to lawsuits. Two types of supervision, general and specific, should be distinguished. General supervision means that an individual must be within the activity area overseeing the activity and given appropriate instruction. Specific supervision means being at a specific location of activity with the participants. The nature of the supervisory actions is dependent on the type of supervision required. The distinction between the two types is of considerable importance. If you have a physically dispersed class, e.g., with students at work in separate workspaces throughout a large shop area, obviously the instructor cannot be with each individual all the time. When must he/she be directly with the person engaging in activity providing specific supervision and when is general supervision adequate?
GENERAL SUPERVISION

There are two considerations for general supervision.

1. The supervisor (instructor) must be immediately accessible to anyone who needs him/her. If injury occurs, some competent person must be secured either to take care of the injured or supervise the participants (students). Further, the supervisor (instructor) must be able to oversee the entire program systematically; that is, rotate to all parts of the activity area. General supervision is not sufficient for hazardous activities.

2. In general supervision, one must be alert to conditions that may be dangerous to participants and warn them of such dangers. A professional should not only be able to identify dangerous conditions and train and warn about them but also anticipate such conditions and establish accident prevention procedures. These conditions include defective premises or equipment, lack of protective devices or safety equipment, and participants (students) performing tasks beyond their capabilities. Dangerous conditions also include rowdism and poor discipline. One of the largest awards in legal history for personal injury to a single individual for negligence ($4,025,000) went to a fifth-grade boy who was permanently disabled in a summer recreation program sponsored by a city recreation and parks department on a school playground. He was hit on the side of the head by a larger boy during a scuffle over which child was to take a turn at bat in an organized ball game. Bleeding inside the skull resulted in a blood clot forming and exerting pressure on the brain stem, causing muteness and paralysis from the neck down.

SPECIFIC SUPERVISION

Specific supervision involves appreciation of the activity in terms of its inherent hazards and of one’s capacity to do the activity, and understanding and adhering to established safety practices and procedures which are appropriate and particular to the activity being undertaken. The first two considerations (as noted below, items 1 and 2) in regard to specific supervision are parallel:

1. When introducing an activity, the instructor must stay with the student until the student is familiar enough with the activity to evaluate his/her own capacity to do the activity and to understand and adhere to safety practices and procedures which have been established. It is essential that the student be warned of and have full knowledge of the specific risks involved in the activity.

The appreciation of risk is essential both for the safety of an individual and for the use of the defense of assumption of risk in a lawsuit. It has sometimes been said that the participant assumes the risk of the activity, but cases in the 1970’s have put a new emphasis on the responsibility for the supervisor of the activity. A participant does not assume any risks he/she is not aware of and does not appreciate. This places the burden on the instructor for training students in a manner that appropriately and clearly communicates the risks involved (warning) and being certain that these are understood by each student (knowledge of the risks involved).

Knowledge of risk, by itself, is not sufficient. It is not sufficient to merely inform or warn of
risks in an activity. There must be an understanding and appreciation of that risk on the part of the participant. This appreciation of risk works both ways; that is, the inexperienced participant requires greater effort on the part of the instructor to communicate the risks; on the other hand, if the participant is young but experienced, he/she is held to assume those risks of which he/she is knowledgeable and should therefore understand.

2. The risks a student or participant assumes are those normal to the activity itself. These risks must be both known and understood by the individual. An individual has the right to expect that the equipment is not defective, that the safety devices will be adequate, and that the instructions given are correct. When this is not true, these become negligent acts and a person does not assume any risks due to negligence; a person does not give "license" to anyone to be negligent at his/her expense. Too often the signing of a "waiver" by an adult is misunderstood—all such signatures mean is that they will assume the normal risks of the activity. They do not give permission for an instructor to be negligent. While permission slips and waivers are somewhat useful in deterring suits and informing as to what a person will be doing, it is far more important that the individual be adequately trained, supervised, and warned, and that every reasonable effort be made to cause them to understand the risks involved.

He/she notes any failure to adhere to rules and regulations or sees some change in the condition of a participant/student, such as apparent lack of appreciation of dangers, then supervision must be changed from general to specific.

3. There is a further concern regarding specific supervision which relates to safety practices and procedures. Appropriate safety practices and procedures must be established, and these must be particular to the activity being undertaken, rather than generalized safety practices and procedures. That is, although there may be some general regulations in the shop area, there must also be safety procedures specific to certain equipment and activities thereon. Each activity and each piece of equipment has its own requirements, and the person instructing must be familiar with them and must communicate these requirements to their students.

When a new activity is introduced, there must be specific supervision, but as the participant becomes more proficient, general supervision is adequate. If, however, under general supervision some change in the physical or emotional condition that might endanger the individual is noted, or if a violation of safety practices and procedures is observed, then the instructor must immediately give specific supervision until the situation is once again safe.

CONDUCT OF THE ACTIVITY

There are two aspects of particular concern relating to negligence in the conduct of an activity: adequacy of instruction and progression of training, and warning of danger or dangerous conditions.

1. Adequacy of instruction and progressive training: If an instructor gives progressive training and instructions to a participant and the participant is injured, the instructor may be held liable if his/her instruction was inadequate to prevent injury and did not
communicate the degree of risk. This requires an understanding of the activity in terms of appropriate technique and progression. In addition, where students are engaged in potentially dangerous activities, instructors must ensure individual understanding on the part of EACH student of the potential dangers. Particular propensities and difficulties associated with each individual student must be recognized and dealt with by the instructor. What is sufficient instruction for one student may not be adequate for another. Record keeping and documentation of both safety training and warnings given is strongly recommended (e.g., course outline, student tests on safety topics, etc.).

2. Warning of danger or dangerous conditions which an individual knew about or should have known about: There is an obligation to provide a reasonably safe environment and to warn of those circumstances and conditions which are dangerous. This will, of course, vary for different activities.

It is recommended that these warnings be delivered to students both verbally and in writing. In addition to giving instructions regarding proper procedures and use of protective equipment, warnings may also be given as printed literature (signs, pictures, posted printed regulations), which provides an ever-present reminder of the importance of safety procedures.

While such warnings are very useful and should be given, the instructor still has a responsibility to check that desirable practices are being followed and the participants appreciate the importance of using safety equipment and aids. Integral to this aspect of warning of danger is the establishment of procedures for safety rules and regulations.

MAINTENANCE OF THE PHYSICAL ENVIRONMENT

Whereas the preceding section dealt with dangerous conditions and a safe environment as related to the activity, this section continues in its concern for safe environmental conditions, but focuses on the physical facilities and area.

Equipment: A participant in the assumption of risk of an activity does not assume the risk of defective or poorly maintained equipment. Proper maintenance and care of equipment is of utmost importance. Where defective equipment is known, it is the instructor's responsibility not to use it. Defective equipment includes the improper installation of equipment and inadequate maintenance.

Facilities: One of the legal concepts that is especially important as related to both equipment and facilities is that of notice or knowledge of dangerous conditions. There are two types of notice, actual and constructive. With actual notice, the dangerous condition has been called to the attention of the responsible party: one has actual knowledge about the situation. Once one has notice, then there is a duty to take action to remedy the dangerous condition. Constructive notice, on the other hand, means that one should have known about the situation had he appropriately inspected or been aware of what was taking place.

Sometimes a dangerous condition has arisen suddenly, but there has been a regular inspection or observation of conditions; appropriate time for notice may be allowed before liability attaches. The key issue is how diligent the person was in seeking out dangerous conditions, and then with what expediency the remedial action was taken.
Adequate inspection policies for both equipment and facilities should be in place with assignment of definite responsibility for periodic inspections. It is strongly recommended that records of equipment maintenance and facilities inspections be maintained.

You, as the instructor, should be making routine inspections of your area of responsibility. When hazards are noted, they should be reported and documented. Then follow through. Be persistent in following up on a hazardous condition which has been reported until it has been corrected.

DEFENSES

The first defense, which is also the best defense, is that there was no negligence, and that in fact, because of adequate training, warning, supervision and environmental conditions, the act was performed according to the appropriate professional standard. It is to that end that the foregoing discussion has been given.

The second primary defense, also previously discussed, is the assumption of risk by the participant. However, it has been indicated that there must be knowledge and understanding of the risk involved in the activity and that the risk assumed is only for those normal risks inherent in the activity which are known and understood. The assumption of risk by a participant does not include risks of inadequate supervision, instruction, warning, defective equipment, or other negligence.

Defense of State Employee by Attorney General’s Office

Employees of the college, in the event they should be involved in a lawsuit having to do with the performance of functions when acting in good faith and within the course and scope of their employment, will defended by the State Attorney General’s Office.

Per RCW 28B.10.842, and per Master Contract, Article III, Section 15, “the college agrees to save academic employees harmless and defend from any financial loss, including reasonable attorney’s fees, for actions arising out of any claim, demand, suit, criminal prosecution, or judgment by reason of any act or failure to act by such employees within or without the college, provided such employees, at the time of the act or omission complained of, were acting within the scope of employment or under the direction of the college... provided the board of trustees has made a finding and determination by resolution that the academic employee was acting in good faith. If the board of trustees is unable to reach any decision on the matter, the office of the attorney general is authorized to consider a request.”
Copyright Issues for the Electronic Age. ERIC Digest.

Copyright Issues for the Electronic Age. ERIC Digest.

In the 1990s, the term “digital age” is commonplace. Computers allow us to translate text and visual information into digital format and give us the ability to create and share new information seamlessly. This Digest will focus on a variety of issues confronting copyright law in the digital age.

CURRENT COPYRIGHT LAW

Because information is now so freely available, particularly in electronic form, does that mean we are free to use that information in any way we want? Current copyright law was adopted in 1976 and went into effect in 1978. It is difficult to imagine how the authors of the 1976 Copyright Act could have foreseen so many new technologies. However, they did attempt to cover all of the bases by using language which was intended to be somewhat elastic in Section 102 (a) of the law:

“Copyright protection subsists...in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”

POSSIBLE LEGISLATIVE CHANGES

A current report by the U.S. Department of Commerce, commonly referred to as the “green report,” has set forth some preliminary recommendations for dealing with digital information. The “green report” was published in July, 1994, and hearings were held in the fall of 1994. A final report, the “white report,” expected in May, 1995, may result in proposed legislative changes to the Copyright Law.

Several areas of special interest to educators are included in the report. One is the discussion of a definition of multimedia. The report has suggested that “mixed” or “multiple” media is a more accurate term, and better describes the variety of rights which need to be acquired. A second area being addressed is “transmission.” An additional right of transmission may be added to the existing rights of copyright owners. The terms “transmit” and “transmission” may be added to existing definitions in section 106, rights of copyright owners. Section 106 (3) might be modified to include distribution “by transmission.” The definition of “transmit” may be expanded to include reproductions of a work as well as performances and displays. In addition to proposed changes in Section 106, the definition of “publication” may be expanded to include “by transmission” in addition to physical copies.

Another area needing clarification according to the “green report” is section 108 of the Law which addresses library exemptions. For example, the legal implications of “browsing” through electronic documents, scanning, uploading, and document transfer may be of concern to copyright holders. The American Association of Publishers has issued a strong statement against digitizing without licensing. Professional organizations such as the
Questions & Answers About Existing Copyright Law

Q: WHAT IS COPYRIGHT?
A: Copyright is a statutory privilege extended to creators of works fixed in a tangible medium of expression.

Q: WHAT ARE THE RIGHTS OF A COPYRIGHT OWNER?
A: Copyright involves five separate rights (section 106):
1. The right to reproduce or copy the work;
2. The right to prepare derivative works;
3. The right to distribute copies of the work to the public;
4. In the case of audiovisual works, the right to perform the work publicly;
5. In the case of literary, musical, dramatic and choreographic works, pantomimes and pictorial, graphic or sculptural works, the right to display the work publicly.

These exclusive rights may be transferred by the copyright owner as individual rights or as a “bundle of rights.”

Q: WHAT IS MEANT BY FAIR USE (SECTION 107)?
A: Four factors are to be considered in determining whether or not a particular use of a copyrighted work is fair:
1. Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. Nature of the copyrighted work;
3. Amount and substantiality of the portion used in relation to the work as a whole; and
4. Effect of the use upon potential market for or value of the work.

Q: WHAT IS MEANT BY THE “CLASSROOM EXEMPTION?”
A: This exemption (section 110) refers to performance or display of copyrighted works in a classroom setting. The language in the law reads: “...performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made...and that the person responsible for
Q: IS A WORK WITHOUT A COPYRIGHT NOTICE CONSIDERED TO BE IN THE PUBLIC DOMAIN?

A: No, not if it was published after March 1, 1989. There is a lack of awareness among educators concerning an important change for copyright notice which occurred at that time. As of March 1, 1989, placement of a copyright notice on works became optional when the U.S. joined the Berne Convention. Placement of notice is certainly recommended; it is very difficult to locate a copyright owner when the notice is absent. However, just because the notice is absent, we cannot assume that anything published since March 1, 1989 is in the public domain unless specifically told so. Now we assume, unless the works are specifically in the public domain or meet a few other criteria, that a work is copyrighted when it is fixed in a tangible medium. Of course, this includes postings on electronic bulletin boards, Internet messages, etc. unless told it may be reposted.

Q: MAY A LIBRARY SCAN AND STORE ITS RESERVE WORKS INTO A DATABASE TO REPRODUCE COPIES ON DEMAND OR STORE THEM ON A NETWORK FOR STUDENTS TO ACCESS ELECTRONICALLY?

A: Not in all cases. If approval is obtained, original works by instructors such as syllabi, sample tests, etc. could be scanned and stored. However, course readings could not be stored without permission, licensing, or royalty fees.

Q: MAY A LIBRARY CIRCULATE COMPUTER SOFTWARE TO PATRONS?

A: Yes. However, as of 1990, the following notice must be permanently attached to the disk or permanent packaging for the software (notice the length!):

“Notice: Warning of Copyright Restrictions—The copyright law of the United States (Title 17, United States Code) governs the reproduction, distribution, adaptation, public performance, and public display of copyrighted material. Under certain conditions specified in law, nonprofit libraries are authorized to lend, lease, or rent copies of computer programs to patrons on a nonprofit basis and for nonprofit purposes. Any person who makes an unauthorized copy or adaptation of the computer program, or redistributes the loan copy, or publicly performs or displays the computer program, except as permitted by Title 17 of the United States code, may be liable for copyright infringement. This institution reserves the right to refuse to fulfill a loan request if, in its judgment, fulfillment of the request would lead to violation of the copyright law.”

This notice must be attached by means of a label in permanent fashion to the disk(s) or the box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copy of the program. A font size must be used which is legible, comprehensible, and readily apparent to the user of the program.

BIBLIOGRAPHY


This ERIC Digest was prepared by Janis H. Bruwelheide, Ed.D., Associate Professor, College of Education, Health, and Human Development, Montana State University-Boseman.

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Copyright Law Resources

PUBLICATIONS:

U.S. Government Copyright Office:

Circular 21, Reproduction of Copyrighted Works by Educators and Librarians

Guidelines for Educational Use of Copyrighted Materials, Designed for Educators and Librarians in the Higher Education Setting, Edited by Peggy Hoon, IBSN: 0-87422-161-7, $15.00, staple-bound

Copyright Issues for Librarians, Teachers & Authors, by Robert J. Banis, Ph.D., CMA (Ed.), IBSN: 1-888725-21-4, booklet, $4.95

Questions and Answers on Copyright for the Campus Community, AAP, AAUP, CCC, NACS, & SPA, 1997, IBSN: 0-942855-81-7, $10.00
WEBSITES:

- Association of American Publishers, AAP.  http://www.publishers.org/home
- Copyright Clearance Center Online.  http://www.copyright.com
- The U.S. Copyright Office Home Page.  http://lcweb.loc.gov/copyright
- Regents Guide to Understanding Copyright and Educational Fair Use  http://www.peachnet.edu/admin/legal/copyright/copy.html
- 10 Big Myths about Copyright Explained.  By Brad Templeton  http://www.templetons.com/brad/copymyths.html
- A Visit to Copyright Bay.  http://www.nmjcc.cc.nm.us/copyrightbay/

FAIR USE AND COPYRIGHT:

- http://www.cetus.org/fairindex.html
- http://www.cetus.org/fair1.html
- http://www.cetus.org/fair5.html
- http://www.cetus.org/fair0.html
1. **JUST WHAT EXACTLY IS “FAIR USE”?**
   The Doctrine of “Fair Use” under the U.S. copyright law permits, in limited situations, the use of portions of a copyrighted work without the copyright owner’s permission. Four basic factors must be examined in determining whether a use is a “fair use”: the purpose and character of the use; the nature of the copyrighted work; the amount and substantiality of the portion of the work used in relation to the copyrighted work as a whole; and the effect of the use in question upon the potential market value of the copyrighted work. No one factor is determinative of a person’s right to use a copyrighted work without permission. However, certain “guidelines” have been recognized that indicate uses thought to be “fair”; these are available from AAP and the United States Copyright Office.

2. **I'M MAKING COPIES TO DISTRIBUTE TO MY CLASS. DO I NEED PERMISSION?**
   Educational use alone is insufficient to make a use in question a fair one. The copying will fall within the certain “fair use guidelines” if it meets agreed standards of spontaneity, brevity and cumulative effect. A good example of legal copying could be if a professor read an article in the morning newspaper, and wanted to distribute it in class that afternoon. However, any reuse of the article in a subsequent semester without first receiving permission would not be covered by the guidelines. Of course, chapter length or other substantial excerpts from copyrighted books will generally require permission before copying.

3. **I'M COPYING LESS THAN 10% OF THE BOOK. WHY DO I NEED PERMISSION?**
   Portion limitation is but one criteria of fair use. A user must also consider the nature of the work, and the effect on the potential market for the work, including licensing fees. The “guidelines” describe spontaneity, brevity and cumulative effect as additional criteria.

4. **WHY DO I NEED PERMISSION WHEN I WROTE THE BOOK?**
   The author of the book is not necessarily the owner of the copyright. If the publisher, by contract, holds the particular rights for reproduction, then — for uses that are not “fair”- the author should contact the publisher.

5. **THE BOOK IS OUT-OF-PRINT. IS PERMISSION NEEDED?**
   Just because the book is out-of-print does not mean that the work is no longer protected by copyright. It is best to contact the publisher’s copyright permission department to determine whether the work is still under copyright or in the public domain.

6. **I USED THIS MATERIAL LAST SEMESTER WITH PERMISSION. DO I NEED PERMISSION AGAIN THIS SEMESTER?**
   Generally, yes. However, you should check to see if the publisher restricted or permitted, or put conditions on, reuse.

7. **DO I NEED PERMISSION IF THERE’S NO COPYRIGHT NOTICE ON THE MATERIAL?**
   The absence of a copyright notice does not mean that the work in question is not protected.
Copyright protection begins at creation for “original works of authorship fixed in a tangible medium of expression.” The best method for determining copyright ownership is by contacting the publisher of the work that you wish to copy.

8. **CLASSES START NEXT WEEK. IF IT TAKES LONGER THAN A WEEK TO CLEAR PERMISSION. DOES THAT MEAN MY READERS WILL HAVE TO WAIT THAT LONG?**

   Yes. If a bookstore, copyshop or professor sells or distributes copyrighted materials that have been improperly copied, they can be subject to a lawsuit, found liable for copyright infringement and subjected to all penalties and remedies for the infringement. If faculty request course materials at the same time they place their book orders, permission should easily be cleared in time for the start of classes. However, this is dependent upon the particular publisher’s permissions process as well as the timing of the faculty request.

9. **IF WE THINK WE WILL GET PERMISSION TO COPY, DO WE HAVE TO WAIT FOR THE PUBLISHER’S RESPONSE BEFORE WE START?**

   The absence of a response does not qualify one to copy. You should not begin copying the material before receiving permission.

10. **WHY DO WE HAVE TO APPLY FOR PERMISSION SO FAR AHEAD OF TIME?**

    The earlier your request is received, the better. It permits the publisher to review its author’s contract and complete its processing, and in case permission cannot be granted it provides time for you to substitute other materials. Publishers do not always control the rights and need time to check the extent to which permission may be granted, the status of the copyright, the materials to be duplicated and assignment of author’s royalties, if fees are involved. The use of on-line services such as those provided by the Copyright Clearance Center (CCC) is making the clearance process easier.

11. **CAN WE COPY WITHOUT PERMISSION IF WE CAN’T IDENTIFY THE COPYRIGHT OWNER?**

    There is no automatic exemption for making unauthorized copies of a copyrighted work. If there is no page showing who owns the copyright, year of publication and publisher name, you may obtain such information from numerous sources available in most libraries such as Books In Print and many college stores, or by contacting the Copyright Clearance Center’s home page at (http://www.copyright.com).

12. **I NEED THIS ITEM IN MY COURSE PACK, BUT I DON’T REMEMBER WHERE I GOT IT FROM. CAN I USE IT ANYWAY?**

    It is likely to be protected by copyright. You should seek to determine the source and not use it without permission.

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Questions and Answers on Copyright for the Campus Community - Includes Software and Internet Issues
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INTRODUCTION

Reproduction of copyrighted material without prior permission of the copyright owner, particularly in an educational setting, is an issue of concern for the academic community. Unfortunately, the impropriety of much unauthorized copying is often overlooked by users in an educational setting.

Although copying all or part of a work without obtaining permission may appear to be an easy and convenient solution to an immediate problem, such unauthorized copying can frequently violate the rights of the author or publisher of the copyrighted work, and be directly contrary to the academic mission to teach respect for ideas and for the intellectual property that expresses those ideas.

Without understanding the copyright law, including elements such as the doctrine of “fair use” and its application and limitations in the educational setting, faculty members, copy centers, college stores, universities and colleges themselves, and others will be at risk for engaging in illegal copying.

This information is intended to aid you in conforming to the requirements of U.S. copyright law by providing an easy-to-understand guide. This guide, in question and answer format, presents a current overview of relevant sections of the Copyright Act, including:

• The requirements for protection of copyrighted works from unrestricted copying;
• The doctrine of “fair use” and its limitations;
• Issues pertaining to software and the Internet;
• Procedures on how to obtain permission to reproduce copyrighted material; and
• Information on how to register works for copyright protection,

The goal of this booklet, cosponsored by the Association of American Publishers (AAP), the National Association of College Stores (NACS), and the Software Publishers Association (SPA), and endorsed by the Association of American University Presses (AAUP), and the Copyright Clearance Center (CCC), is to clarify the issues and present information and procedures that will result in greater understanding of the rules governing use of copyrighted works and facilitate the permissions process.
Questions and Answers Concerning Copyright Compliance for Print and Software

1. WHAT IS COPYRIGHT?

Copyright is the right granted by law to an author or other creator to control use of the work created. The copyright law grants owners of copyright (authors and other creators and publishers) the sole right to do or allow others to do each of the following acts with regard to their copyrighted works: to reproduce all or part of the work; to distribute copies; to prepare new (derivative) versions based on the original work; and to perform and display the work publicly.

Copyright protection covers both published and unpublished works. The fact that a previously published work is out of print does not affect its copyright. Copyright protection exists to foster and induce the creation of all forms of works of authorship. This includes books, newspapers, magazines, computer software, multimedia works, sound recordings, audio visual works and other works. The copyright law does so by providing fair returns to creators and copyright owners. To the extent copies are made without permission, authors and publishers - including faculty - are deprived of revenues in the very market for which they have written and published. This could severely reduce the incentive to create new materials in all formats.

Copyright protection in works created after January 1, 1978 generally lasts for 50 years after the death of the author. Copyright in works created by businesses, rather than individuals, or before 1978 can last for 75 years from publication. After a work is no longer protected, it falls into the public domain. (See question 17.)

2. HOW IS A COPYRIGHT OBTAINED?

The Copyright Act provides that copyright protection begins at the moment the work is created. Registration with the Copyright Office is not required in order for a work to be protected under U.S. copyright law. The copyright must generally be registered with the Copyright Office in Washington, D.C., before the copyright owner can sue an infringer. (Once the work is registered, suit can be brought for infringements.) For some foreign works infringed after March 1, 1989, registration prior to suit is no longer required. In all cases, however, registration provides certain advantages, including the ability to qualify for an award of attorney’s fees and substantial statutory damages.

3. WHAT TYPES OF WORKS CAN CLAIM COPYRIGHT PROTECTION?

Copyright protection exists in “original works of authorship” which are “fixed in a tangible medium of expression.” Among the types of works which are subject to copyright protection are literary, dramatic, musical, choreographic and pictorial, graphic, pantomimes, sound recordings, sculptures, motion pictures and audio-visual. These categories include reference works (including dictionaries), video cassettes, and computer programs and databases. Copyright protection does not include facts, ideas, procedures, processes, systems, concepts, principles or discoveries, although these may be protectible under patent or trade secret laws. However, the literary or other form of expression and detailed organization of these ideas is covered by copyright.
4. **HOW DO I FIND OUT WHO OWNS THE COPYRIGHT FOR A PARTICULAR WORK?**

   You should consult the location on the work or packaging containing the copyright notice as well as any acknowledgments. If you have a photocopy or other reproduction that does not contain a notice of copyright or acknowledgments, consult an original copy of the work. Most works contain a copyright notice. Because copyright ownership can be transferred after publication, your copy may not identify the current copyright owner. Consult the publisher of the work that you wish to copy as a first step. They may be able to refer you to the current owner. For unpublished works, permission to copy should be obtained from the author of the work. The absence of a copyright notice does not mean that the work in question may be freely copied.

   The U.S. Copyright Office maintains records of registered works by author and title. For more information, ask the Copyright Office to send you Circular 22 - “How to Investigate the Copyright Status of a Work,” at (202) 707-9100, or http://lcweb.loc.gov/copyright/circs.html.

5. **WHAT ARE THE PENALTIES FOR COPYRIGHT INFRINGEMENT?**

   Civil and criminal penalties may be imposed for copyright infringement. Civil remedies can include an award of monetary damages (substantial statutory damages, which in cases of willful infringement, may total up to $100,000 per work infringed, or actual damages, including the infringer's profits), an award of attorney's fees, injunctive relief against future infringement and the impounding and destruction of infringing copies. While under some circumstances educators are not required to pay statutory damages, nonetheless, they may be responsible for paying the copyright owner actual damages caused by their infringement, as well as attorney's fees.

6. **WHAT IS “FAIR USE”? HOW DOES IT AFFECT COPYRIGHTED MATERIAL?**

   “Fair use” under the U.S. copyright law permits limited use of portions of a copyrighted work without the copyright owner's permission for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. Section 107 of the Copyright Act establishes four basic factors to be considered in deciding whether a use constitutes a fair use. These factors are:

   A. The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
   B. The nature of the copyrighted work;
   C. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
   D. The effect of the use upon the potential market for or value of the copyrighted work.

   No one factor determines a person's right to use a copyrighted work without permission.

7. **IS ALL COPYING BY EDUCATIONAL INSTITUTIONS FAIR USE?**

   No. There is no blanket exemption from liability for infringement by educational institutions or for educational uses. Rather, the particular use must qualify as a fair use.

8. **ARE THERE GUIDELINES FOR EDUCATORS AND STUDENTS TO DECIDE WHAT IS A FAIR USE?**

   Yes. To help students and educators decide whether fair use permits them to copy a work...
without permission, representatives of educators, authors, and publishers have agreed to several sets of guidelines. While only the courts can authoritatively determine whether a particular use is fair use, these guidelines are generally considered to be, in the words of Congress, “a reasonable interpretation of the minimum standards of fair use.” Therefore, although some limited copying that does not fall within the guidelines may still be fair use, unauthorized copying that does comply with these guidelines generally constitutes fair use under the Copyright Act.

Books and Periodicals. In 1976, the U.S. Congress endorsed fair use guidelines for educators making multiple copies of portions of books and periodicals for use in classrooms. The guidelines also permit educators to make single copies of lengthier portions. On the other hand, the guidelines expressly prohibit some types of copying as not being fair use, such as making unauthorized coursepacks. These guidelines do not apply to computer software. (See Appendix A.)

Television Programming. In 1981, a Congressional committee endorsed guidelines that permit individual educators to record broadcast television programming (but not pay-per-view) and to play the recording soon after the broadcast in the course of relevant teaching activities.

Educational Multimedia Presentations. In late 1996, a Congressional subcommittee recognized guidelines that permit educators and students to reproduce and adapt portions of books, movies, sound recordings, and computer program screen displays for use in educational multimedia presentations.

Distance Learning. During the May 1997, meeting of the Conference on Fair Use (CONFU) the Distance Learning and Image Archive Guidelines did not achieve full support from proprietors and users alike. However the academic community can consider them guidelines for print materials knowing that if they stay within the guidelines there is support for that behavior as fair use. Beyond the Guidelines, consider the four fair use factors.


9. WHAT IS “THE KINKO’S CASE”?

“The Kinko’s case” refers to a lawsuit for copyright infringement filed against Kinko’s Graphics Corporation in 1989 by eight book publishers. The Court held that Kinko’s’ practice of photocopying, without authorization, multiple page excerpts (including chapters of books and articles from periodicals) from copyrighted works to create anthologies (coursepacks) and of selling those anthologies to students for a profit violated the publishers’ copyrights. The copyrighted works Kinko’s infringed included hardback and paperback editions of works, both in-print and out-of-print works, and trade, professional and text books. The copied materials ranged in length from 14 to 110 pages and from 5% to 24% of the works.

The Court found that Kinko’s had infringed the publishers’ copyrights and, in addition to
enjoining Kinko’s from photocopying works to create anthologies without the permission of the copyright owners, awarded the plaintiffs damages, court costs and attorneys’ fees resulting in Kinko’s paying almost $2 million. The Court’s decision in the Kinko’s case did not prohibit the reproduction and sale of anthologies. It only prohibited the unlawful reproduction and sale of anthologies, i.e., those made without obtaining proper copyright permission.

10. WHY DID THE PUBLISHERS BRING THIS SUIT?
Publishers typically sell both complete books and the permission to copy smaller portions of books. As copyright owners, publishers have the right to refuse permission. Kinko’s’ practice of copying without permission infringed publishers’ rights to sell permission to copy or, at their discretion, to object to copying, and deprived both publishers and authors of royalty income.

11. WHAT IS “THE MICHIGAN DOCUMENT SERVICES CASE”?
“The Michigan Document Services (MDS) case” refers to a lawsuit for copyright infringement brought by three publishers against Michigan Document Services, Inc. and James M. Smith. The publishers challenged MDS’s and its owner-operator’s practice of making course packs containing excerpts of plaintiffs’ copyrighted works without obtaining permission. The copied materials ranged in length from 17 to 95 pages and from 5% to 30% of the original works. As in the Kinko’s case, the entire Sixth Circuit Court of Appeals upheld a lower court ruling that use of the copyrighted materials for an educational purpose does not itself constitute fair use and held MDS and Smith to be infringers. After the U.S. Supreme Court declined to review the decision, MDS and Smith settled the case. The settlement provides that MDS may not use more than one page of copyrighted material belonging to one of the plaintiffs or any member publisher of the Association of American Publishers to create coursepacks without obtaining the necessary copyright permission.

Thus, the decisions in Kinko’s and Michigan Document Services provide the most relevant judicial guidance about copyright law as it pertains to coursepacks. Those who compile and sell coursepacks should not change their practice of obtaining permissions from copyright owners when using excerpts of copyrighted works.

12. WHAT EFFECT WILL THE KINKO’S AND MICHIGAN DOCUMENT SERVICES CASES HAVE ON COLLEGE BOOKSTORES AND COPY SHOPS THAT MAKE OR SELL CUSTOMIZED COURSE ANTHOLOGIES?
The Courts’ decisions indicate that the making and selling of customized anthologies or coursepacks without the copyright owners’ permission is infringing. The record in both cases showed that many college stores are already operating legitimate custom publishing operations where they obtain permission and produce anthologies authorized by the copyright owners of the included excerpts. The decisions support the practices of these stores.

13. WILL FACULTY MEMBERS WHO ASSIGN CUSTOMIZED COURSE ANTHOLOGIES, OR THE COLLEGES AT WHICH THEY TEACH, BE LIABLE FOR COPYRIGHT INFRINGEMENT?
Anyone who violates any of the exclusive rights of the copyright owner is an infringer. In the Kinko’s and MDS suits, the publishers sued commercial copy shops that had profited from selling publishers’ copyrighted works without obtaining permission. The copy shops in these
In 1983, a number of publishers coordinated a suit against New York University and nine professors for creating similar coursepacks. The action was settled with the adoption of certain procedures by NYU. Since that time, faculty and school administrations have generally been sensitive to the copyright law and have widely followed the Classroom Guidelines (see Appendix A) which the Court confirmed in the Kinko’s case to be relevant. Other cases have confirmed that educational use can be infringing and that faculty and institutions can be liable for uses that are not fair.

14. WOULD I INFRINGE SOMEONE’S COPYRIGHT IF I WERE TO MAKE MULTIPLE COPIES AND EITHER DISTRIBUTE THOSE COPIES FOR FREE OR REQUIRE THEIR RETURN AFTER USE?
You may be infringing. You do not have to sell the copies (or permanently dispose of them) in order to infringe the copyright owner’s rights. (However, making and distributing multiple copies of portions of copyrighted works may be permissible under the classroom guidelines. See Appendix A.)

15. CAN I LEGALLY COPY A WORK I BOUGHT WITHOUT INFRINGING THE COPYRIGHT?
The purchaser of a work owns only that particular copy of the work. The purchaser does own any rights in the copyright covering the contents of the purchased copy. A purchaser cannot copy the purchased work, in whole or in part, without the copyright owner’s permission unless such copying constitutes “fair use.” For information about copying software, see questions 22 to 25.

16. WHAT SHOULD I DO IF I WANT TO USE MATERIALS THAT CONTAIN A PHOTOGRAPH OR ILLUSTRATION WITH A COPYRIGHT OWNER DIFFERENT FROM THAT OF THE BOOK ITSELF?
Many times photographs or illustrations are covered by copyrights owned by a different party from the copyright owner of the material in which they are published. The author or publisher of that material has received permission from the photographer or illustrator to include it in the work but may or may not have the right to grant permission to others to reproduce the photograph or illustration. In some cases, licensing organizations act for the photographer or illustrator. You may need to make a separate request for permission to copy the photograph or illustration. See page 12 for Procedures for Obtaining Permission to Copy.

17. OTHER THAN UNDER THE FAIR USE DOCTRINE DISCUSSED IN QUESTIONS 6 THROUGH 8, CAN I EVER COPY MATERIAL WITHOUT INFRINGING SOMEONE’S COPYRIGHT?
Works in the public domain may be freely copied; however, collections, translations and edited versions of works in the public domain may be protected by copyright. Works in the public domain include works that have never been the subject of copyright protection, works whose term of copyright protection has expired, and works by the U.S. government. Certain works created by the U.S. government, including documents prepared by an officer or employee of the federal government as part of that person’s official duties, may be freely copied. The right to copy U.S. government-created works without permission, however does not extend to documents published by others with the support of U.S. government funds, grants or contracts; to portions of government documents which contain copyrighted material from other non-government sources; or to publishers’ edited, annotated or compiled versions of such documents.
cases had solicited faculty business and given assurances to faculty that the copyright law Absence of a copyright notice does not necessarily indicate that the work is in the public domain. Similarly, the fact that the author is deceased or the book is out-of-print does not mean that the work may be copied.

When in doubt about the status of a work, it is best to contact the publisher or author’s representative to determine whether the work is still under copyright or in the public domain.

18. WHAT IF I REQUEST PERMISSION AND I DON’T GET A RESPONSE?
If you don’t receive a response to your request for permission, you cannot assume that you have been granted the necessary permission.

19. WHAT CAN I DO IF COURSE MATERIAL HAS BEEN ORDERED FOR A CLASS BUT IS LATE IN ARRIVING AT THE BOOKSTORE?
You may be able to obtain permission from the copyright owner to photocopy a portion of the material until the book arrives. Each publisher has different procedures regarding such matters. You should contact the publisher to determine what procedures the publisher follows.

20. CAN A COLLEGE STORE BE LIABLE FOR INFRINGEMENT IF IT UNKNOWINGLY COPIES OR SELLS WORKS WHERE PERMISSION HAS NOT BEEN OBTAINED?
Yes. A store can be liable for unknowingly copying or selling works where permission is required. An indemnification agreement obtained from the provider of the materials to be copied or sold by the store will not absolve the store from liability from the copyright owner.

21. WHEN CAN COPYRIGHTED WORKS BE UPLOADED TO OR DOWNLOADED FROM THE INTERNET?
You may upload or download copyrighted works when you are the copyright owner of the works, when you have permission from the copyright owner or when fair use applies. While some materials available on the Internet are not protected by copyright, there are also many copyrighted works such as web pages and computer software that are protected just as much as works in other media such as books and CD-ROMs. Many copyright owners permit Internet users to make some use of the work, but the works are not in the public domain, even if they do not display a copyright notice.

Because uploading and downloading works involves copying the work and other exclusive rights, educators and students should apply the rules discussed in this booklet to using copyrighted works on the Internet. They should also be cautious because some copyrighted works are unauthorized copies posted without the knowledge of the copyright owner. For more information, consult the copyright information on the web site or request permission from the webmaster.

Copying and Networking Software

22. WHAT ARE THE LAWS WITH REGARD TO COPYING SOFTWARE?
Generally, copyright law applies to computer software the same as it does to most other forms of works. However, the copyright law permits the owner to make a copy for archival purposes so long as the copy is destroyed once the original software is transferred or sold. In
limited circumstances, a copy or adaptation may be made as an essential step in using the program in a computer. It is important to note that, in most cases, when buying the software, you are actually acquiring only a license to use the software. The license governs the permitted uses of the software.

23. WHAT IS A LICENSE AGREEMENT, AND HOW DOES IT RELATE TO COPYRIGHT?
A license agreement allows the purchaser to use the software subject to the terms of the license. The purchaser has not bought the software but only licensed it. The purchaser does not have the right to copy or transfer the software to another party unless provided for in the license agreement.

24. DOES FAIR USE APPLY TO COMPUTER PROGRAMS?
Yes, but because most copying involves the entire computer program, rather than a portion of it, the unauthorized copying will rarely be considered fair use.

25. WHAT IF A SCHOOL OWNS AN OLD VERSION OF A SOFTWARE PROGRAM AND WANTS TO PURCHASE ADDITIONAL COPIES BUT THE PROGRAM IS NOW UNAVAILABLE? CAN THE OLD SOFTWARE PACKAGE BE COPIED IN SUCH A CASE?
The software program cannot be copied without first obtaining the permission of the publisher or copyright owner. Some software publishers permit copies to be made in such cases if additional licenses of the new version are purchased. Other publishers allow copies of the old program to be made if upgrades are purchased. Many publishers offer educational discounts that may make it economical to upgrade all older versions.

26. IS THERE ANY WAY TO MANAGE NETWORKS TO ENSURE THAT SOFTWARE IS NOT COPIED?
Yes. A school can purchase “metering” software which tallies the number of license agreements that the school owns and the number of copies made. Also, software auditing programs are available for purchase. These programs keep a log of existing license agreements and tell users what software is installed on their hard drive or server. These programs help to manage software ownership and reduce the possibility of accidentally pirating software. Information about these programs is available on the Software Publishers Association home page (http://www.spa.org).

27. WHAT DOES THE EXPRESSION “PIRATING SOFTWARE” MEAN?
It means making an impermissible copy of software.

28. CAN COMPUTER SOFTWARE BE RESOLD?
If a copy of a computer software program is purchased instead of obtained through a license, the purchaser has the right to transfer that one copy of the material. The “First Sale Doctrine” allows the copyright owner to control the initial sale or distribution of the material to the public, but once title to the material changes hands, the copyright owner has no right to control the subsequent resale or transfer of that one copy.
The First Sale Doctrine applies only to copies of the material that were lawfully made or obtained. Thus, if the computer software was a pirated copy, the purchaser does not have the right to subsequently transfer or sell that copy.
If the computer software is obtained through a license, the user should consult the license agreement to determine whether the copy may be resold.
Procedures for Obtaining Permission to Copy

Whether you request permissions yourself, or through a college store or copy service, these suggestions will speed the process by ensuring that you provide the necessary information to permit the copyright holders to respond to copying requests. The form included in Appendix B can be used for submitting most permission requests.

1. REQUEST PERMISSION BEFORE OR AT THE SAME TIME YOU ORDER TEXTBOOKS.
   The earlier your request is received the better, in case it cannot be granted and you need to substitute other materials. Publishers do not always control the rights and need time to research the extent to which permission may be granted or to refer you to the correct copyright owner. Each request requires a careful check of the status of the copyright, a determination of the exact materials to be duplicated (which sometimes involves ordering a copy of the material from a warehouse). In other words, the greater the lead time you give the copyright owner to respond to your request, the more likely it is that you will get the permission you seek.

2. INDIVIDUAL REQUESTS MAY BE DIRECTED TO THE PUBLISHER’S RIGHTS AND PERMISSIONS DEPARTMENT.
   The page containing the copyright notice shows who owns the copyright, the year of publication and the publisher’s name. The acknowledgment page may also contain information regarding copyright ownership. If the rights are held by the author or another publisher, you will be referred to the correct copyright owner. If the address of the publisher does not appear with the material, it may be obtained from a variety of resources such as the National Association of College Stores’ Book Buyers’ Manual; the American Booksellers Association’s Publishers Directory; the Association of American University Presses Directory (available from the University of Chicago Press); Books in Print; The Literary Marketplace (for books); The International Literary Marketplace (for international listings); or Ulrich’s International Periodicals Directory (for journals), published by R.R. Bowker Co., and available in any library. Your college store also has access to a few of these and similar resources. The Software Publishers Association includes a directory of software publishers on its home page (http://www.spa.org). The Authors Registry can help you find specific authors.

3. INCLUDE ALL OF THE FOLLOWING INFORMATION IN YOUR REQUEST:
   A. Author’s, editor’s, translator’s full name(s);
   B. Title, edition and volume number of book or journal;
   C. Copyright date;
   D. ISBN for books, ISSN for magazines and journals;
   E. Numbers of the exact pages, figures and illustrations;
   F. If you are requesting a chapter or more: both exact chapter(s) and exact page numbers;
   G. Number of copies to be made;
   H. Whether material will be used alone or combined with other photocopied materials;
   I. Name of your college or university;
   J. Course name and number;
   K. Semester and year in which material will be used; and
   L. Instructor’s full name.
4. REQUEST PERMISSION WHETHER OR NOT WORKS ARE IN PRINT.

5. PROVIDE YOUR COMPLETE ADDRESS AND THE NAME OF A CONTACT PERSON AND TELEPHONE NUMBER IN CASE THERE ARE ANY QUESTIONS.
   In many cases your college store or other service can assist you and/or provide appropriate forms; many of these services accept the form included in Appendix B. The publisher's response form will provide information about payment and fees, which are determined by the individual publisher. Many publishers have copyright permission information on the Internet.

6. OTHER RESOURCES TO FACILITATE PERMISSION:
   Publishers typically control permissions for scientific and scholarly books and journals, and for most in-print trade books. For some in-print and most out-of-print trade books and for articles in general circulation magazines, rights are often held by the authors. The Authors Registry can help you locate authors. The Authors Registry can be reached at http://www.authorsregistry.org or by writing to Authors Registry, 330 W. 42nd Street, New York, NY 10036. The Copyright Clearance Center (CCC) provides a central clearinghouse for clearing permissions for over 1.75 million titles and offers an on-line service for clearing permission for coursepacks at http://www.copyright.com. The CCC can also be reached by writing to 222 Rosewood Drive, Danvers, MA 01923.

Obtaining Copyright Registration

Educators and students who create copyrighted works may wish to register the copyrights in these works. Although copyright is secured automatically upon creation, there are certain advantages to registering works:

A. Registration creates a record informing the public that the work is protected by copyright;
B. It identifies the copyright owner and shows the year of first publication; and
C. In the event a work is infringed and the work carries a proper notice, a court will not allow a defendant to claim “innocent infringement.”

Registration may be made at any time within the life of the copyright. Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin and for foreign works not originating in a Berne Union country.

How to Register Your Works:

All applications and materials related to copyright registration can be obtained through or should be addressed to:

Register of Copyrights
Copyright Office
Library of Congress
Washington, DC 20559-6000
202/707-3000
Web Site:  http://lcweb.loc.gov/copyright
The Copyright Office is not permitted to give legal advice. If you need information or guidance on matters such as disputes over the ownership of a copyright, suits against possible infringes, the procedure for getting a work published, or the method of obtaining royalty payments, it may be necessary to consult an attorney.

Appendix A

The following excerpt from the legislative history of the 1976 Copyright Act establishes congressionally endorsed guidelines relating to classroom copying for educational use:

AGREEMENT ON GUIDELINES FOR CLASSROOM COPYING IN NOT-FOR-PROFIT EDUCATIONAL INSTITUTIONS WITH RESPECT TO BOOKS AND PERIODICALS.

The purpose of the following guidelines is to state the minimum standards for educational fair use under Section 107 of HR 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

GUIDELINES

I. SINGLE COPYING FOR TEACHERS:

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

A. A chapter from a book;
B. An article from a periodical or newspaper;
C. A short story, short essay or short poem, whether or not from a collective work;
D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

II. MULTIPLE COPIES FOR CLASSROOM USE:

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion, provided that:

A. The copying meets the tests of brevity and spontaneity as defined below; and
B. Meets the cumulative effect test as defined below; and
C. Each copy includes a notice of copyright.
DEFINITIONS:

Brevity:

i. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or (b) from a longer poem, an excerpt of not more than 250 words.

ii. Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words. (Each of the numerical limits stated in “i” and “ii” above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)

iii. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

iv. “Special” works: Certain works in poetry, prose or in “poetic prose” which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph “i” above notwithstanding such “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof may be reproduced.

Spontaneity:

i. The copying is at the instance and inspiration of the individual teacher; and

ii. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect:

i. The copying of the material is for only one course in the school in which the copies are made.

ii. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author nor more than three from the same collective work or periodical volume during one class term.

iii. There shall not be more than nine instances of such multiple copying for one course during one class term. (The limitations stated in “ii” and “iii” above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

PROHIBITIONS:

Notwithstanding any of the above, the following shall be prohibited:

A. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately.

B. There shall be no copying of or from works intended to be “consumable” in the course of study or teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

C. Copying shall not:
   i. substitute for the purchase of books, publisher’s reprints or periodicals;
   ii. be directed by higher authority;
   iii. be repeated with respect to the same item by the same teacher from term to term.

D. No charge shall be made to the student beyond the actual cost of the photocopying.

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OSHA’s Top 25 Hit List of Safety Infractions in the Workplace
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THIS IS A VALUABLE EXCERPT FROM CHAPTER 5- OSHA TOP 25 HIT LIST:

1. **Improper wiring** is present in one of the following ways [1910.305(b)(1)]:
   - unused openings and **electrical boxes** not closed;
   - conductors entering boxes are not protected from abrasion.

2. **Improper building design**, construction, maintenance or occupancy of a building or structure containing employees. [7F-0102 NFPA Life Safety Code]

3. Not having a written **Hazard Communication Program**. [1910.1200(e)(1)]

4. Missing or inadequate **machine guarding**. [1910.212(a)(1)]

5. Improperly using a **flexible cord** in one of the following ways [1910.305(g)(1)]:
   - as a substitute for fixed wiring
   - run through holes in ceilings or walls
   - run through doorways or windows

6. Failing to provide information about the **Hazard Communication** standard and the actual hazards of the chemicals that are present. [1910.1200(h)]

7. Improperly using a **flexible cord** in one of the following ways [1910.305(g)(2)]:
   - flexible cord smaller than a #12 was spliced.
   - splice wasn’t properly done [you can’t use solder to splice a flexible cord]
   - flexible cords were not strain relieved at stress/connection points.

8. **Fire extinguishers** not located or mounted in an accessible and safe location or not provided. [1910.157(c)(1)]

9. Tongue guard on **grinder** is more than 1/4” from the edge of the stone. [1910.215(b)(9)]

10. Failing to provide **fire extinguisher** training. [1910.157(g)(1)]

11. Employers in the construction industry failing to have a written **Hazard Communication Program**. [1926.59(e)(1)]

12. Not marking exits or accesses to exits. [1910.37(q)(1)]

13. Not having an **MSDS** for every hazardous chemical in use. [1910.1200(g)(1)]
14. Exposed, non-current carrying metal surfaces of fixed equipment are not grounded. [1910.304(f)(4)]

15. Failing to provide electrical boxes and fittings with an approved cover, or failing to ground metal covers. [1910.305(b)(2)]

16. Not properly labeling all containers or groups of containers containing hazardous chemicals. (This does not include transfer containers in immediate use for one shift only.) [1910.1200(f)(5)]

17. OSHA-200 log hasn’t been properly maintained or is missing. [1904.2(A)]

18. Work rest is missing or is more than 1/8" from a grinding wheel. [1910.215 (a)(4)]

19. Written standard operating procedures governing the selection and use of respirators shall be established. [1910.134(b)(1)]

20. Not providing a suitable eyewash or shower. [1910.151(c)]

21. Not having a written fire prevention program. [1910.38(b)(1)]

22. Employers shall make conveniently available protectors suitable for the task to be performed. Protective eye and face equipment shall be required where there is reasonable probability of injury that can be prevented by such equipment [1910.132(a)]

23. Disconnects, circuit breakers, and other overcurrent devices aren’t legibly (and permanently) marked to allow quick identification of their purpose. [1910.303(f)]

24. Persons shall not perform tasks requiring respirators if they are not able. [1910.134(b)(10)]

25. A platform four feet or more from the ground is not provided with a standard railing (and toeboard, where required). [1910.023(c)(1)]
Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) is a Federal law designed to protect the privacy of a student’s education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children’s education records. These rights transfer to the student, or former student, who has reached the age of 18 or is attending any school beyond the high school level. Students and former students to whom the rights have transferred are called eligible students.

- Parents or eligible students have the right to inspect and review all of the student’s education records maintained by the school. Schools are not required to provide copies of materials in education records unless, for reasons such as great distance, it is impossible for parents or eligible students to inspect the records. Schools may charge a fee for copies.

- Parents and eligible students have the right to request that a school correct records believed to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record commenting on the contested information in the record.

- Generally, schools must have written permission from the parent or eligible student before releasing any information from a student’s record. However, the law allows schools to disclose records, without consent, to the following parties:
  - School employees who have a need to know;
  - Other schools to which a student is transferring;
  - Certain government officials in order to carry out lawful functions;
  - Appropriate parties in connection with financial aid to a student;
  - Organizations conducting certain studies for the school;
  - Accrediting organizations;
  - Individuals who have obtained court orders or subpoenas;
  - Persons who need to know in cases of health and safety emergencies; and State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may also disclose, without consent, “directory” type information such as a student’s name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

For additional information or technical assistance, you may call (202) 260-3887 or TDD (202) 260-8956 or visit the website om@ed.gov or contact:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-4605
Overview ADA, IDEA, & Section 504: ERIC Digest E537

ERIC Identifier: ED389142
Publication Date: 1995-06-00
Author: Henderson, Kelly
Source: ERIC Clearinghouse on Disabilities and Gifted Education Reston VA.

THIS DIGEST WAS CREATED BY ERIC, THE EDUCATIONAL RESOURCES INFORMATION CENTER. FOR MORE INFORMATION ABOUT ERIC, CONTACT ACCESS ERIC 1-800-LET-ERIC AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

TYPE/PURPOSE
A civil rights law to prohibit discrimination solely on the basis of disability in employment, public services, and accommodations.

WHO IS PROTECTED?
Any individual with a disability who: (1) has a physical or mental impairment that substantially limits one or more life activities; or (2) has a record of such an impairment; or (3) is regarded as having such an impairment. Further, the person must be qualified for the program, service, or job.

RESPONSIBILITY TO PROVIDE A FREE, APPROPRIATE PUBLIC EDUCATION (FAPE)?
Not directly. However, (1) ADA protections apply to nonsectarian private schools, but not to organizations or entities controlled by religious organizations; (2) ADA provides additional protection in combination with actions brought under Section 504 and IDEA. Reasonable accommodations are required for eligible students with a disability to perform essential functions of the job. This applies to any part of the special education program that may be community-based and involve job training/placement.

FUNDING TO IMPLEMENT REQUIREMENTS?
No, but limited tax credits may be available for removing architectural or transportation barriers. Also, many federal agencies provide grant funds to support training and to provide technical assistance to public and private institutions.

PROCEDURAL SAFEGUARDS
The ADA does not specify procedural safeguards related to special education; it does detail the administrative requirements, complaint procedures, and the consequences for noncompliance, related to both services and employment.

EVALUATION/PLACEMENT PROCEDURES
The ADA does not specify evaluation and placement procedures; it does specify provision of reasonable accommodations for eligible students across educational activities and settings. Reasonable accommodations may include, but are not limited to, redesigning equipment, assigning aides, providing written communication in alternative formats, modifying tests, redesigning services to accessible locations, altering existing facilities, and building new facilities.

DUE PROCESS
The ADA does not delineate specific due process procedures. People with disabilities have the same remedies that are available under Title VII of the Civil Rights Act of 1964, as amended in 1991. Thus, individuals who are discriminated against may file a complaint with the relevant federal agency or sue in federal court. Enforcement agencies encourage informal mediation and voluntary compliance.
Individuals with Disabilities Education Act (IDEA)

TYPE/PURPOSE
An education act to provide federal financial assistance to State and local education agencies to guarantee special education and related services to eligible children with disabilities.

WHO IS PROTECTED?
Children ages 3-21 who are determined by a multidisciplinary team to be eligible within one or more of 13 specific categories of disability and who need special education and related services. Categories include autism, deafness, deaf-blindness, hearing impairments, mental retardation, multiple disabilities, orthopedic impairments, other health impairments, serious emotional disturbance, specific learning disabilities, speech or language impairments, traumatic brain injury, and visual impairment.

RESPONSIBILITY TO PROVIDE A FREE, APPROPRIATE PUBLIC EDUCATION (FAPE)?
Yes. A FAPE is defined to mean special education and related services. Special education means “specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability....” Related services are provided if student's require them in order to benefit from specially designed instruction. States are required to ensure the provision of “full educational opportunity” to all children with disabilities.

IDEA requires the development of an Individualized Education Program (IEP) document with specific content and a required number of specific participants at an IEP meeting.

FUNDING TO IMPLEMENT REQUIREMENTS?
Yes. IDEA provides federal funds under Parts B and H to assist State and local education agencies in meeting IDEA requirements to serve infants, toddlers, children, and youth with disabilities.

PROCEDURAL SAFEGUARDS
IDEA requires written notice to parents regarding identification, evaluation, and/or placement. Further, written notice must be made prior to any change in placement. The Act delineates the required components of the written notices.

EVALUATION/PLACEMENT PROCEDURES
A comprehensive evaluation is required. A multidisciplinary team evaluates the child, and parental consent is required before an initial evaluation. IDEA requires that reevaluations be conducted at least every 3 years. A reevaluation is not required before a significant change in placement.

For evaluation and placement decisions, IDEA requires that more than one single procedure or information source be used; that information from all sources be documented and carefully considered; that the eligibility decision be made by a group of persons who know about the student, the evaluation data, and placement options; and that the placement decision serves the student in the least restrictive environment. An IEP review meeting is required before any change in placement.

DUE PROCESS
IDEA delineates specific requirements for local education agencies to provide impartial
hearings for parents who disagree with the identification, evaluation, or placement of a child.

SECTION 504 OF THE REHABILITATION ACT OF 1973

TYPE/PURPOSE—A civil rights law to prohibit discrimination on the basis of disability in programs and activities, public and private, that receive federal financial assistance.

WHO IS PROTECTED?
Any person who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks.

RESPONSIBILITY TO PROVIDE A FREE, APPROPRIATE PUBLIC EDUCATION (FAPE)?
Yes. An “appropriate” education means an education comparable to that provided to students without disabilities. This may be defined as regular or special education services. Students can receive related services under Section 504 even if they are not provided any special education.

Section 504 does require development of a plan, although this written document is not mandated. The Individualized Education Program (IEP) of IDEA may be used for the Section 504 written plan. Many experts recommend that a group of persons knowledgeable about the students convene and specify the agreed-upon services.

FUNDING TO IMPLEMENT REQUIREMENTS?
No. State and local jurisdictions have responsibility. IDEA funds may not be used to serve children found eligible only under Section 504.

PROCEDURAL SAFEGUARDS
Section 504 requires notice to parents regarding identification, evaluation, and/or placement. Written notice is recommended. Notice must be made only before a “significant change” in placement. Following IDEA procedural safeguards is one way to meet Section 504 mandates.

EVALUATION/PLACEMENT PROCEDURES
Unlike IDEA, Section 504 requires only notice, not consent, for evaluation. It is recommended that districts obtain parental consent.

Like IDEA, evaluation and placement procedures under Section 504 require that information be obtained from a variety of sources in the area of concern; that all data are documented and considered; and that decisions are made by a group of persons knowledgeable about the student, evaluation data, and placement options. Section 504 requires periodic reevaluations, but does not specify any timelines for placement. Section 504 requires that students be educated with their nondisabled peers to the maximum extent appropriate. Section 504 does not require a meeting or any change in placement.

DUE PROCESS
Section 504 requires local education agencies to provide impartial hearings for parents who disagree with the identification, evaluation, or placement of a student. It requires that parents have an opportunity to participate in the hearing process and to be represented by counsel. Beyond this, due process details are left to the discretion of the local education agency. It is recommended that districts develop policy guidance and procedures.
Questions and Answers on Disability Discrimination
Section 504 and Title II

HOW DO SECTION 504 AND TITLE II DIFFER?

The main difference between the two laws is that one applies to the recipients of grants from the federal government (Section 504) and the other applies only to public entities (Title II). A school or college may be both a recipient of Federal funds from the US Department of Education and also a public entity. In such cases, the institution is covered by both laws.

ARE ALL SCHOOL DISTRICTS, COLLEGES, AND UNIVERSITIES COVERED BY THESE LAWS?

Virtually all public school districts are covered by Section 504 because they receive some federal financial assistance. Public colleges and universities generally receive federal financial assistance, and most private colleges and universities receive such assistance. There are some private colleges that do not receive any federal assistance, and Section 504 does not apply to them. Title II applies only to public institutions.
ARE ALL PROGRAMS IN A SCHOOL OR COLLEGE COVERED IF IT RECEIVES FEDERAL FINANCIAL ASSISTANCE?

Generally, all programs in a school or college are covered if the school or college receives federal financial assistance or is a public entity.

DO THESE LAWS COVER JUST STUDENTS?

No. The laws protect all participants in the program from discrimination, including parents, students, and employees.

DO THESE LAWS COVER JUST EDUCATION PROGRAMS?

No. They cover all programs of a school or college, including academics, extracurricular, and athletics. Also, the laws apply to the activities of a school or college that occur off campus.

DO ALL BUILDINGS HAVE TO BE MADE PHYSICALLY ACCESSIBLE?

No, not necessarily. While buildings constructed after the Section 504 regulation was issued (that is, those built since 1977) must be fully accessible, older buildings do not have to be made fully accessible. For older buildings, the law requires that the program or activity be made accessible. A common way this is done is to relocate the program to another building that is accessible.

WHAT TYPES OF ADJUSTMENTS ARE REQUIRED FOR STUDENTS WITH DISABILITIES IN COLLEGES AND UNIVERSITIES?

Colleges and universities are required to provide students with appropriate academic adjustments and auxiliary aids and services that are necessary to afford an individual with a disability an equal opportunity to participate in the school's program. Examples of auxiliary aids that may be required are taped texts, note-takers, interpreters, readers, and specialized computer equipment.

Colleges and universities are not required to supply students with attendants, individually prescribed devices such as hearing aids and wheelchairs, readers for personal use or study, or other devices or services of a personal nature.

WHAT TYPES OF SERVICES ARE REQUIRED FOR STUDENTS WITH DISABILITIES IN ELEMENTARY AND SECONDARY SCHOOLS?

School districts are required to provide a free appropriate education to students with disabilities based on their individualized educational needs. The services may include special education and related aids and services such as physical therapy, as well as modifications to the regular education program including adjustments in test-taking procedures and adjustments to rules regarding absences when a student's absences are due to a disability.

DOES OCR ENFORCE LAWS THAT PROHIBIT HARASSMENT OF STUDENTS OR OTHERS BECAUSE OF A DISABILITY?

Yes. Both Section 504 and Title II of the Americans with Disabilities Act make it unlawful to harass people in covered entities because of their disabilities. OCR and the Office of Special Education and Rehabilitation Services have jointly issued guidance to school districts regarding harassment based on disability.