

The Principal's Quick-Reference Guide to School Law

Fourth Edition

Do not copy, post, or distribute

I dedicate this fourth edition to my family—my wife, Kari, who has always supported my professional career, and to our sons Jack and Evan, who have never really figured out what it is that I do for a living. Once I figure that out myself, they will be the first to know. A final dedication to our sons Chase and Samuel, whose lives were cut short, leaving only to the imagination what could have been, yet have always been in our heart.

The Principal's Quick-Reference Guide to School Law

Reducing Liability, Litigation,
and Other Potential Legal Tangles

Fourth Edition

Robert F. Hachiya



Copyright ©2022 by SAGE Publications, Inc.

This work may not be reproduced or distributed in any form or by any means without express written permission of the publisher.



FOR INFORMATION:

Corwin
A SAGE Company
2455 Teller Road
Thousand Oaks, California 91320
(800) 233-9936
www.corwin.com

SAGE Publications Ltd.
1 Oliver's Yard
55 City Road
London EC1Y 1SP
United Kingdom

SAGE Publications India Pvt. Ltd.
B 1/1 Mohan Cooperative Industrial Area
Mathura Road, New Delhi 110 044
India

SAGE Publications Asia-Pacific Pte. Ltd.
18 Cross Street #10-10/11/12
China Square Central
Singapore 048423

President: Mike Soules
Associate Vice President and Editorial
Director: Monica Eckman
Senior Acquisitions Editors: Ariel Curry
and Tanya Ghans
Content Development Manager:
Desirée A. Bartlett
Editorial Assistants: Caroline Timmings
and Nyle De Leon
Production Editor: Melanie Birdsall
Copy Editor: Exeter Premedia Services
Typesetter: Exeter Premedia Services
Proofreader: Barbara Coster
Cover Designer: Scott Van Atta
Marketing Manager: Sharon Pendergast

Copyright © 2022 by Corwin Press, Inc.

All rights reserved. Except as permitted by U.S. copyright law, no part of this work may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system, without permission in writing from the publisher.

When forms and sample documents appearing in this work are intended for reproduction, they will be marked as such. Reproduction of their use is authorized for educational use by educators, local school sites, and/or noncommercial or nonprofit entities that have purchased the book.

All third-party trademarks referenced or depicted herein are included solely for the purpose of illustration and are the property of their respective owners. Reference to these trademarks in no way indicates any relationship with, or endorsement by, the trademark owner.

Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Names: Hachiya, Robert (Robert F.) author

Title: The principal's quick-reference guide to school law: reducing liability, litigation, and other potential legal tangles / Robert F. Hachiya.

Description: Fourth edition. | Thousand Oaks, California: Corwin Press, a SAGE Company, [2022] | Includes bibliographical references and index.

Identifiers: LCCN 2021048707 (print) | LCCN 2021048708 (ebook) | ISBN 9781071827772 (paperback) | ISBN 9781071871706 (ebook)

Subjects: LCSH: Educational law and legislation—United States. | School management and organization—Law and legislation—United States. | School administrators—United States—Handbooks, manuals, etc.

Classification: LCC KF4119.85 .H33 2022 (print) | LCC KF4119.85 (ebook) | DDC 344.73/07—dc23/eng/20211220
LC record available at <https://lccn.loc.gov/2021048707>
LC ebook record available at <https://lccn.loc.gov/2021048708>

This book is printed on acid-free paper.

22 23 24 25 26 10 9 8 7 6 5 4 3 2 1

DISCLAIMER: This book may direct you to access third-party content via web links, QR codes, or other scannable technologies, which are provided for your reference by the author(s). Corwin makes no guarantee that such third-party content will be available for your use and encourages you to review the terms and conditions of such third-party content. Corwin takes no responsibility and assumes no liability for your use of any third-party content, nor does Corwin approve, sponsor, endorse, verify, or certify such third-party content.

Contents

Preface and Advisement	ix
Acknowledgments	xiii
About the Author	xv
Introduction	1
1. The School and the Legal Environment	6
A. The School's Relationship to the Legal Environment	7
B. Constitution Clauses and Amendments That Affect Education Practice	14
C. Selected Federal Statutes That Affect Education Practice	16
D. Supreme Court Rulings That Affect Education Practice	21
2. Preventive Law: Developing Risk and Crisis Management Programs	36
A. Prevention and Risk Management	38
B. Duty and Risk Management	47
C. Working With the Media	48
3. Tort Liability	51
A. The Law of Torts and the Concept of Negligence	53
B. The Concept of Negligence and Its Application to Duty and Standards of Care	59
C. Negligence, Duty, and Standards of Care in School Activities	65
D. State-Created Danger and Deliberate Indifference	79
4. Students' Rights	88
A. Symbolic Expression	89
B. Oral and Written Expression	96
C. Privacy, Search, and Seizure	100
D. Gender Identity	110
5. Technology and Social Media	117
A. Student Technology Misconduct On and Off School Grounds	119
B. Use of Technology to Monitor Students	135

6. Student Discipline	138
A. Discipline Considerations for Principals	140
B. Due Process	152
C. Applying Discipline to Students	154
7. Sexual Harassment	164
A. Origins of Sexual Harassment Prohibitions	165
B. Definitions	170
C. Title IX and Changing Guidance	172
D. How to Handle Allegations and Complaints	174
E. Additional Essential Topics of Focus	177
F. Prevention	181
8. Special Education Services	189
A. The Purpose and Historical Context of Special Education	191
B. Key Terminology and Principles in Special Education Law	193
C. Identification and Procedures for Students With Disabilities	196
D. Disciplining Students With Disabilities	207
E. Suggested Additional Resources	209
9. Program Management	213
A. School Attendance	214
B. Bilingual and Special Language Programs	218
C. Religion in Public Schools	220
D. The Marketplace of Ideas	234
E. Health and Safety Issues	237
10. Copyright Law	250
A. Sources of Copyright Law	251
B. Copyright Protections	252
C. Public Domain and Fair Use	254
D. Minimizing Risk	258
11. Human Resources Management	265
A. Human Resource Functions and Demands on Principals	266
B. Important Laws Related to Human Resources	267
C. Staff Selection	274
D. Negligent Hiring, Defamation, and Referencing	279
12. Teachers' Rights	286
A. Licensure and Employment Contracts	287
B. Teachers' Rights	293
C. Teacher Discipline and Dismissal	302
D. Hearings and Procedural Due Process	309
E. Performance Evaluation	311

13. Education Law 101 for Teachers: Priorities for Professional Development	322
A. Code of Ethics for Educators	322
B. Teachers and Students	323
C. Relationship With Administrators	325
D. Teacher Protection in Practice	326
Table of Cases	329
References and Resources	338
Index	347



Visit the companion website at
resources.corwin.com/principalsquickreferenceguide4e
for downloadable resources.

Do not copy, post, or distribute

Do not copy, post, or distribute

Preface and Advisement

In previous editions of this book, we stated,

Once upon a time there was order in our schools and change occurred so benevolently that it was called “progress.” There was a place and a time for everything. There were authorities, too. The principal spoke without hesitation about what was appropriate behavior. Dad and Mom told their children to go to school and “mind the teacher,” and students listened and learned and behaved themselves. Teachers and school administrators worked in harmony with each other. Parents left educational decisions up to the schools. The courts rarely got involved with schools and, when they were asked to make a decision, they tended to side with schools.

Then something happened. Some say parents failed in their responsibility. Some say schools lost their direction and control. Some say society became too permissive. Some say the courts started to get involved where they did not belong. (p. xiii)

We could not say then, and we still cannot say definitively what happened (societal changes, court rulings, etc.), but we know that much that was nailed down suddenly came loose. We know that the job of school principal is vastly different today from what it was twenty years ago, ten years ago—or even yesterday. Today’s principals grapple with a sea of conflicting demands from their school boards, central office administrators, students, teachers, parents, community pressure groups, and various political agendas. Principals’ jobs are further complicated by the seemingly endless and often contradictory statutes, court decisions, and attorneys’ general opinions that directly affect the operation of their schools. As a result of these pressures, principals often feel insecure and, at times, powerless when it comes to balancing the pressure to do something, on the one hand, and legal restraints, on the other. Today’s principals face an additional dilemma as they address the task of balancing the need for order with the need to respect the legal rights of students, teachers, and parents.

Principals in practice today who see their colleagues retire from the profession understand that school and societal events and changes date their service, because in many ways those events changed practice within the schools. The role and duties of daily practice changed for principals after tragedies, inventions, innovations, and a pandemic. There was the daily life of principals before and after the Columbine tragedy; the 9/11 attacks; the invention of the cell phone; the invention of vaping; and the start of a devastating worldwide pandemic.

All of the above still applies in 2022, but the timing of this text also had to consider the challenges of the COVID-19 global pandemic and the anticipated changes of federal education policy after the 2020 presidential election. Both the pandemic and election result dramatically affect the practice of principals and other educators, and at the time of the publication of this book, how those changes play out as education law issues remains unknown.

Revising a text that includes continually changing statutes, policy implementation, and case law always presents a challenge and the potential to be out of date after any new law is passed or court decision is rendered. The impact of the pandemic on schools and what the future holds is unknown and presents a unique challenge given the purpose of this text and the audience who reads it.

Although a number of good books are available on education law, few focus directly on the specific needs of the principal. Previous editions of *The Principal's Quick-Reference Guide* have been written exclusively for preservice and in-service principals, vice principals, and other building-level administrators, to provide basic information on the current status of law and site-based risk management as it relates to the legal rights and responsibilities inherent in managing and leading schools. The book is also widely adopted in principal preparation programs, which is a major reason why foundational content, perhaps less important to a practicing administrator, remains in the book. Because this book is used as an introductory text for future principals, the book intentionally includes narratives that may not necessarily be of significant benefit to principals in the field, but are very important for those who are aspiring to become principals. Such narratives and in-depth discussion should be valuable to establish the foundational knowledge for those who wish to become principals.

Even with the usual challenges presented in revising an education law text and especially doing so in 2021, there were new considerations that went into the fourth edition. When the book was first published, the wide availability of instant information from the internet was not available, and a book written in this format was indeed a quick reference. As changes in education law took place between each edition, the book added new sections, some of which would have been unheard of in previous editions (such as searching the contents of a cell phone). As a result, the book became lengthy and no longer resembled the “quick reference” as intended in its original form.

WHAT'S NEW IN THE FOURTH EDITION?

Similar to previous revisions of the book, this edition embeds areas of risk management that educators need to know, understand, and address in everyday practice. Each chapter has been updated, as appropriate, with current case law and court rulings to provide educators with the legal knowledge they need for exemplary practice. The cases chosen for the text include landmark decisions that influence education practice, and also have been chosen to be of interest to principals because they relate to the issues that might commonly occur in their daily practice.

In the effort to return to its original intention as a quick reference, the book has been reorganized, with some previous chapters merged in order to provide a

more meaningful flow. Some chapters also include suggested practice related to COVID-19 responses, especially as they relate to risk management. New to the fourth edition, the book concludes with topics principals may find valuable as they conduct professional development for teachers with some of the most common education law concepts and circumstances they face each day.

Nearly all school administrators have had a course in school law. They know that the law affects almost every facet of education. However, most school law courses end without helping the principal translate school law and policy into education procedures and practice. This book helps close that gap and places principals in a better position to maintain a safe school and to be proactive in litigation avoidance and conflict resolution.

Most legal actions brought against school principals are not based on areas of education leadership or knowledge of curriculum. Principals who find themselves defendants in court often got there because they did not know the relevant law or did not practice sound management based on an understanding of existing court decisions. This fourth edition continues to help principals understand and provide a stronger foundation for their day-to-day management of risk.

As with previous editions, this book is designed to be a desk reference in which school administrators can quickly find and identify important legal points to consider during decision-making processes when such decisions may have legal consequences. To further assist in that process, we continue to use straightforward, nontechnical language and follow a standard format in presenting pertinent information.

Learned Hand noted in an address to the Association of the Bar of the City of New York in 1921 that “[a]fter now some dozen years of experience [as a judge] I must say that as a litigant I should dread a lawsuit beyond almost anything else short of sickness and death” (Association of the Bar, 1926, p. 87). The operative word in 1921 was *dread*. The operative word in this current edition of *The Principal’s Quick-Reference Guide* is *prevention*, and, as was true in previous editions, this practitioner’s guide is designed to reduce *ex post facto* decision making (applying law or making rules after the fact) in real-life, school-based risk management and incident resolution. If Latin were a living language, perhaps we could coin a new phrase, *pre facto* decision making, to describe this book’s proactive approach to avoiding litigation and managing risk. We hope that by continuing to equip principals and other school leaders to act with both knowledge and understanding of education law, we will help make wise, safe, and legally defensible decisions in the best interests of students, teachers, and parents. We intend this book to make the daunting job of being an effective school leader a bit easier.

Please be advised that this book represents an effort to respond to the professional needs of the reader. The case law interpretation and the presentation of scenarios are not designed as statements of final authority. Only a court of law, guided by individual case facts, can be considered as an authority on a specific issue. That issue may be treated differently from court to court, state to state. This book serves a purpose for the education profession and provides only suggested guidelines for the avoidance of litigation. This book should not be considered a forecaster of impending or future litigation. It should also be noted that any guidelines suggested should be treated with caution in light of the specific

subject matter examined and the expected level of personal involvement. There are those administrative and teaching responsibilities that transcend the norm, requiring a higher degree of duty and care, supervision, instruction, and maintenance. This book is designed to provide accurate and authoritative information in regard to the subject matter covered.

In publishing this book, neither the author nor the publisher is engaged in rendering legal service. If legal advice or assistance is required, the services of a competent attorney should be sought.

Do not copy, post, or distribute

Acknowledgments

As the sole author of this fourth edition, I would like to acknowledge both Dr. Robert Shoop and Dr. Dennis Dunklee for providing me this opportunity to join their team when I was in my first year as an assistant professor. Their willingness to place trust in my work helped propel me into a new career after a lengthy tenure as a public school teacher and administrator. I also wish to acknowledge Dr. David Thompson, who was the chairperson of the Educational Leadership Department at Kansas State University when I was hired. His guidance and mentorship has been outstanding and greatly appreciated.

Equally important are my colleagues in our department, and I could not have completed this work without their encouragement and continual professional collaboration, especially during the unsettling times of the pandemic. So thank you, Dr(s). Mary Devin; Donna Augustine-Shaw; Jia Liang; Alex Red Corn; Richard Doll; and our chairperson, Jerry Johnson.

Finally, I wish to acknowledge the Education Law Association, which has been a tremendous professional resource for me since I joined in 2012. It has been my great privilege to have met and worked alongside some of the greatest leaders in the field of education law, and I appreciate not only the opportunities ELA has presented, but the relationships that have grown over the years.

PUBLISHER'S ACKNOWLEDGMENTS

Corwin gratefully acknowledges the contributions of the following reviewers:

Debi Gartland, Professor of Special Education
Towson University
Towson, MD

Laura Schaffer Metcalfe, Education Faculty
Grand Canyon University Online
Mesa, AZ

Do not copy, post, or distribute

About the Author



Dr. Robert F. Hachiya is an associate professor in the education leadership department at Kansas State University. With twenty-seven years' experience as a teacher, coach, assistant principal, and principal, Dr. Hachiya now teaches courses and advises graduate students at Kansas State University. Among the classes he teaches are Education Law, as well as Ethical Dimensions for Leadership; Principalship; Leadership for Diverse Populations; and History and Philosophy of Educational Administration. He joined the team of Robert J. Shoop and Dennis R. Dunklee for the third edition of this book and is now the sole author of the fourth edition.

Dr. Hachiya has presented across the country at several national conferences, including the National Association of Secondary School Principals (NASSP) National Convention in Philadelphia, Pennsylvania, regarding conducting sexting investigations, and in Boston, Massachusetts, on school violence prevention. In 2021, he presented at the Education Law Association Conference on the practical applications for principals regarding the *Mahanoy Area School District v. B.L.* decision of the United States Supreme Court. He has also presented papers or led discussions at conferences for the Education Law Association (ELA), the University Council for Educational Administration (UCEA), the International Council of Professors of Educational Leadership (ICPEL), and the Kansas United School Administrator (K-USA).

Dr. Hachiya received his BS degree from the University of Nebraska-Lincoln and his master's and EdD degrees from the University of Kansas. He also did post-doctoral work at the School Law Institute at Teachers College, Columbia University.