

# U.S. CONSTITUTION

## BILL OF RIGHTS

### AMENDMENTS RELATED TO EDUCATION

Abstracted by Sheldon Braaten

AMENDMENT I: Congress shall make no law respecting an established religion, or prohibiting the free exercise of speech, or of the press; or the right of people peaceably to assemble, and to petition the government for a redress of grievances.

Concepts: freedom of religion, speech and assembly (association); many examples involving educators, and students.

AMENDMENT IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall be issued, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Concept: right to privacy; educators do not have to meet the same standards as police, however there must be reasonable cause for searches and seizures

AMENDMENT V: No person shall be held answerable for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

Concepts: personal ownership; education is considered a “property” right which cannot be taken (e.g. suspension, expulsion) without due process of law.

AMENDMENT VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory processes for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Concepts: persons have a right to know specifics of charges being made and by whom, and to a process for presenting their side of the case

AMENDMENT VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Concepts: punishment shall be reasonable-must be in proportion to the gravity of the offense. While education is granted wide discretion, the legality of the penalty is the child’s ability to bear the punishment-consider sex, age, size, and emotional, mental and physical condition; (corporal punishment; time-out)

AMENDMENT X: The powers not delegated to the United States by the Constitution, nor prohibited by to the states, are reserved to the states respectively, or to the people.

Concepts: role of the federal and state governments; federal control over education is secondary to the power exercised by the states

AMENDMENT XIV: Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Concepts: due process; fundamental *fairness*-hearing, trial, judgment; opportunity to present all sides in a dispute

equal protection prohibition of arbitrary or capricious action, based on race, gender etc.

- rights of teachers, administrators and students

protection from rules that substantially infringe on an individuals' constitutional rights, e.g. speech religion, association, privacy, non-discrimination, self-incrimination; etc.

Rules: states have a legitimate interest and right to establish rules which are necessary to protect:

-the health, safety and welfare of the students

-the school from a material and substantial disruption

Rules (related to discipline) must be rational and reasonable and weighed against students' rights.

### **Some Issues involving special education:**

- equal protection: students with disabilities have right to benefit from free appropriate education; antidiscrimination;
- procedural safeguards
- False imprisonment-when a student is wrongfully detained for an unreasonable amount of time or in a wrongful manner.
- Probable cause, reasonable grounds
- foreseeability
- negligence has to do with safety: four elements-duty, violation, cause and injury
- reasonable and prudent teacher or administrator: teachers and administrators are held to a higher standard than a person on the street-under a duty to possess more than the “ordinary” amount of intelligence in relation to students and their care...to “foresee.”
- testing
- intentional tort: injury is wrongfully caused, person causing the injury intended the act; e.g. assault, battery, defamation, false imprisonment, mental distress, trespass to personal property
- Malpractice (accountability): negligent for failing to supervise the process of education-to diagnose an obvious learning problem or prescribe a clearly needed therapy; fraud for telling a student s/he would learn to....if s/he comes to school and for leading parents to believe that s/he is learning.... difficult to enforce...many defenses.
- medication...giving of
- mental distress, infliction of
- ”safe place”
- code of conduct
- search and seizure
- appearance
- association
- teacher aides & supervision of
- tracking, ability grouping
- punishment, corporal punishment
- discrimination
- student records-data privacy