



AALS

Education Law Section

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December 2016 (revised)

Message from the Chair

Dear Section Members,

It's been a privilege and a pleasure to serve as chair of the AALS Education Law Section this year.

Education law continues to be at the center of national events. Although the death of Supreme Court Justice Antonin Scalia resulted in a stalemate regarding two important education law cases, one involving the parents of undocumented children and the other related to teachers' union fees, the Court issued major decisions in the areas of voting rights, affirmative action and the rights of public employees. Controversies over transgender student rights, debates about Common Core, and questions regarding the level of benefits required by special education law have all been part of our collective scholarship, teaching and learning. The scholarship of members of our community has contributed to efforts to resolve many of these legal issues and promote equitable school learning environments that provide every student with the opportunity to fulfill their potential. As we usher in the New Year we will be faced with new challenges in education; however, I am confident that we will continue our relentless dedication to promote students' well being and success.

Our session at the 2017 AALS annual meeting is on Friday, January 6, at 10:30 a.m. in the Continental Parlor, Room 7, on the Ballroom level of Tower 3 of the Hilton San Francisco Union Square Hotel. The panel is entitled "New Horizons: Navigating the Complex Landscape of Title IX Compliance," and will include the following panelists: Tanya Washington of Georgia State University, Robin Fretwell Wilson of University of Illinois, Champaign-Urbana, Deborah Brake of University of Pittsburgh, and John C. Clune of Hutchinson, Black, Cook, LLC. The program will highlight the work of these distinguished Title IX experts from around the country through a lively discussion of the emerging institutional challenges in complying with Title IX, in both K-12 and higher education milieus. Please come to the session, bring your colleagues, and join in the discussion.

There will be a business meeting held on Wednesday, January 4th from 7:30 a.m. to 8:30 a.m. in the Union Square Room 8, on

the fourth floor of Tower 3. In that meeting we will elect officers and brainstorm on a topic for next year's program. The practice of the section has been to be open and democratic in charting its direction; all are encouraged to attend the meeting and participate actively.

Special thanks to the law teachers who submitted papers in response to the Section's call for papers for this year's program. Additionally, I would like to thank the officers of the Section: Chair Elect **Aaron Saiger** (Fordham); Secretary **Eloise Pasachoff** (Georgetown); Treasurer **Twinette Johnson** (Southern Illinois); and all the members of the Executive Committee. It has been an honor to work with this stellar group of scholars and serve as Chair.

I look forward to meeting up with everyone in San Francisco in January!

Sincerely,

Laura McNeal

Laura R. McNeal
Brandeis School of Law, University of Louisville

Chair, Education Law Section, AALS

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Student Writing Award

George Jay Joseph Education Law Writing Award

The purpose of this national competition is to generate increased interest in and recognition of education law among graduate students in education schools and students in law schools. The winner of the competition will be recognized at the annual conference of the Education Law Association (ELA), and the manuscript will be published in the *Journal of Law and Education*. Additionally, the winner will be invited to present on the topic of the article at the ELA annual conference and receive a commemorative plaque, a year's membership in ELA, waiver of the registration fee for the conference, and national recognition via an ELA press release. The author must submit the manuscript via email (as an attachment in Word format) to the chair of the selection committee for the Joseph Award Committee. More information about applying is available here: <https://educationlaw.org/ela-award-nominations/george-jay-joseph-award>. The deadline to apply is July 1 of each year.

Criteria:

- subject matter: one or more legal issues within any of the various contexts of education, including public and private k-12 schools and institutions of higher education, especially current and emerging issues in elementary and secondary public education
- format: double-spaced, with 12-point font and one-inch margins, with footnotes on each respective page (rather than at the end) carefully conforming to Blue Book citation style
- length: between 35 and 55 pages including the footnotes
- status: not previously published and not under review elsewhere for publication
- authorship: single-authored by a law student or a student in a graduate program in education

Member News

The Section Secretary has received the following updates about member activities:

Derek Black, University of South Carolina

Reforming School Discipline, 111 Northwestern University Law Review 1 (2016)

Taking Teacher Quality Seriously, 57 William & Mary Law Review 1597 (2016)

The Constitutional Challenge to Teacher Tenure, 104 California Law

Review 75 (2016)

I also published these books:

Ending Zero Tolerance: The Crisis of Absolute School Discipline (NYU Press 2016)

Education Law: Equality, Fairness, Reform (Aspen Publishers, 2d. ed. 2016)

These two articles are also shortly forthcoming:

Abandoning the Federal Role in Education, 105 California Law Review (forthcoming 2017)

Averting Educational Crises, 94 Washington University Law Review (forthcoming 2017)

Tiffani N. Darden, Michigan State University College of Law

Exploring the Spectrum: How the Law May Advance a Social Movement, 48 Ariz. St. L.J. 261 (2016)

Maurice R. Dyson, Thomas Jefferson School of Law

Rethinking Rodriguez After Citizens United: The Poor As A Suspect Class In High Poverty Schools, 24 Georgetown Journal on Poverty Law and Policy 1 (forthcoming)

Excessive Force, Bias & Criminal Justice Reform: Proposals for Congressional Action, __ Loyola Law Review __ (forthcoming)

Still Using The Wrong Yardstick: Measuring Quality by the Proxies of Rumor, Bias and Conformity, 31 Columbia Journal of Gender & Law 154

Promise Zones, Poverty & the Future of Public Schools: Confronting the Challenges of Socioeconomic Integration & School Culture in High Poverty Schools, 2014 Michigan State Law Review 711

Professor Dyson is also presenting at the AALS joint panel of the Sections on Constitutional Law and Poverty Law on the Constitution in An Era of Increasing Inequality. He also served as a panelist on the Race, Poverty & Mass Incarceration conference, sponsored by the University of San Diego School of Law, the University of San Francisco School of Law and the Western Regional BLSA (2016). He has also presented at the Pursuing Excellence: Diversity In Higher Education, Women & the Law Conference, at the Thomas Jefferson School of Law (2016).

James Foreman, Yale Law School

My news is that I am visiting at Stanford Law this year, teaching 2 classes: Race and Public Education, and Race, Class, and Punishment. Also, I recently shifted from a clinical to a non-clinical position at Yale. My teaching highlight is that last semester I offered a seminar on the criminal justice system to a group that included 10 students from Yale Law and 10

students who were incarcerated at a Connecticut state prison. We met weekly in the prison. It was the most rewarding teaching experience I've ever had and I look forward to doing it again. Last but not least, my book [Locking Up Our Own: Crime and Punishment in Black America](#) will be released April 18, and is currently available for pre-order.

Darrell D. Jackson, University of Wyoming

Books & Book chapters

Black Men in Law School: Unmatched or Mismatched (Routledge Publishing, under contract)

Critical Race Spatial Analysis: Mapping to Understand and Address Educational Inequity (Stylus Publishing, forthcoming 2017) (edited with Deb Morrison and Subini Annamma)

Articles

Conceptualizing Color-evasiveness: Using Dis/ability Critical Race Theory to Expand a Color-blind Racial Ideology in Education and Society, *Race Ethnicity & Educ.* (2016) (with Subini Annamma and Deb Morrison)

Selected Scholarly Conferences/Lectures/Presentations

Invited speaker, "Implicit (Unconscious) Bias: A New Look at an Old Problem." University of Memphis Cecil C. Humphreys School of Law, Memphis, Tennessee, November 2016. (Speaking on the implications of implicit bias within education.)

Invited participant, Wolters Kluwer Legal Education "Leading Edge" Conference (July 2016).

"Conceptualizing Color-Evasiveness: Using Disability Critical Race Theory to Expand Notions of Color-Blindness." Paper presentation for panel *Disability Critical Race Theory and Conceptualizations of Place and Space: Working Toward Intersectional Understanding* at the Annual Meeting of the American Educational Research Association, Washington, DC, April 2016 (with Subini Annamma).

Laura McNeal, University of Louisville's Brandeis School of Law

Managing Our Blind Spot: The Role of Implicit Bias in the School-to-Prison Pipeline, 48 *Ariz. St. L.J.* 285 (2016)

The School-to-Prison Pipeline: Redirecting Our Future, *Insights on Law and Society*, American Bar Association Magazine (2016)

Schuette v. Coalition to Defend Affirmative Action: *The Majority's Tyranny Against Equal Educational Opportunity*, 59 *St. Louis U. L.J.* 385 (2015)

Invited Speaker (Distinguished Faculty Speaker Series), *Tyranny of The Majority: Unequal Educational Opportunity and the Rise of Moral Exclusion*, University of Cincinnati College of Law (2016)

Invited Speaker (Expert Testimony), *Indiana Advisory Committee to the U.S. Commission on Civil Rights: Hearings on School-to-Prison Pipeline* (2016)

Invited Speaker, *Hidden Consequences: Implicit Bias and Education*, Ashland University (2016)

Invited Speaker, *Every Child Matters: Achieving Equal Educational Opportunity in the 21st Century*. American Swiss Foundation Global Leaders Conference, Zurich, Switzerland (2015). *One of 25 national scholars selected from the U.S.*

Rachel Moran, UCLA School of Law

Publications

The Constitution of Opportunity: Democratic Equality, Economic Inequality, and the Right to Education, in *THE ROAD TO PROGRESS: THE CASE FOR A U.S. EDUCATION AMENDMENT* (Charles Ogletree and Kimberly Jenkins Robinson eds.) (forthcoming 2017)

City on a Hill: The Democratic Promise of Higher Education, 6 *UC IRVINE LAW REVIEW* (forthcoming 2016)

Michael Olivas: On Being a Trailblazer Instead of an Eagle Scout, in *ACCIDENTAL HISTORIAN: THE MICHAEL OLIVAS READER* (E. Roman ed.) (forthcoming 2016)

Race-Conscious Admissions Policies Face More Tests after "Fisher", *CHRONICLE OF HIGHER EDUCATION*, July 17, 2016 (with Mark Yudof)

Recognition

The American Bar Foundation (ABF) selected me to serve as the inaugural William H. Neukom Fellows Research Chair in Law and Diversity. In that capacity, I launched a project on "The Future of Latinos in the United States: Law, Opportunity, and Mobility," which I am co-directing with Robert L. Nelson, Director Emeritus and the MacCrate Research Chair in the Legal Profession at the ABF. I gave numerous talks about the initiative, including speeches to the New York and Los Angeles chapters of the ABF Fellows, a presentation at the American Bar Association's Mid-Year Meeting, and a roundtable with Chicago-area law students at Sidley Austin. The project hosted an inaugural roundtable on the Latino experience in the Midwest, which was held at the ABF and Northwestern University School of Law on June 6-7, 2016. In addition, the initiative held a planning summit on November 7, 2016 at UCLA's Luskin Conference Center to prepare a strategic plan for a pilot Network for Justice in California. The network would link law school clinics, academic research centers, public interest firms, community organizations, law firm pro bono programs, policymakers, and foundations as a way to address the growing access to justice gap in the Latino community.

In 2017, I will be the Austin Wakeman Scott Visiting Professor of Law at Harvard Law School.

Professional Activities

Panelist, Constitutional Law: On Resistance and Recognition, Association of American Law Schools Annual Meeting, New York, NY, January 8, 2016

Panelist, The Future of Legal Education, National Council of Bar Presidents Program, American Bar Association Mid-Year Meeting, San Diego, CA, February 5, 2016

Panelist, *Evenwel v. Abbott*, ABA Commission on Hispanic Legal Rights and Responsibilities Program, American Bar Association Mid-Year Meeting, San Diego, CA, February 6, 2016

Keynote Speaker, American Bar Foundation Fellows State Chair Luncheon, American Bar Association Mid-Year Meeting, San Diego, CA, February 7, 2016

Keynote Speaker, Luncheon on Education Policy, Latino Caucus Policy Conference, Lake Tahoe, CA, February 24, 2016

Speaker, City on a Hill: The Democratic Promise of Higher Education, ABF Seminar Series, American Bar Foundation, Chicago, IL, March 30, 2016

Moderator, Addressing Discrimination and Economic Inequality for LGBT People, Williams Institute 15th Annual Update, UCLA School of Law, Los Angeles, CA, April 8, 2016

Commentator, Metrics in Journalism and for the Public, Metrics, Diversity, and Law: 2016 Conference of the Research Group on Legal Diversity, American Bar Foundation, Chicago, IL, May 5, 2016

Panelist, Plenary Session—Diversity and Inclusion Inside and Outside the Classroom, Association of American Law Schools Workshop for New Law Faculty, Washington, D.C., June 11, 2016

Panelist, Plenary Session—The Constitution at a Crossroads, American Constitution Society National Convention, Washington, D.C., June 11, 2016

Panelist, ABA CLE Showcase Program—On the Docket: The 2015 Supreme Court Term, American Bar Association Annual Meeting, San Francisco, CA, August 5, 2016

Panelist, What & Why: Deciding to Become a Dean, Promoting Diversity in Law School Leadership, University of Washington School of Law, Seattle, Washington, August 12, 2016

Invited Participant, *America's Future Summit: Reimagining Opportunity in a Changing Nation*, *Latinos & Society Program*, Aspen Institute, Los Angeles, CA, August 16, 2016

Panelist, Whither the Court, UCLA School of Law, Los Angeles, CA, August 25, 2016

Invited Lecturer, Liminal Latinos: Contested Categories, Coming Challenges, Diversity and U.S. Legal History Series, Harvard Law School, Cambridge, MA, September 28, 2016

Moderator, The Gavel Gap: Who Sits in Judgment on State Courts?, American Constitution Society, UCLA School of Law Chapter, Los Angeles, CA, October 24, 2016

Jason Nance, University of Florida

Student Surveillance, Racial Inequalities, and Implicit Racial Bias, 66 Emory Law Journal __ (forthcoming 2017)

The American Bar Association's Joint Task Force on Reversing the School-to-Prison Pipeline Preliminary Report (Feb. 2016) (with Sarah E. Redfield), reprinted in 47 University of Memphis Law Review __ (forthcoming 2017)

Students, Police, and the School-to-Prison Pipeline, 93 Washington University Law Review 919 (2016)

Dismantling the School-to-Prison Pipeline: Tools for Change, 48 Arizona State Law Journal 313 (2016)

Over-Disciplining Students, Racial Bias, and the School-to-Prison Pipeline, 50 Richmond Law Review 1063 (2016)

Rethinking Law Enforcement Officers in Schools, 84 George Washington Law Review Arguendo 151 (2016)

Michael A. Olivas, University of Houston Law Center

Michael Olivas is on leave from the University of Houston Law Center, serving as Interim President of UH-Downtown, a 14,000+ student institution. After a research leave, he will return to UHLC, and will complete his forthcoming NYU Press project, *Perchance to DREAM, A Legal and Political History of the DREAM Act*.

Eloise Pasachoff, Georgetown University Law Center

I received tenure at Georgetown this year. My most recent article, *The President's Budget as a Source of Agency Policy Control*, 125 Yale L. J. 2182 (2016), was selected for reprinting in the Environmental Law and Policy Annual Review (2017) as one of the best law review articles relevant to that field published during the year. In 2016, I presented this paper at the Legislation Roundtable at Fordham; presented an early stage project, called *Money Rules: Federal Spending and Intergovernmental Relationships*, at the Administrative Law Junior Scholars Roundtable at Michigan State; and presented a draft book chapter called *Unnecessary and Insufficient: Doctrine, Politics, and the Limits of a Federal Education Amendment* at faculty workshops at Georgetown and at Temple Law. I also won an internal grant at Georgetown to write an article with an education economist on cost-benefit analysis at the Department of Education.

Frank S. Ravitch, Michigan State University College of Law

My new book, *Freedom's Edge: Religious Freedom, Sexual Freedom, and the Future of America* (Cambridge Univ. Press (2016), was published and it has been nominated for a PROSE Award.

I also published the following two articles: *Be Careful What you Wish For: Why Hobby Lobby Weakens Religious Freedom*, 2015 BYU Law Review 55 (2016), and *Complementary or Competing Freedoms: Government Officials, Religious Freedom and LGBTQ Rights*, 11 Fla. Int. L. Rev. 164 (2015) (symposium).

I presented papers at Emory University Law School, Florida International Law School, Doshisha Law School in Kyoto, Peking University in Beijing and the National University of Vietnam in Hanoi, and keynote addresses at Adam Miskiewicz University in Poznan, Poland, Spiru Haret University Law School in Romania, Dimitrie Cantimir University in Romania, and the IAFOR Conference on Ethics, Religion and Philosophy in Kobe Japan.

Kimberly Jenkins Robinson, University of Richmond

Fisher's Cautionary Tale and the Urgent Need for Equal Access to an Excellent Education, 130 Harv. L. Rev. 185-240 (2016) (invited).

No Quick Fix for Funding Equity and Excellence: The Virtues of Incremental Shifts in Education Federalism, 27 Stan. J. of L & Pol'y 201-283 (2016).

I also won the 2016 Steven S. Goldberg Award for Distinguished Scholarship in Education Law from the Education Law Association for "Disrupting Education Federalism," which was published in 2015 in the *Washington University Law Review*.

Finally, I am teaching Race, Racism and American Law at George Washington University Law in 2016.

John E. Rumel, University of Idaho College of Law

I received tenure from the University of Idaho College of Law in Spring 2016. Along with Professor Suzanne Eckes of Indiana University, I co-authored an article entitled "Dealing with ADA Employment Issues" which appeared in the Legal Matters section of the May 2016 Issue of Principal Leadership, a publication of the National Association of Secondary School Principals. I spoke as a co-presenter on the topic "What Not to Wear . . . or Do, Email, Tweet or Blog — The Questionable Off Duty Conduct Standards," at the National Organization of Lawyers for Education Associations ("NOLEA") Annual Conference held in Boston, Massachusetts on October 6-8, 2016. I presented a paper entitled "Teacher and Other Political Speech in the K-12 Setting: Rights and Permissible Regulation" at the 2016 Annual Conference of the Education Law Association in Orlando, Florida on November 3, 2016. My article, "Public Employee Speech: Answering the Unanswered and Related Questions in *Lane v. Frank*," has been accepted for publication in an upcoming volume of the Hofstra Labor and Employment Law Journal at Hofstra University School of Law.

Aaron Saiger, Fordham University School of Law

2016 saw publication of several papers: *Agencies' Obligation to Interpret the Statute*, [69 Vanderbilt L. Rev. 1231](#); *Local Government as a Choice of Agency Form*, [77 Ohio State L.J. 423](#); and *Homeschooling, Virtual Schools, and the Erosion of the Public/Private Binary*, [10 Journal of School Choice 297](#). The homeschooling piece emerged from a presentation I made at the Global Home Education Conference, held in Rio de Janeiro, Brazil, in

March 2016. I learned an enormous amount from the scholars and practitioners of home schooling attending that conference.

In 2017, I will again teach Education Law at Fordham Law, and will be working on projects concerning online education, school choice, the relationship between environmental and educational regulation, and regulatory guidance in federal education policy. I will be part of a panel concerning the last of these topics at the Annual Federalist Society Faculty Conference, held in conjunction with the AALS conference, on Friday, January 6, 2017.

I am excited to begin my term as chair of the Section this month. I greatly look forward to working with all of you.

Emily Gold Waldman, Elisabeth Haub School of Law at Pace University

[Show and Tell?: Students' Personal Lives, Schools, and Parents](#), 47 Conn. L. Rev. 699 (2015).

This May, I became the Associate Dean for Faculty Development & Strategic Planning. I have been very involved with administrative matters since then, but hope to turn back to my education law scholarship soon.

Mark C. Weber, DePaul University College of Law

Intent in Disability Discrimination Law: Social Science Insights and Comparisons to Race and Sex Discrimination, 2016 University of Illinois Law Review 151

Accidentally on Purpose: Intent in Disability Discrimination Law, 56 Boston College Law Review 1417 (2015)

Immigration and Disability in the United States and Canada [Symposium on Law, Disability and the Challenge of Equality in Canada and the United States], 32 Windsor Yearbook of Access to Justice 19 (2015)

Numerical Goals for Employment of People with Disabilities by Federal Agencies and Contractors [Symposium on Disability Rights and the Healthcare Work Force], 9 Saint Louis University Journal of Health Law and Policy 35 (2015)

Social Insurance for Disability: Contemporary Challenges and Insights from Disability Civil Rights, in *Disability Politics in a Global Economy: Essays in Honor of Marta Russell* 24 (Ravi Malhotra ed.) (New York: Routledge 2017)

I am currently working on a new 4th edition of *Special Education Law and Litigation Treatise* (LRP Pubs.).

Upcoming Conferences

38th Annual National Conference on Law and Higher Education
Conference Theme: Higher Education Law and Policy at the Crossroads in 2017: Accountability and Regulation of American Colleges and Universities in Times of Legal, Social and Political Upheaval
Dates: February 9-13, 2017
Location: Orlando, FL
Conference Link: <http://www.stetson.edu/law/conferences/highered/home/>

27th Legal Issues in Higher Education Conference
Dates: October 9-11, 2017
Location: University of Vermont
Conference Link: <https://learn.uvm.edu/program/legal-issues-in-higher-education-conference/>

Education Law Association 63rd Annual Conference
Conference Theme: Equality and Freedom in Education
Dates: November 9-11, 2017
Location: San Diego, CA
Conference Link: <https://educationlaw.org/events/national-conference>

Links to Education Law Publications

In addition to the list of publications provided by members and included in the *Member News* section of the Newsletter, the Section provides the following links to recent and forthcoming academic papers addressing education law related topics:

Education Law eJournal:

http://papers.ssrn.com/sol3/JELJOUR_Results.cfm?form_name=journalBrowse&journal_id=1085374

Education Law: College and Graduate Education:

http://papers.ssrn.com/sol3/JELJOUR_Results.cfm?form_name=journalBrowse&journal_id=1085375

Education Law: Primary and Secondary Education:

http://papers.ssrn.com/sol3/JELJOUR_Results.cfm?form_name=journalBrowse&journal_id=1085376

Note: Any opinions expressed in this newsletter are not necessarily those of the Section and are not intended to represent the position of the Association of American Law Schools