

Greetings from Miranda Johnson, Education Law Section Chair

This year has been another momentous year for education law. The national context of political polarization continues to impact PreK-12 schools as well as colleges and universities. Increasing numbers of state laws and school board policies are restricting education on race, gender, and sexual orientation, and efforts to protect LGBTQ+ students and advance diversity, inclusion and equity are under attack. Questions relating to educational curricula, parents' rights, pronoun use, and religious freedom of school employees are being disputed in courts. State laws and school district policies limiting the use of exclusionary discipline in schools are being rolled back, as schools struggle to meet students' behavioral and mental health needs in the wake of the COVID-19 pandemic.

Changes in long-standing Supreme Court jurisprudence are also creating new challenges for educational institutions. In particular, colleges and universities are grappling with the implications of the Supreme Court's decisions on affirmative action last term. Education law attorneys and school administrators are also navigating the shifting landscape relating to the scope of religious freedom in schools.

In this time, the work of Education Law Section members is critical. Through teaching, scholarship, and media interviews, Section members are helping law students, attorneys, policymakers, educational institutions, and the public

understand the meaning and scope of legal changes and the relevance of legal precedents. Section members who are clinical faculty are also supporting law and policy reform processes and providing legal representation on education law matters.

The Education Law Section has provided important opportunities to convene and share information during this challenging moment. At the 2023 Annual Meeting, the Section organized two programs related to PreK-12 schools: **Governance and Political Polarization of Elementary and Secondary Public Schools** and **COVID-19 Equity Impacts on Schools**. The Education Law Section also co-sponsored two Family and Juvenile Law Section programs on the **Politicization of Parenthood**. These AALS programs provided a range of knowledge, insights, and reflections on timely and relevant issues facing schools.

The Section was also able to build on the success of last year's inaugural midyear Works in Progress session by sponsoring a second **Works in Progress Session**, this time together with the Children and the Law Section. My colleague, Sacha Coupet from the Children and the Law Section, and I were thrilled to welcome faculty from around the country to Loyola University Chicago School of Law to support one another to advance scholarship on a range of topics. I was delighted to get a preview of so many great articles, and I look forward to seeing the published work!

I hope to see many of you in Washington, D.C. for the 2024 Annual Meeting, where our section's programming—true to form—will be tackling hot topics in

education law. The Education Law Section is sponsoring two panels: **Affirmative Action and the Way Forward** and **Academic Freedom and Faculty Governance in the Crosshairs**. We are also co-sponsoring a program by the Associate Deans for Academic Affairs and Research Section entitled **Academic Integrity and Technology: What to Do About AI**. See pages 4-5 of this newsletter for more information on these programs. Please join us for our Section programs and for our business meeting, which will take place on **Friday, January 5 from 5-6 p.m.** We welcome your ideas for section programming and invite you to consider taking on a leadership role in the Section.

In this season of gratitude, I want to express my appreciation for all those who have made our Section's work possible this year. I want to particularly acknowledge Natalie Gomez-Velez (CUNY), Outgoing Chair of the Section, who organized the programming at the 2023 Annual Meeting and who brought wonderful energy and collaborative spirit to her role as Chair. I also want to thank Ben Trachtenberg (Missouri), Chair-Elect, for his partnership in the Section's work and programming. I am grateful to Karen Halverson Cross (UIC), Secretary, for putting together this newsletter and supporting the Works in Progress Session and Annual Meeting organizing. Special thanks also to Janel George (Georgetown), Treasurer, and Kimberly Jenkins Robinson (Virginia), Executive Committee member, for their contributions to Section programs. Thank you to the full Executive Committee for their advice and support and to all those who participated in the Annual Meeting

programs and the Works in Progress Session.

Congratulations to each of you for what you have accomplished in this past year. I wish you all the best as you wrap up your semesters, and I hope that you find time during the winter break to rest and spend time with family and friends. As we look forward to 2024, let's reflect on the upcoming 70th anniversary of the landmark Supreme Court decision in *Brown v. Board of Education* (1954) and consider both how far we have come and how much work we have yet to do in order to realize the goals of educational equity and racial justice.

It's been an honor to serve as Chair of this section, and I look forward to opportunities for continued collaboration in the years ahead.

2023 Education Law Section Officers

Chair: Miranda Johnson (Loyola Chicago)
Chair-Elect: Ben Trachtenberg (Missouri)
Secretary: Karen Halverson Cross (UIC)
Treasurer: Janel George (Georgetown)

Executive Committee:

- Maryam Ahranjani (New Mexico)
- Erin Archerd (Detroit Mercy)
- Erik Girvan (Oregon)
- Natalie Gomez-Velez (CUNY)
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- John Rumel (Idaho)
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- Aaron Tang (UC Davis)

Works in Progress Session at Loyola (Chicago), September 22-23 (co-sponsored with Children and the Law Section)

Following up on the WIP session that the Section sponsored at UIC Law in Chicago last fall, this year our Section joined with the Section on Children and the Law to organize a follow-up Works in Progress Session. The event was held at Loyola University Chicago School of Law on September 22-23, 2023. The organizers aimed to provide a collegial and supportive environment for advancing scholarship and promoting cross-fertilization between scholars working in related areas of the law. The call for submissions invited proposals from all legal scholars writing on issues of education law and/or children's law. Each presenter at the WIP session was assigned to serve as a commenter on another presentation, which ensured that all presenters received supportive feedback. Many thanks to Section Chair Miranda Johnson and Sacha Coupet (Loyola Chicago), Chair of Midyear Programming for the Section on Children and the Law, for their excellent work organizing the session.

The scholars who presented their research at the WIP session included:

- Danielle Wingfield (Richmond)
- Aníbal Rosario-Lebrón (Rutgers-Newark)
- Robert Garda Jr. (Loyola New Orleans)
- Janet Decker (Indiana Bloomington School of Education)
- Christina Scott & Stacie Kershner (Georgia State)
- Janel George (Georgetown)
- Aarti Sidhu (Maryland)
- Diana Newmark (Arizona)
- Vanessa Miller (Indiana Bloomington School of Education)
- Vinay Harpalani (New Mexico)
- Ben Superfine (UIC College of Education)
- Nicole Tuchinda (Loyola New Orleans)
- Michael Heise (Cornell)
- Eve Rips (Chicago-Kent)
- Ben Trachtenberg (Missouri)
- Karen Halverson Cross (UIC)
- Neoshia Roemer (Seton Hall)
- Tiffany Puckett (Northern Illinois)
- Nickole Miller (Drake)
- Mark Weber (DePaul)
- Chrystal Clodomir (Elon)
- Richard Marsico (New York Law School)
- Emily Stolzenberg (Villanova)



WIP presenter Tiffany Puckett (Northern Illinois)



WIP session participants at Loyola Chicago

2024 Annual Meeting Preview

The 2024 AALS Annual Meeting will be held January 3-6, 2024, at the Marriott Marquis hotel in Washington, DC.

Our Section is sponsoring or co-sponsoring the following sessions at the Annual Meeting:

1. *Affirmative Action and the Way Forward* (co-sponsored by Constitutional Law and Law and Interpretation). **Thursday, January 5, from 8:00-9:40 am** in the Marquis Salon 15 room (Level M2).

This session will consider the implications of the U.S. Supreme Court's recent *Student for Fair Admissions v. Harvard/UNC* decision and explore best practices for promoting diversity and higher education opportunity in light of the decision.

Moderator: Janel George (Georgetown)

Speakers:

Twynette Johnson (University of the District of Columbia)
Robert Kim (Education Law Center)
David Hinojosa (Lawyers' Committee for Civil Rights)

Kimberly Jenkins Robinson
(Virginia)

2. *Academic Integrity and Technology: What to do About AI* (Associate Deans for Academic Affairs and Research, co-sponsored by Education Law).
Thursday, January 4, from 3:00-4:40 pm in the Georgetown University room (Level M1).

This session comprises two panels. The first will address the faculty role and second will address the administrative role in using and limiting generative AI.

Speakers:

Dmitry Bam (Maine)
Rosa Castello (St. John's)
Kirsten Davis (Stetson)
Christine Lazaro (St. John's)
Mary-Beth Moylan (University of the Pacific)
Rachelle Holmes Perkins (George Mason)
Jennifer Wondracek (Capital)
Michelle Zakarin (Touro)

3. *Academic Freedom and Faculty Governance in the Crosshairs* (co-sponsored by Associate Deans for Academic Affairs and Research).
Friday, January 5, from 10:00-11:40 am in the Liberty Salon N room (Level M4).

This session will address how law faculty and others in higher education can respond to the public discontent and financial pressures that threaten to

undermine the independence and integrity of higher education institutions.

Moderator: Ben Trachtenberg (Missouri)

Speakers:

Keith Whittington (Princeton Department of Politics)
Risa Lieberwitz (Cornell School of Industrial and Labor Relations)
Juliana Paré-Blagojev (Johns Hopkins College of Education)
Jonathan Feingold (Boston University)

4. *Business meeting.* The Section business meeting is scheduled for **Friday, January 5, from 5:00-6:00 pm** in the Woodley Park room (Level M3).

At the meeting we will discuss programming for the 2025 Annual Meeting and solicit ideas for other programming during 2024, including potential plans to organize another works in progress workshop.



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Section Member News

Ashley Nyce (Boston College) published *Children, Disability, and the Digital Classroom: Rethinking Access and Assistive Technology for Low-Income Children with Disabilities in the Digital Age*, 55 CONN. L. REV. 125 (2022). The article rethinks the role of assistive technology for low-income children with disabilities in today's hybrid learning environments.

Peter Huang (Colorado) published (with Anna Gorman-Huang) [*After the Demise of Affirmative Action, Ensuring Equitable Access to Educational Opportunities*](#), 21(1) UNIVERSITY OF CALIFORNIA LAW JOURNAL OF RACE & ECONOMIC JUSTICE (forthcoming 2023).

Scott Bauries (South Carolina) was appointed Professor of Law at South Carolina in Fall 2022. He published:

CIVIL PROCEDURE: A CONTEXT AND PRACTICE CASEBOOK, 3d Edition (Carolina Academic Press, forthcoming 2024) (with Gerald Hess, Teresa Beiner & Saurabh Vishnubhaka); and

Escaping State Constitutional Duty, 50 FLORIDA STATE UNIVERSITY LAW REVIEW 811 (forthcoming 2023).

Kevin Brown (South Carolina) took emeritus status from Indiana University Maurer School of Law on June 30, 2022, and is now the Mitchell Willoughby Distinguished Professor at South Carolina. He published:

Critical Race Theory Explained by One of the Original Participants, 98 NEW YORK UNIVERSITY LAW REVIEW ONLINE 91 (2023);

Racial and Ethnic Ancestry of the Nation's Black Law Students: An Analysis of Data from the LSSSE Survey, 22 BERKELEY JOURNAL OF AFRICAN-AMERICAN LAW & POLICY 1 (2022) (with Ken Dau Schmidt); and

NEPC review of: HOW TO REGULATE CRITICAL RACE THEORY IN SCHOOLS: A PRIMER AND MODEL LEGISLATION. Boulder, CO: National Education Policy Center (2022).

Joshua Weishart (West Virginia) was recently awarded an endowed professorship, the "Thomas R. Goodwin Professor of Law" and received West Virginia's 2023 Significant Scholarship Award for *The Right to Teach*, 56 U.C. DAVIS LAW REVIEW 817 (2022).

Rosemary Salomone (St. John's) was awarded the 2023 Premio Pavese for non-fiction by the Fondazione Pavese in Italy for her book, *THE RISE OF ENGLISH: GLOBAL POLITICS AND THE POWER OF LANGUAGE* (Oxford University Press, 2021). The annual award is named in honor of the late Cesare Pavese, the noted Italian novelist, poet, translator, and editor.

Jonathan Feingold (Boston University) shares the following recent or forthcoming publications and appearances:

- *The Supreme Court Didn't Kill Affirmative Action. But Universities Might*, J. COLLEGE & UNIV. L. (forthcoming 2023);
- [*Ambivalent Advocates: Why Elite Universities Compromised the Case for Affirmative Action*](#), 58 HARV. CR-CL L. REV. 143 (2023);
- [Newsweek Op-ed](#) (with Athena Mutua and Angela Harris) & [#RaceClass Podcast](#) Episode on "[Free Speech on Campus](#)";

- (blog post) [The Next Fight for Racial Justice Starts Now](#), New America Expert Blog Series;
- (blog post) [After SFFA v. Harvard, Universities Must Hold the Line](#), Oxford Human Rights Hub;
- (media appearance) [Admissions Essays Post-SFFA](#), Scripps News Live;
- (short film appearance) [Worthy](#), NAACP Cinematic Film Competition, Amy Tiong & Payton Mack; and
- (panelist) [What's Next? Diversity in Education after SFFA v. Harvard/UNC](#), Rutgers Law School.

Kimberly Jenkins Robinson (Virginia) has the following news:

I recently launched the Education Rights Institute at the University of Virginia School of Law. With \$4.9 million in anonymous funding we will be:

- (1) Producing new scholarship and commentary that stimulates and engages public debate about a federal right to a high-quality education;
- (2) Amplifying research and scholarship about educational opportunity gaps and their impact on individuals, families, communities, democracy, and our economy to increase public awareness of these gaps and the federal laws and resources that can help districts deliver the high-quality education that closes these gaps; and,
- (3) Serving as a catalyst that expands the capacity of school districts to capitalize on the power of effectively implementing existing federal laws that support a high-quality education, particularly Title VI of the Civil Rights Act of 1964.

I would love for section members to follow ERI on social media:

LinkedIn
(<https://www.linkedin.com/showcase/education-rights-institute>),

Facebook
(<http://facebook.com/educationrightsinsitute>) and
X (@UVALawERI).

Here is a story about the Institute and our public launch:

<https://www.edweek.org/policy-politics/americas-children-dont-have-a-federal-right-to-education-will-that-ever-change/2023/10>

I also published an essay titled *Rodriguez at 50: Lessons Learned on the Road to a Right to a High-Quality Education for All Students*, LOYOLA UNIVERSITY CHICAGO LAW JOURNAL (forthcoming 2023).

Gary Simson (Mercer) will be publishing *The Roberts Court's Overprotection of Free Speech and the Perfect Storm with Social Media* in a special First Amendment issue of the TENNESSEE LAW REVIEW. The article features a detailed critique of the Supreme Court's 2021 decision in *Mahanoy Area School Dist. v. B.L.*

Margaret Dalton (San Diego) and **Julie Waterstone (Southwestern)** presented "The Intersection of Behavioral Health, Mental Health, and Special Education" at the Practicing Law Institute in San Francisco on October 25. The presentation was part of the day's program of education for practitioners, California Special Education Law 2023.

Daniel Kiel (Memphis) published THE TRANSITION: INTERPRETING JUSTICE FROM THURGOOD MARSHALL TO CLARENCE THOMAS (Stanford University Press, 2023). The

book examines the characters at the center of the most impactful Supreme Court transition of the past 75 years, exploring their lives and work—particularly with regard to schooling—in a way that illuminates important American questions of law and society.

Janel George (Georgetown) published [*Reflections on the Launch of a Racial Justice Clinic and the Bravery of Lions*](#), 30 CLIN. L. REV. 151-186 (Fall 2023). The article focuses on launching a new clinic dedicated to racial equity in education.

Emily Gold Waldman (Pace) spoke at the BELMONT LAW REVIEW's September 2023 symposium on developments in education law. Her related article, *From Garcetti to Kennedy: Teachers, Coaches, and Free Speech at Public Schools* will be published in the BELMONT LAW REVIEW in 2024. She also has an article coming out in the MINNESOTA LAW REVIEW in late 2023/early 2024 entitled *Just Extracurriculars?*

Erik Girvan (Oregon) has been awarded an endowed position at Oregon. He is the Bernard B. Kliks Professor of Law.

Miranda Johnson (Loyola Chicago) co-edited the book DISCIPLINE DISPARITIES AMONG STUDENTS WITH DISABILITIES: CREATING EQUITABLE ENVIRONMENTS (Teachers College Press, 2022) (with Pamela Fenning). In this book, a team of interdisciplinary scholars, attorneys, and education practitioners focus on how discipline disparities based on disability intersect with race and ethnicity, why such disparities occur, the impacts these disparities have over time, and recommended changes in law, policy, and practice.