

DECEMBER 2022

Education Law News

AALS Section on Education Law Newsletter



Warm Greetings from Natalie Gomez-Velez, 2022 Education Law Section Chair

Natalie Gomez-Velez, CUNY Law School

As 2022 comes to a close, the United States and the world continue to grapple with the COVID-19 pandemic, a societal reckoning on race and inequality, political polarization, a war on facts, and seismic changes in the law, among many other challenges. These are daunting times for legal education and education law and policy more broadly. The excellent and essential work by members of the Education Law Section demonstrate that we are up to the challenge in helping to address these issues.

This has been an engaged and productive year for the Education Law Section. Karen Halverson Cross organized and hosted a highly

IN THIS ISSUE

MESSAGE FROM THE
CHAIR

ANNOUNCEMENTS

WORKS-IN-PROGRESS
SESSION

ANNUAL MEETING
PREVIEW

SECTION MEMBER NEWS

successful **Works-in-Progress program** on **September 16-17, 2022** at the University of Illinois Chicago. The program included paper presentations on topics ranging from K-12 through law school education and issues including disability rights, improved uses of research and data to support equity and opportunity, analysis of attacks on critical race theory, student loan issues, among others. More details on the Works-in-Progress session may be found in this newsletter.

Through the year, section membership and leadership have been actively involved in planning for this year's AALS Annual Meeting with programs that speak to current education law issues of critical importance to educational equity and democracy.

See a description of the Section's programs later in this newsletter.

The Education Law Section is proud to have participated in the selection process for the **Inaugural Michael A. Olivas Award for Outstanding Leadership in Diversity and Mentoring in the Legal Academy** along with the AALS Sections on Civil Rights, Immigration Law, Minority Groups, and Student Services. As many of you may know, Michael A. Olivas was an active member of the Education Law Section who passed away in April 2022. He chaired the AALS Section three times and participated on the 2021 Annual Meeting Program: ***The Future of Plyler v. Doe on its 40th Anniversary***. A description of Professor Olivas's extensive and impressive legacy may be found [here](#). UC Davis **Dean Kevin Johnson** will receive the Inaugural Michael Olivas Award at the 2023 AALS Annual Meeting Awards Ceremony on **January 5, 2023**.

All in all, 2022 - though tough -- has been a very productive year for the Education Law Section! Section members contributed important research, scholarship, and practical innovations to education law, policy, and practice from the elementary through the law school level and across a broad range of key issues. It is an honor to have served as 2022 Chair of the Education Law Section.

I look forward to seeing many of you in person at the Section's programs and throughout the 2023 Annual Meeting. In the meantime, best of luck completing the fall 2022 semester, including grading, scholarship and service obligations.

Wishing each of you good health and much joy though the end of year holidays and as we welcome 2023.

Announcements

The Education Law Section will host (or co-host) multiple panels at the upcoming AALS Annual Meeting in San Diego. See descriptions later in this newsletter.

The Section will conduct a business meeting at the conclusion of its main program on January 4, which is scheduled to run from 10:00 a.m. to 11:40 a.m.

On February 17, the *Virginia Law Review* will host a hybrid conference on the 50th anniversary of *San Antonio Independent School District v. Rodrigues*. See further details in the Member News section of this newsletter.



Education Law Section Officers

Chair: Natalie Gomez-Velez, CUNY

Chair-Elect: Miranda Johnson, Loyola (Chicago)

Secretary: Ben Trachtenberg, Missouri

Treasurer: Karen Halverson Cross, UIC

Executive Committee:

- Maryam Ahranjani (New Mexico)
- Erik Girvan (Oregon)
- Kimberly J. Robinson (Virginia)
- James H. Rosenblatt (Mississippi College)
- John Rumel (Idaho)
- Charles J. Russo (Dayton)
- Aaron Saiger (Fordham)
- Aaron Tang (UC Davis)

See you in San Diego!

[Image license: https://commons.wikimedia.org/wiki/File:San_Diego_skyline_18.jpg]

Contact Us

Section on Education Law

Website: <https://www.aals.org/sections/list/education-law/>

Section Email Address: AALSCHOOLS-LE@ConnectedCommunity.org

Works-In-Progress Session in Chicago, Sept. 2022

By Karen Halverson Cross, UIC School of Law

Recognizing the need for fostering community after two years of pandemic shut-down, the Section organized an in-person (at last!) works-in-progress session for scholars of education law. The stated objective of the session was to support and promote colleagues' scholarship, broadly defined. The session was held in Chicago, Illinois, on the campus of University of Illinois Chicago (UIC) School of Law. Paper topics addressed legal and policy issues confronting K-12 and higher-education institutions—ranging from accommodations for students with disabilities and attacks on CRT in schools to Title IX adjudication and student loan borrower complaints (see below for a full list of presentations from the session). The intimate scale of the WIP session allowed for full discussion of each of the works presented, and the participants were both generous and supportive with their time and attention; most were able to stay through the entire session. Feedback on the session was quite positive; participants expressed interest in organizing a follow-up Section WIP session during the 2023-24 academic year. Many thanks to the scholars who traveled to Chicago (or from other parts of Chicagoland) to share their scholarship, and to Dean Nicky Boothe for agreeing to host the session at UIC Law.

A list of presenters and topics follows on the next page.



Front row: Tan Boston, Karen Cross, Shakira Pleasant, UIC Law Dean Nicky Boothe, Miranda Johnson, Claire Raj, and Bilge Schrijer Bingol.

Back row: Mark Weber, Ben Trachtenberg, Michael Angarola, Crystal Grant, Ben Superfine, and Matt Bruckner.



Front row: Shakira Pleasant, Claire Raj, Bilge Schrijer Bingol, Miranda Johnson, and Karen Cross.

Back row: Katherine Liebl, Mark Weber, Michael Angarola, Matt Bruckner, Crystal Grant, Taifha Alexander, Paton Moody, Ben Superfine, and Ben Trachtenberg.

WIP session presenters and topics:

- Bilge Schrijer Bingol (Visiting Scholar, Loyola University Chicago), *The Traces of a Right to Education in the U.S. Legal System: Widening the Scope of the Codes and Strengthening the Application through Courts*
- Tan Boston (Northern Kentucky University), *NIL Data Entry*
- Shakira Pleasant (UIC), *A Clinical Study of UIC Law's Legal Writing Intervention Project*
- Matt Bruckner (Howard University), *Understanding Why Student Loan Borrowers File Complaints with the CFPB*
- Ben Superfine (UIC), *Improving Research Use in Large-Scale School Reform to Improve Educational Equity and Opportunity*
- Taifha Alexander & Paton Moody (UCLA), *Behind Enemy Lines: An Analysis of the Attacks on CRT in Education*
- Claire Raj (University of South Carolina) & Crystal Grant (Duke University), *Exploring the Disability Rights Laws in Education*
- Ben Trachtenberg (University of Missouri), *Campus Stakes and Campus Process*
- Miranda Johnson (Loyola University Chicago), *Alternative Schools and Students with Disabilities*
- Mark Weber (DePaul University), *Special Education Cause Lawyers*
- Emily Suski (University of South Carolina), *Signaling Sexual Harassment*

See the next page for a preview of the Section's activities during the 2023 AALS Annual Meeting.

Annual Meeting Preview

By Ben Trachtenberg, University of Missouri School of Law and Natalie Gomez-Velez, CUNY Law School

Please join us for the following panels, hosted or co-hosted by the Section on Education Law



The Section's main program, entitled **Governance and Political Polarization of Elementary and Secondary Public Schools**, is scheduled for **January 4, 2023** from **10:00 am - 11:40 am PT** in the Del Mar Room, Third Floor, South Tower of the Marriott Marquis Hotel. This panel will explore recent developments involving the politicization of primary and secondary public schools through legislation, policy, and political campaigns targeting public school curricula including anti-critical race theory proposals; anti-LGBTQ+ efforts; book bans; protests against COVID-19 vaccines, masking and testing requirements; and threats to school board members, teachers, and others. Panelists include **Taifha Natalee Alexander**, Director of the UCLA CRT Forward Tracking Project, **Antonio Coronado**, Georgetown University School of Law, **Aaron Saiger**, Fordham Univ. School of Law, and **Hon. Betty Rosa**, Commissioner of Education for the State of New York. Section Chair **Natalie Gomez-Velez**, CUNY Law School, will serve as moderator.

The Section's business meeting will take place immediately following this program.

In addition, the Section has organized a pedagogy program entitled **COVID-19 Equity Impacts on Schools** scheduled for **January 5, 2023** from **10:00 am - 11:40 am PT** in the Marriott Grand Ballroom Third Floor, Lobby Level, North Tower. This panel will examine the inequities in educational access laid bare during the pandemic and persisting in its wake from legal, factual, policy, and governance perspectives. Speakers include **Claire Raj**, University of South Carolina School of Law, **Kimberly Jenkins Robinson**, University of Virginia School of Law, **Jennifer Rodriguez-Fee**, Southwestern Law School, **Charles J. Russo**, University of Dayton School of Law. The panel will be moderated by **John E. Rumel**, University of Idaho College of Law.

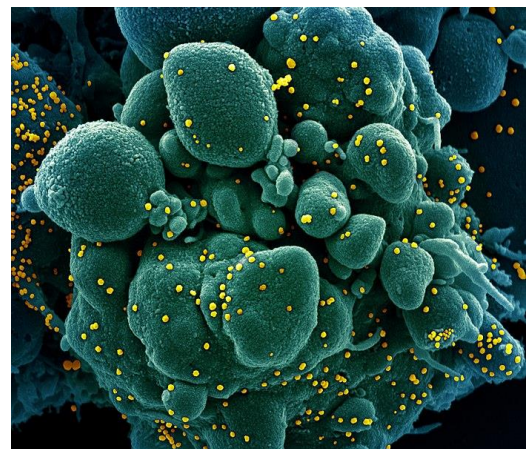


Image credit:

[https://commons.wikimedia.org/wiki/File:Novel_Coronavirus_SARS-CoV-2_\(49679608266\).jpg](https://commons.wikimedia.org/wiki/File:Novel_Coronavirus_SARS-CoV-2_(49679608266).jpg)

See the next page for panels co-sponsored by the Section.



[Image credit:
https://commons.wikimedia.org/wiki/File:Storks_Delivering_Babies_Graphic_-_48412252021.jpg]

The Education Law Section also is co-sponsoring a program with the Family and Juvenile Law Section, also Co-Sponsored by Children and the Law, Sexual Orientation and Gender Identity Issues Sections, entitled ***Politicization of Parenthood*** scheduled for **January 6, 2023 from 1:00 pm - 2:40 pm PT** in the Temecula Room 1, First Floor, North Tower and a works-in-progress session scheduled for January 5, 2023 10:00 am - 11:40 am PT.

Navigating Politicized Parenthood in the Classroom

Family and Juvenile Law, Co-Sponsored by Children and the Law, Education Law, Sexual Orientation and Gender Identity Issues

January 5, 10:00 a.m. to 11:40 a.m.

This Pedagogy Program session will complement the discussion on Politicizing Parenthood [see left side of this page] with strategies and tools for integrating these issues into the family law classroom. We will model and share various approaches to teaching about parenthood in the context of politicized issues, including but not limited to reproductive rights, gender-affirming medical care for trans youth, and the discussion of systemic racism, sexual orientation, and gender identity in schools. Participants will demonstrate, model, and discuss their holistic inclusive approaches to the courses as well as to provide examples of how they handle discrete cases or topics.

Speakers: Melanie Daily (Kansas), Dara E. Purvis (Penn State), Sarah L. Swan (Rutgers) (moderator), Tanya M. Washington-Hicks (Georgia State)



See the next page for Section Member News.

Section Member News

By Ben Trachtenberg, Missouri

Our Section members have been busy and productive. See their updates below.

Professor Kimberly Robinson (Virginia) provides this news: On February 17, the *Virginia Law Review* will host a hybrid conference on the 50th anniversary of *San Antonio Independent School District v. Rodriguez*. “Nearly fifty years ago, the majority of the Supreme Court in *Rodriguez* rejected the claim that education is a fundamental right and held that Texas’ system of using local property taxes to fund public schools did not violate the Equal Protection Clause. Today, the fight for equity in K-12 public education continues on numerous fronts--some decades-old and some unique to the present moment. With debates about public schooling increasingly becoming a microcosm of larger political and social issues, we are interested in contextualizing these struggles and thinking creatively about ways to forge a more just and equitable system.”

For information on registration, see: <https://www.virginialawreview.org/>

Also, Professor Robinson has recently published:

Strengthening the Federal Approach to Educational Equity during the Pandemic, 59 HARV. J. ON LEGISLATION 35-100 (2022).

Protecting Education as a Civil Right: Remediating Race Discrimination and Ensuring a High-Quality Education, THE LEARNING POLICY INSTITUTE (2021).

Education Federalism: Why It Matters and How the United States Should Restructure It, THE OXFORD HANDBOOK OF U.S. EDUCATION LAW 115, 115-134 (Kristine L. Bowman ed. 2021).

Professor Laura Rothstein (Louisville) is retiring as of December 31, 2022 and relocating to San Diego, where she will engage in consulting on higher education and disability issues.

Recent publications:

DISABILITIES AND THE LAW (Thomson/West) (Spring 2022; Fall 2022 cumulative editions), with Julia Irzyk

Medical Education and Individuals with Disabilities: Revisiting Policies, Practices, and Procedures in Light of Lessons Learned from Litigation, 46 J. COLL. & UNIV. L. 258-359 (2021), <https://www.nacua.org/resource-library/resources-by-type/journal-of-college-university-law/index-by-volume/jcul-by-volume-landing-page/volume-46-number-2>

The Law That Changed the Game for Lawyers with Disabilities: A Milestone Reflection, October 2022 LBA Bar Briefs pp. 4-5,

https://loubar.dcatalog.com/v/October_2022/?page=4

Reflections on the Legacy of Justice Stephen Breyer (for various publications May/June 2022), https://www.loubar.org/UserFiles/files/bar-briefs/2022/2-February/Bar%20Briefs_February'22_20th%20Anniver%20CHS%20and%20Brandeis_Rothstein_10-11.pdf

See her presentation in San Diego: "Section 504 at Fifty," at the AALS 2023 Annual Meeting, Disability Law Section.

Karen Halverson Cross (University of Illinois Chicago School of Law) recently published *Deregulation and the 'Gig Academy,'* 67 WAYNE LAW REVIEW 151 (2022). The article examines how government and higher-education accreditors have relaxed full-time faculty requirements at colleges and universities, failing to constrain a dramatic increase of part-time faculty in academia. It contrasts the ABA's relatively clear rules on full-time faculty requirements with those of other accrediting bodies, and argues in favor of the ABA's rule-based approach. The article also considers ways to improve public disclosure of higher education institutions' reliance on part-time faculty.

Rosemary Salomone (St. John's) published *The Rise of English: Global Politics and the Power of Language* (Oxford University Press, 2021). The book has been reviewed in (and recommended by) the *New York Times*:

See Amy Chua, "How the English Language Conquered the World," *New York Times*, Jan. 18, 2022, <https://www.nytimes.com/2022/01/18/books/review/the-rise-of-english-rosemary-salomone.html>

"12 New Books We Recommend This Week," *New York Times*, Feb. 17, 2022, <https://www.nytimes.com/2022/02/17/books/review/12-new-books-we-recommend-this-week.html>

A serial adaptation was published in the *Wall Street Journal*. See Rosemary Salomone, "The Downside of English Dominance," *Wall Street Journal*, Nov. 27, 2021, <https://www.wsj.com/articles/the-downside-of-englishs-dominance-11637989261>

On September 23, 2022, Section member **Daniel Weddle (University of Missouri-Kansas City)** and UMKC School of Law joined the John F. Tinker Foundation in hosting a National Student Rights Conference, bringing together litigants and attorneys involved in five landmark U.S. Supreme Court cases dealing with student speech rights in public school, along with prominent First Amendment scholars. Participants included, among others, John and Mary Beth Tinker, Matthew Fraser, Cathy Kuhlmeier, Dr. Steven Brown, Prof. David Hudson, and Prof. Catherine Ross.

Jonathan Feingold (Boston University) has recently published (or will soon publish) the following pieces, among other things:

After Affirmative Action, J. COLLEGE & UNIV. L. (forthcoming 2023)

Colorblind Capture, 102 BOSTON U. L. REV. __ (forthcoming 2022)

Ambivalent Advocates: Why Elite Universities Compromised the Case for Affirmative Action, 58 HARV. CR-CL L. REV. __ (forthcoming 2022)

Brief of Legal Scholars Defending Race-Conscious Admissions, in *SFFA v. Harvard* (20-1199) & *SFFA v. UNC* (21-707) (2022) (with Vinay Harpalani)

Reclaiming Equality: How Regressive Laws Can Advance Progressive Ends, 73 S.C. L. REV. 723 (2022)

Aaron Saiger (Fordham) recently published *More than Merit: Reframing the Debate over Examination-Based Admissions in Public Schools*, 49 FORDHAM URBAN. L.J. 1003 (2022).

Scott R. Bauries has made a lateral move to the **University of South Carolina School of Law**. He won't be teaching Education Law there but will remain involved with the field. His recent work includes:

Escaping State Constitutional Duty, 50 FLA. ST. U. L. REV. ___ (forthcoming 2022).

Special Education's Lessons for School Funding Litigation, 6 EDUCATION LAW & POLICY REVIEW 126 (2021) (with Spencer Weiler) (special issue: "Serrano at 50").

Public Employees Who Testify, 24 EMPLOYEE RIGHTS & EMPLOYMENT POLICY J. 71 (2020) (peer reviewed).

Professor Williams and the Education Debates in State Constitutional Law, 72 RUTGERS U. L. REV. 101 (2020) (special issue: "A Festschrift for Robert Williams").

Joshua Aaron Jones, Legal Writing Professor at **California Western School of Law**, has been recognized by CWSL as a Distinguished Teaching Scholar. The honor recognizes Professor Jones's work to develop and implement pedagogy methods that promote Positive Psychology.

Janel George (Georgetown) has this news:

The Racial Equity in Education Law & Policy Clinic at Georgetown University Law Center is hiring for a Teaching Fellow & Supervising Attorney for a two-year term from summer of 2023-2025. Please visit the website for the posting of the position!

She also had an Essay published in the Fordham Urban Law Journal about a challenge to a diversity initiative at Virginia's Thomas Jefferson STEM High School:

The Myth of Merit: The Fight of The Fairfax County School Board and the New Front of Massive Resistance, 49 FORDHAM URB. L.J. 1091 (2022).

She also was a co-author on a paper proposing how the federal government can support students in a Post-COVID world by implementing a civil rights framework for the reauthorization of the Elementary and Secondary Education Act, in DeBray, E., Finnigan, K.S., George, J., & Scott, J. (2022). *A civil rights framework for the reauthorization of ESEA*. Boulder, CO: National Education Policy Center. Retrieved November 4, 2022 from <http://nepc.colorado.edu/publication/reauthorization>

Rachel Moran (UC Irvine) has the following recent publications, among others:

Personhood, Property, and Public Education: The Case of Plyler v. Doe, COLUM. L. REV. (forthcoming 2023).

Diversity's Distractions Revisited: The Case of Latinx in Higher Education, 73 S. CAROLINA L. REV. 579 (2022).

The Unbearable Emptiness of Formalism: Autonomy, Equality, and the Future of Affirmative Action, 100 U. N. CAROLINA L. REV. 785 (2022).

Stopping the Conversation about Race and Poverty Before It Really Began: The Case of San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973), in CRITICAL RACE JUDGMENTS: REWRITTEN U.S. COURT OPINIONS ON RACE AND LAW 675 (Bennett Capers, Devon Carbado, Robin Lenhardt, and Angela Onwuachi-Willig eds.) (2022).

Her recent presentations include:

Moderator, "Legal Education in a Post-COVID World," Law and Society Annual Meeting, Lisbon, Portugal, July 15, 2022

Speaker, "Do We Still Need Affirmative Action?," The Superior Court of California, County of San Francisco, and the Bar Association of San Francisco, San Francisco, CA, October 2, 2022

Robert Garda (Loyola University New Orleans) has recently published:

The Impact of Admission Policies on Racial and Socioeconomic Diversity in New Orleans' Selective Admission Schools, 49 FORDHAM URB. L.J. 1139 (2022), <https://ir.lawnet.fordham.edu/ulj/vol49/iss5/5>

"The Legal Foundation for Special Education" in SPECIAL EDUCATION FOR ALL TEACHERS (8th ed. Kendall Hunt Publishing 2022) (co-authored with Makala Graves)

M. Isabel Medina (Loyola University New Orleans) was elected Chair of the University Senate and has a chapter titled *Ruth Bader Ginsburg's Impact on Citizenship and Immigration Law: Through Her Opinions*, in THE JURISPRUDENTIAL LEGACY OF RUTH BADER GINSBURG, edited by Ryan Vacca and Ann Bartow (NYU Press forthcoming 2023).

Congratulations to all for your accomplishments!