SYLLABUS AND COURSE OUTLINE

COURSE DESCRIPTION:

This course focuses on four principal legal and policy debates affecting pre-K-12 public education: (i) educational equity, equality of opportunity, and the dilemma of difference, (ii) federal and state constitutional dimensions of school finance, (iii) school choice and market initiatives for the provision of school services, and (iv) the structures and processes of educational governance and “new governance” reforms. The course is not a general survey of the law of public education. To a limited extent, if at all, the course will not cover matters such as church-state-education relationships, student free speech, privacy and due process rights, terms and conditions of employment of teachers, or school board powers, procedures, and elections. These matters are generally covered in a variety of other courses including constitutional law, public employment law, state and local government law, and a separate seminar on law, policy, and education. Students who seek to do research and writing on topics which overlap with these matters should seek consultation to determine early in the semester whether or not their paper topics will be accepted.

COURSE MATERIALS:

The materials for this course consist of a text, Educational Policy and the Law by Mark Yudof, et al. (5th ed. 2012), and supplementary materials posted on NYU Classes or distributed as handouts.
OFFICE HOURS:

Office hours will be observed each week on Wednesdays from 2:30-4:00 p.m. or otherwise by appointment for students unable to meet during regularly scheduled hours. Students are advised to make appointments for regularly scheduled office hours with my assistant at the address in the heading of this document in order to avoid conflicts with students from this and other courses.

COURSE REQUIREMENTS:

The success and enjoyment of this course depend on full and consistent participation by all class members. Regular attendance is required. The Law School’s Academic Policies Guide provides, in part, as follows:

Rules of the American Bar Association, the New York State Court of Appeals, other state high courts, and the Law School itself all require regular classroom attendance. Students are advised that excessive absenteeism can result without warning in: 1) grade lowering or 2) denial of permission to complete course work and/or sit for the exam or receipt of a grade of WD (withdrawn) or FAB (failed for absence). Missing more than one-fifth of classes is presumptively excessive....

Faculty members may establish a higher standard of regular attendance than that described above, and may also take this higher standard of attendance, class participation, and the quality of class performance into account in determining the student’s grade as long as the faculty member has, during the first week of classes, announced an intention to do so or has included that intention in the syllabus or other class materials distributed in the first week of class ....
Forty percent of the final grade will be based on class participation. Class participation includes preparation and discussion of class materials individually or as a member of a group, timely submission of periodic written commentary, oral presentation of research and argument of final paper, and peer review of the work of other students.

Sixty percent of the final grade will be based on a final paper of 15-20 pages in length. Final papers should bear on one or more of the four policy and legal debates considered during the semester. The course is available for substantial writing credit.

READING ASSIGNMENTS:

Reading assignments for the course are set forth below. These assignments are subject to alteration to accommodate the schedules of guest speakers or other exigencies. The final portion of the semester will be devoted to a workshop for the presentation and critique of student research and papers.

Reading Assignments

NB: IN PREPARING FOR CLASS, STUDENTS SHOULD ALWAYS CONSULT THE READING ASSIGNMENT RATHER THAN RELY SOLELY ON THE DOCUMENTS WHICH APPEAR ON NYU CLASSES FOR A PARTICULAR CLASS MEETING. THE FULL TEXT OF A DOCUMENT MAY BE POSTED ON NYU CLASSES WHEN THE READING ASSIGNMENT COVERS ONLY A PORTION OF THE
DOCUMENT. THE READING ASSIGNMENT MAY ALSO INCLUDE DISCUSSION POINTS WHICH SHOULD BE CONSIDERED IN ORDER TO PREPARE FOR CLASS DISCUSSION. DUE DATES AND OTHER INSTRUCTIONS FOR WRITING ASSIGNMENTS OR GROUP PARTICIPATION WILL ALSO APPEAR IN THE READING ASSIGNMENT.

Week 1:

August 30:

I. INTRODUCTION

A. Overview: Equality, Finance, Choice, and Governance


Rabin et al., “Getting Back to Where We Started From: The Failure of Proxy-Based Policies and a Possible Return to Plessy,” Current Issues in Educational Policy and the Law, Welner and Chi, eds., pp. 153-172


1All references are to textbook or to materials on NYU Classes
B. New and Noteworthy [SKIM]

Brown, “Inequitable School Funding Called ‘one of the sleeper civil rights issues of our time’, The Washington Post, June 8, 2015

Southern Education Foundation, “A New Diverse Majority: Students of Color in the South’s Public Schools


Strauss, “Like it or not, Betsy DeVos has made a mark in six months as education secretary,” Washington Post, August 4, 2017


Week 2:

September 6:

C. Schooling and the State

1. The Governance of Public Schools

State Authority and Local Control, pp. 923-25

Local Control in an Era of Standards-Based Accountability,
2. Compulsory School Attendance
   a. Historical and Theoretical Considerations, pp. 1-10
   b. The Pierce Compromise, pp. 10-17

Week 3:

September 11:

3. Home Schooling
   a. Care and Protection of Charles, pp. 34-42

Discussion Points: Professor Yuracko’s work is motivated by the growth of homeschooling among a specific group within the Christian religion, and she is particularly concerned about the implications of unregulated homeschooling for gender equality. Do you support the proposal she makes to deal with these issues? How effective is it likely to be?

September 13:
4. State Regulation of Private Schools, pp. 50-58

II. EQUALITY OF EDUCATIONAL OPPORTUNITY AND RACE

A. Introduction

NB: THE MATERIALS PROVIDED IN SUBSECTIONS 1 AND 2, BELOW, ARE MARKED “OPTIONAL READING” AND ARE PROVIDED FOR THE BENEFIT OF STUDENTS WHO HAVE NOT TAKEN A COURSE IN CONSTITUTIONAL LAW OR WHO ARE CURRENTLY DOING SO BUT HAVE NOT YET CONSIDERED LEVELS OF SCRUTINY IN CONSTITUTIONAL LITIGATION AND EQUAL PROTECTION ANALYSIS

1. Levels of Scrutiny in Constitutional Litigation


2. Introduction to Equal Protection Analysis


B. Court-Ordered Desegregation

1. The Road to Brown

Gong Lum v. Rice

Westminster v. Mendez, District Court, Excerpt, Race, Races and
Week 4:

September 18:

2. Brown I, pp. 408-410; Notes 1 and 2, pp. 411-413; Brown II, Note 4, pp. 414-415

3. Eyes on the Prize, Episode 2 (video, in class)

September 20:

NB: FIRST WRITTEN ASSIGNMENT: SEE NYU CLASSES FOR INSTRUCTIONS AND DUE DATE

4. The Influence of Social Science
   b. Note 3, p. 413: The Role of Social Science Evidence
5. Implementing Brown
   b. Green, Swann, Keyes, pp. 420-432

   Green Excerpt

Week 5:

September 25:

6. Remedial Limitations

   Milliken I and Milliken II, pp. 432-440

   Milliken Excerpt [expanding Note 2 on Local Control]

   Achieving Unitary Status, pp. 440-444

   The Current Status of Desegregation Litigation, pp. 444-446

September 27:

C. Voluntary Efforts to Diversify Schools

   1. Colleges and Universities

      Gratz, pp. 455-459
      Grutter, pp. 459-465
Notes, 1-5, pp. 465-467
Fisher I (Supreme Court 2013)

**Week 6:**

**October 2:**

Fisher II (Supreme Court 2016)

2. Elementary and Secondary Schools

   Parents Involved, pp. 467-484, Notes 1-4

**DISCUSSION POINTS:** Is Fisher II a solid win for diversity? Is more litigation likely to follow? What, if any, are the effects of Fisher I and Fisher II on Parents Involved?

**October 4:**  **GROUP I PRESENTING**

D. K-12 Desegregation (Voluntary or Court-Ordered) and the Social Science Controversy

1. Selected Briefs in Parents Involved

   Amicus Brief of 553 Social Scientists in Support of Respondents
   **Required Reading:** pp. 2-8. Optional Reading: pp. 8-38 [skim]

   Amicus Brief of Profs. Amy Stuart Wells, et al., in Support of Respondents.  **Required Reading: pp. 5 [bottom] to 21**
2. Why Integration?

Braddock, “Looking Back: The Effects of Court-ordered Desegregation,” *From the Courtroom to the Classroom: The Shifting Landscape of School Desegregation* ("the Shifting Landscape")

**DISCUSSION POINTS:** The briefs are very repetitive, especially the brief signed by 553 social scientists. Read to extract the essential arguments of each. What are the differences between the two briefs in support of the respondents? What is the central argument of the petitioner’s brief? What use does the Supreme Court make in *Parents Involved* of the social science discussed in the briefs? Professor Braddock offers a particular view of the meaning of *Brown* and the definition of equality of educational opportunity. Do you agree? How does Braddock’s view affect your understanding of the relationship between law and social science for purposes of understanding the past (court-ordered desegregation) or preparing for the present and the future (voluntary desegregation or integration after *Parents Involved*)?

**D. Assessing Desegregation: Two Case Studies**

**GROUP II PRESENTING**

1. Can Courts Bring About Social Change?

Koski and Oakes, “Equal Educational Opportunity, School Reform,
DISCUSSION POINTS: The role of courts in bringing about social change is a hotly debated issue in legal theory. Do you agree with the answer provided by Koski and Oakes? How do they define equal educational opportunity? Did remedying unlawful segregation necessarily mean an abandonment of the goal of equal educational opportunity?

GROUP III PRESENTING

2. The Role of State Constitutions and a Comparison of Court-ordered and Voluntary Measures

a. Sheff v. O’Neill


[DISCUSSION POINTS: In February 2015, the parties in the Sheff litigation entered into a new agreement calling for new efforts to end racial and ethnic segregation faced by Hartford students, including 1,000 new magnet school seats and 325 new Open Choice seats for Hartford students; new buildings, renovations, or relocations for three Hartford magnet schools; the filling of incoming classes in Sheff magnets with 50 percent Hartford students. Should this new plan be voluntary or mandatory? More than 25 years after the filing of Sheff, should the goal of integration be abandoned? If so, what goals should the parties pursue?]
Week 7:

October 9:

E. Moving Away from Race and Ethnicity

1. Socioeconomic Integration, pp. 485-488, Notes 1 and 2
2. Racial and Ethnic Categories, pp. 538-540, Notes 1-3

F. Discrimination and Private Education

Runyon v. McCrary, pp. 71-79, Notes, pp. 79-82 (SKIM)

III. EQUAL EDUCATIONAL OPPORTUNITY AND SCHOOL FINANCE

A. Introduction

1. The Current State of School Finance Litigation

“School Funding Litigation Hot Topics in State Courts, Education Law Center, August 20, 2015

Overview of School Finance Schemes and Concepts, pp. 799-806; Notes 1-4, pp. 806-809

Inequalities in Funding, pp. 808-09

October 11:
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B. The Federal Equal Protection Clause

1. Introduction, pp. 809-810
2. Serrano v. Priest, pp. 811-816

C. School Finance Litigation and State Constitutions: “Equity” and “Adequacy”

1. Introduction, pp. 832-33
2. Brigham and Notes, pp. 833-840
3. Rose and Notes, pp. 840-845
   Robinson and Notes, pp. 846-849

Week 8:

October 16:

4. Robinson and Notes, pp. 846-849

D. The Special Problems of Large Urban Districts

1. Abbott, pp. 849-858, Note 1, pp. 858-863

2. The City of New York: A Case Study
   Campaign for Fiscal Equity I (Liability)
   Campaign for Fiscal Equity II (Remedy)

October 18:

E. Assessing School Finance Reform

1. Money Matters


Rebell and Wardinski, “Of Course Money Matters: Why Arguments to The Contrary Never Add Up”

2. Is Adequate Better than Equal?


3. Redefining Adequacy?


Week 9:

October 23:
IV. EQUALITY OF EDUCATIONAL OPPORTUNITY AND SCHOOL CLASSIFICATION PRACTICES

A. High Stakes Testing and Tracking

1. Tracking

Hobson v. Hansen, Note 5, p. 521
People Who Care v. Rockford [Document I]
People Who Care v. Rockford [Document II]
People Who Care v. Rockford [Document III]

Larry P. v. Riles

p. 510, Note 3

Tracking Today, Note 4, p. 520-521

Educational Rights and Latinos: Tracking as a Form of Second Generation Discrimination, pp. 699-700

Valencia, “Conceptualizing the Notion of Deficit Thinking,” in The Evolution of Deficit Thinking in Education Thought and Practice

2. Governance and the Politics of Tracking

Civic Virtue and School Board Elections, Note 5, p. 944
“Only for My Kid: How Privileged Parents Undermine School
3. The Legal Vulnerability of High Stakes Testing

Title VI of the Civil Rights Act of 1964, p. 417-18
The Reach of Title VI: Intent versus Effect, pp. 448-49

October 25:

High Stakes Testing for Tracking, Promotion, and Graduation,
   Pp. 512-516
   The Battle over Disparate Impact Theory, pp. 516-518
   Notes 1-3, pp. 518-520

B. Racial Inequity in Special Education

   Overview, pp. 521-26
   Notes, 1-3, pp. 530-31

C. Racial Inequity in Student Discipline

   Overview, pp. 531-35
   Notes 1-3, pp. 537-38

   Guidelines, U.S. Dept. Of Justice and Dept. Of Education,
   Nondiscriminatory School Discipline [Appendix] [skim]

V. EQUALITY OF EDUCATIONAL OPPORTUNITY: BEYOND RACE AND CLASS
A. Disability

1. Introduction, pp. 719-25

2. Federal Constitutional and Statutory Framework

   Mills, p. 725; Notes 1-4, pp. 728-29

OCTOBER 27: MAKEUP CLASS, FRIDAY, FROM 2:00-3:50 AT LOCATION TO BE ANNOUNCED

   The Individuals with Disabilities Education Act, Note 2, pp. 736-40

3. The Substantive Entitlement, Rowley, p. 740; Notes 1-4, pp. 745-46

4. Mainstreaming and the Least Restrictive Environment

   Roncker, p. 747; Hartmann, p. 748; Notes, 1-2, p. 753

Week 10:

October 30: GROUP III PRESENTING

   Mainstreaming, Segregation, and Equality, pp. 747-764

   Honig, p. 764

B. Ethnicity and National Origin

1. Language, Identity, and Equality
VI. EQUAL EDUCATIONAL OPPORTUNITY AND SCHOOL CHOICE

November 1:

A. Schools and Markets, pp. 968-976

B. Vouchers

1. Vouchers and the Federal Constitution, pp. 87-88

   Zelman, pp. 88-95; Notes, 1-3, pp. 95-96

2. Vouchers and State Constitutions, pp. 96-97

   Bush v. Holmes, pp. 97-106
   Notes 1-3, p. 106

   Trinity Lutheran Church of Columbia v. Comer

3. The Shifting Politics of School Choice, pp. 976-981

4. Vouchers and Student Achievement, 981-986

Week 11:

November 6: GROUP II PRESENTING

C. Charter Schools

1. From Vouchers to Charter Schools, pp. 985-991
   Notes 1-6, pp. 992-996

2. The Legal Status of Charter Schools

3. Race and School Choice, pp. 488-498

4. Assessing Charter Schools


20


Required Reading: pp. 5-30

November 8: CLASS IS CANCELLED

WEEK 12:

November 13: GROUP I PRESENTING

5. Privatization and the Public Good


VII. STANDARDS, ACCOUNTABILITY, AND GOVERNANCE

A. Educational Governance and the Law

Introduction, pp. 885-86

B. Federal Authority

1. Historical Background, pp. 886-893 [skim]
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2. The No Child Left Behind Act

Ryan, Key Provisions, p. 894-895
Notes 1-3, pp. 907-909

November 15:

3. Race to the Top, pp. 920-923

C. State Authority

1. States and the No Child Left Behind Act, pp. 925-938

2. OPTIONAL READING: Liu, “Interstate Inequality in Educational Opportunity,” 81 NYU L. Rev. 2044 (pp. 2073-2101; 2113-2127)

WEEK 13:

November 20

D. Every Student Succeeds Act

1. ESSA Explained, Education Week


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WORKSHOP FOR STUDENT PRESENTATIONS– NOVEMBER 22 THROUGH DECEMBER 6. SEE COURSE DOCUMENTS FOR SCHEDULE OF PRESENTATIONS AND WORKSHOP GUIDELINES