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Education Law: Public and Private by William D. Valente

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BOOK REVIEW

EDUCATION LAW: PUBLIC AND PRIVATE


Reviewed by Hon. Peter S. Popovich

When I began to concentrate on public law thirty-nine years ago, education law as a specialty was in its infancy. No comprehensive publications were available and, of necessity, research was confined to McQuillin's treatise on municipal corporations, state statutes and the decennial digest system. Later, Edwards' The Courts and the Public Schools, Hamilton and Mort's The Law and Public Education, Drury and Ray's Principles of School Law, Mort and Reusser's Public School Finance, and D. Parker Young's Higher Education appeared on the scene, among other texts.

The National Organization of Legal Problems in Education, founded in the mid-1950's, produced its annual yearbook of school law and various specialized monographs, but those works contained no indexes. State and national councils of school attorneys, established in the 1970's, instituted their monthly newsletters. Inquiry and Analysis, published by the National Council of School Attorneys, from time to time had articles on important school law subjects. West Publishing Company, after years of urging by many in the legal community, commenced publication of its Education Law Reporter, but that series is limited to education cases written since 1982.

All previous education law resource aids had their deficiencies, and a school law practitioner was really left to his own devices in research and preparation, litigation, and rendition of advice. Nowhere was there a comprehensive treatise covering the entire scope of education law analogous in any way with McQuillin's multi-volume set.

1. Valente - Professor of Law, Villanova University School of Law.
2. Chief Judge, Minnesota Court of Appeals, 1983-.
William Valente’s *Education Law: Public and Private* now fills the void. His approach of sifting, sorting and analyzing this body of law is best described in his preface:

This treatise endeavors to organize, within a rational, comprehensive framework, the mass of laws that govern the educational efforts of parents, schools, and society. It is intended to serve professional needs that are not met by single subject, specialty texts, viz. those dealing with labor relations, or with teacher and students civil rights. Important as those topical studies are, they do not integrate the separate branches of federal and state law which often intersect and apply within the same context. Such a project requires a cross-referenced text that interrelates: (a) pertinent regulatory law; and (b) process elements of judicial and administrative review.

(vol. 1, p. VII). Valente is quite successful in his endeavor.

Education law is a complicated field. Its development varies in each state. For example, in some, sovereign immunity has been abolished, in others it is still retained. Some states permit collective bargaining, organization and strikes, other states prohibit these activities. Employment may be at-will, continuing contract, or tenure. Financing, revenue raising, taxing authority, and education aids are as varied as there are number of states. The structure of school organization differs. Valente’s treatise organizes these nuances and interprets the volume of state and federal statutes, state and federal cases, and rules and regulations of state and federal agencies which is growing daily.

Consisting of twenty-one chapters and thirty-five tables, Valente’s treatise is divided into three parts: Elementary and Secondary Education; Public Schools; and Private Education. Each chapter is divided into convenient sections, with provision for future expansion and pocket parts.

The promotional literature indicates accurately the following chapter-by-chapter review:

The first three chapters review the legal status and structure of public schools and the jurisdiction of government agencies and boards which oversee their operation.

Chapters Four through Eight review the laws governing individual school organization—from site selection through pupil admission, placement and services, and management of the school calendar.

Chapters Ten and Eleven trace laws governing the school program: the curriculum; textbooks and other materials; extracurricular activities; and religion-related disputes in public school functions.

Chapters Twelve through Nineteen cover the rights and obligations of the professional staff (both supervisory and instructional) and the rights and obligations of students and their parents.

Chapters Twelve through Fifteen address issues of teachers’ constitutional rights: the required due process procedures for the profes-
sional staff and other public school employees; and the modern labor-relations statutes governing public school employment.

Chapter Sixteen details the issues and governing law on student rights and discipline.

Chapters Seventeen and Eighteen focus on federal civil rights statutes.

Chapter Nineteen covers modern developments in the general tort law of the various states.

Chapter Twenty is an overview of the law of Public School Finance.

Chapter Twenty-one is a rather lengthy chapter that builds, by reference, upon those parts of the preceding chapters that apply to private schools; and then proceeds to identify and discuss those areas of the law that are unique to private schools. In particular, Chapter Twenty-one explains the unique role played by the law of contracts in settling private school disputes; religious school exemptions from otherwise governing state regulations; and teacher-labor relations. The history and current legal ruling of various forms of government financial aid, both federal and statute to non-public educations are also reviewed extensively in this chapter. Legislative proposals for such financial aid which either have been discussed, but not enacted, or have been enacted, but not completely tested by litigation are discussed. Appendices One through Thirty-two include state legal standards for public education, state-by-state summaries of labor laws affecting school employees, and regulations governing privacy rights of parents and students. Also included are tables of statutes, regulations, and recent supreme court cases.

I was particularly impressed with Valente's handling of the sections on tort immunity (vol. 2, p. 159), educational malpractice (vol. 2, p. 269), administrative structure (vol. 1, p. 35), private transportation (vol. 2, p. 441), textbooks (vol. 1, p. 173) and the constitutional challenge to library removal (vol. 1, p. 175), continuing contract and tenure rights (vol. 1, p. 394), tort liability (vol. 2, pp. 153, 197), collective bargaining, and employee organizational efforts (vol. 1, p. 323). In these areas, Valente has done an excellent job of integrating federal and state common and statutory law into concise discussions.

He provides a depth of analysis which up to this point has been lacking. This comprehensiveness is evident in sections such as that analyzing “immoral conduct,” which has been for decades an un-clearly defined term regarding disciplinary dismissals. Valente has cornered the term into a framework of examples allowing proper analysis of its definition (vol. 1, p. 439).

Several impressive organizational aspects of Valente's treatise should be highlighted. A basic, yet necessary, feature of any quality treatise is the use of guidepost sections to aid the reader in focusing on the subject matter. Valente does this well. Sections entitled
“Background Note,” “Introduction,” and “In General” provide neutral, objective introductory material. Such simple paragraphs set an appropriate tone and are invaluable to the reader in indicating the scope of the material that follows.

Another seemingly simple, yet essential, element of a comprehensive work is adequate cross-referencing of sections. This principle is of even greater importance when a multi-volume treatise is involved. Cross-referencing eliminates the necessity of duplicative material and yet gives the researcher a complete treatment of the subject matter. Valente, by taking the time to alert the reader to previous or latter sections or footnotes, enhances the speed of research as well as comprehension.

Valente greatly assists researchers again by inserting annotations labeled “Library References.” Those brief lines may go unnoticed by many readers, but are nonetheless quite helpful research tools. Citations are to *Corpus Juris Secundum* and the West Digest key number system. The treatise is also well footnoted. In addition to salient statutes and case law, I found myself directed to appropriate law review articles, leading texts, ALR articles and West’s *Education Law Reporter*. Such sources are quite useful when confronted with a specific issue.

My disappointments with Valente’s work were limited and, if absent, would only serve to make his effort a greater resource tool. While an index may only constitute end pages to the casual reader, a developed index provides the researcher with quick reference to the subject matter desired. Valente’s index is too brief and should be enlarged. I actually found more help from the detailed table of contents. To greater assist research, index and section headings in the future should follow the topics utilized in either the *Education Law Reporter* or the West key system.

In a random use of the index, I found “home education” referring to section 21.5. Yet in turning to the text, I found the section was reserved for supplementary material. Thus, the index was keyed to a future section number without text. I do not know if this is an isolated instance or if there may be others. I presume that as pocket parts and supplemental material are prepared, this will be corrected and the material supplied.

Valente’s thirty-five tables provide useful information organized under well-headed columns. Textual material describes column headings and explains the topic analyzed.

I did encounter certain difficulties. A number of the tables comparing the fifty states’ provisions in various areas were reduced too much, resulting in small, nearly illegible type (vol. 2, p. 466). Some tables were only one-half or two-thirds of a page. I found I had to
use a magnifying glass occasionally. Production size should be adjusted to utilize a full page.

I also found some of the table data might be dated. Table 25, for example, regarding state public sector labor relations laws affecting public school employees, appeared to be obsolete (vol. 2, p. 543). Its source was a 1979 United States Department of Labor report.

Valente provides a handy table of recent United States Supreme Court cases from 1975 to date (vol. 2, p. 655). Cases are presented in alphabetical order and cross-referenced to sections of the treatise wherein the case cited is supplied. Unfortunately, no similar table containing state court cases is given. Many important state law decisions exist. At least the most significant state cases should be so catalogued.

The parochial nature of education issues, combined with the flood of litigation in the last twenty years, has produced a body of education law as varied and complex as one can imagine. Professor Valente is to be complimented on distilling this vast source of reference material into his two volume comprehensive treatise. It will be a welcome addition to the professional educator's and the practicing attorney's libraries. I only wish it had been available when I began to concentrate in the school law area years ago. It certainly would have saved countless hours of research. Now Valente's work will be the beginning point for one seeking an answer to an education law problem. The busy lawyer will be able to obtain a neutral and objective treatment of the subject matter with timely reference to other resource material.

If I was beginning to practice law today in the school law area, my basic educational library would be composed of Valente's work, my state statutes, state rules and regulations, appropriate federal statutes, rules and regulations, and West's Education Law Reporter, together with the specialized monographs and articles of the organizations previously mentioned. It would be an effective, comprehensive collection and Valente's Education Law would be the key resource aid.