

The Due Process Clause of the Fifth and Fourteenth Amendments and the Policy-Making Process in Educational Leadership: An Analysis of Relevant Legal Cases

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Abstract

This article discusses the due process clause of the Fifth and Fourteenth Amendments and their application in legal cases related to K-12 and higher education. The Fifth and Fourteenth Amendments are important because, among many things, they declare that before any person can be accused of any crime or wrongdoing, he or she must be allowed due process to prove his or her innocence. Without due process, all decisions related to an individual's innocence or guilt are thus null and void. Using content analysis methodology, this research looked at 11 Supreme Court decisions related to due process in education. It was discovered that decisions mainly related to student classification versus self-identification and wrongful termination of faculty and school personnel. The findings of this study help educational leaders at all levels to better understand the vastness of both amendments and how they work in tandem with drafting equitable, equal, inclusive, and fair policies and procedures for all students, faculty, and staff in educational settings.

Keywords: Due Process, Educational Law, Educational Leadership, Fifth Amendment, Fourteenth Amendment, Higher Education, K-12 Education, Policy Development

Introduction

Schools, colleges, and universities across the United States of America grow and evolve daily to become more multicultural, diverse, and inclusive. One of the many tasks of educational leaders is to constantly create and nourish an empowering school culture (Banks, 2019). In recent years, parents and other stakeholders have started to focus more attention on issues of equity and equality in education as the result of social justice movements such as #BlackLivesMatter and #MeToo. Likewise, teachers have become friendlier to progressive approaches to the teaching and learning process such as culturally relevant teaching and project-based learning in all fields (Parker, 2020). With the new changes enacted in education via COVID19, there is growing interest in equity, equality, and access and what those look like in various areas of educational institutions.

For educational leaders, it is critical to constantly re-evaluate policies and procedures to ensure that all students regardless of race, gender, sexuality, socioeconomic level, religion, or exceptionality are given the proper tools to succeed and not provided with a pathway to poverty or prison. Although they are two separate pillars of society, the intersection of law and education has deep roots in American society. From its inception, government officials have always felt that decisions related to education should be left to the state (Alexander & Alexander, 2007; Essex, 2016). While there do exist certain provisions addressing education such as the Land Ordinances of 1785 and 1787, for centuries law makers at the national level have made it a point to keep a separation between the federal government and the education system.

The United States constitution does not deal directly with issues related to education. The Supreme Court and federal government still however serve as the final mediator of all legal cases brought on behalf of or against schools, colleges, universities, and/or their governing boards and stakeholders (Alexander & Alexander, 2007; Essex, 2016). The Supreme Court's job is not to influence decisions directly, but rather regulate them in the best interest of the nation. This regulation is done via a liberal or conservative interpretation of the constitution.

For educational leaders tasked with drafting policy and making tough decisions, it can be very difficult to understand first, how perspective in the interpretation of law matters and second how certain decisions will affect their students and staff long-term. Before any decisions can be made, educational leaders must first understand the rights of the students and staff and the legal parameters of power for both groups. They must be given their full due process.

Due process rights, policies, and procedures have become a topic of interest in special education and teacher tenure and dismissal within recent years; yet, it reaches well beyond just there (Myrna, 2016). For educational leaders, it is detrimental to understand all areas in which due process rights for students, faculty, and staff may be violated and in what ways such violations are possible. This article seeks to fill gaps in the previous literature as it relates to due process, the Fifth Amendment, and the Fourteenth Amendment.

By understanding the Fifth and Fourteenth Amendments and how they have been used to in relation to due process, educational leaders have a starting point for their decision-making as it pertains to the school, the legal system, policy, and procedure. Through a deeper understanding of due process, leaders will be better equipped with the skills and knowledge to draft sound, equitable,

and equality-based policies and procedures that ensure fairness for all teachers, staff, and students in every way possible.

The Due Process Clause in Education

Due process is a long-standing American tradition. Its worth is so valued that it is the only command of the United States Constitution that is specifically mentioned twice, in the Fifth Amendment and in the Fourteenth Amendment (Strauss, n.d.). While it was originally created under the Fifth Amendment of the constitution, throughout American history due process has been restated in various other forms such as in the Ordinance of 1787 also known as the Northwest Ordinance (Section XIV Article II) (Alexander & Alexander, 2007; Strauss, n.d.; U.S. Constitution).

The Fifth Amendment of the U.S. Constitution states that:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (Fifth Amendment, n.d.)

This amendment guarantees five separate constitutional rights: grand juries for capital crimes, protection against double jeopardy, protection against required self-incrimination, guarantee of a fair trial (due process), and a guarantee that the government will not seize private property without paying market value (just compensation) (Alexander & Alexander, 2007; Fifth Amendment, n.d.). As suggested by Goodwin (1987), invoking the Fifth Amendment in relation to education has been very controversial because many courts consider it to be null and void. There are likewise some courts that consider it to be partially relevant to education-related due process violations. Over the years, due process has become very important in a variety of ways that all connect back to its original intent of fairness. For decades K-12 teachers and university faculty and staff have had to grapple with educational leaders violating their Fifth Amendment rights in lieu of losing their job (Byse, 1954; Taylor 1954; Kahlenburg, 2015).

Section one of the Fourteenth Amendment of the U.S. Constitution is more of interest to education because it addresses state action, privileges & immunities, citizenship, due process, and

equal protection in relation to the state (Fourteenth Amendment, n.d.). Education is a duty of the state (See Appendix for the full amendment text). Simply put, while the Fifth Amendment guarantees due process rights when dealing with the federal government, the Fourteenth Amendment specifically states that “No state shall” and for this reason it is only invoked when dealing with state matters such as education. (Alexander & Alexander, 2007 p. 865; Strauss, n.d.).

For educational leaders, knowledge and understanding of due process rights in relation to both amendments is important because no disciplinary process can start without a student, faculty member, or staff personnel understanding his/her rights and being given due process to establish his/her innocence. Although the original intent of the Fifth Amendment was only to be applied to federal courts, over the years the U.S. Supreme Court has interpreted the Fifth Amendment's provisions as now applying to the states through the due process clause of the Fourteenth Amendment. In other words, it is common practice to use these together in education related cases.

Miranda v. Arizona (1966)

Although it has no relation to education, the seminal case that deals with due process is *Miranda v. Arizona* (1966). Because of this case we now have the famous “Miranda Rights”—*You have the right to remain silent. Anything you say or do can and will be used against you in a court of law...* (Benz, 2012). Currently, because K-12 administrators, faculty, and staff take on the role of surrogate parents (*loco parentis*), if students are under their care, schools reserve the right to determine students’ rights to a certain extent. One of these rights includes those awarded by the *Miranda v. Arizona* (1966) decision.

This case is infamous for multiple reasons. It guaranteed Fifth Amendment rights to criminals and those being questioned for a crime. Interrogators must ensure that the subjected understand that he/she has:

1. The right to remain silent; anything that he/she says can and will be used against him/her in a court of law.
2. The right to have legal counsel to be present at the time of interrogation.
3. The right to have legal counsel appointed by the state to represent him/her.
4. The right to stop the interrogation at any moment.

If the accused is not made aware of these rights, then anything that he/she says is not permissible in a court of law. Although students are not specifically awarded all these rights, it is in the best interest of educational leaders to adopt aspects of them when drafting school policies and

procedures dealing with disciplinary decisions. The consideration of this case in policy development allows for a balanced approach to implementation that is fair and rational for all.

This study sought to go beyond the *Miranda* case to understand in what other ways has the due process clause been used by the courts when dealing with matters of education. To do so, previous court opinions were analyzed. The following section will present the research methodology used to conduct this study along with the research question that guided it. Afterward, there is a presentation of the findings and then a discussion of them, which includes the response to the proposed research question. This article concludes with implications for educational leaders as it relates to due process and policy creation.

Methodology

The purpose of this study was to better understand due process rights as established by the Fifth Amendment and Fourteenth Amendment of the United States Constitution. This study was guided by the following research question:

1. In what ways has the due process clause of the Fifth and/or Fourteenth Amendments been enacted in legal cases related to K-12 and higher education?

To respond to the proposed research question, a content analysis of relevant case decisions was done. When conducting research with legal documents, using content analysis as the methodological approach, it is important to keep in mind the case selection process, coding system, and analysis (Hall & Wright, 2008).

The method of choosing cases is important to ensure validity and reliability of the study. Cases included in the sample need to be pertinent only to responding to the proposed research questions. The coding of content is important because improper or inconsistent coding can alter the findings of the study in significant ways. There is the possibility of information being misinterpreted or being unintentionally excluded. Consistent and systematic analysis is also important to ensure the findings are accurate and appropriately respond the research questions.

The sample for this study consisted of court opinions written by the Supreme Court of the United States of America. Case inclusion in the sample was based on relevancy to due process, the Fifth Amendment and/or Fourteenth Amendment, and education. Court opinions were found using the following databases: *Lexus Nexis*, *Google Scholar*, *Justia US Law* and *Cornell Law*. In total, 11 cases were found. Seven cases were related to K-12 education and four cases were related to

higher education. The cases were grouped by their relevancy to K-12 education and higher education.

The analysis of the cases centered on understanding reoccurring themes among both groups of cases and the sample altogether. Within the K-12 group, themes ranged from political activity, disability, race, immigration status, and freedom of speech. In higher education, themes of political activity, race, and students' rights were observed. Across both groups, the larger themes of self-identification, students' rights, and issues related to termination were evident.

One limitation of this study was that there does not exist a comprehensive list or database of all Supreme Court cases that relate specifically to educational due process rights as argued by the Fifth and/or Fourteenth Amendment. It is possible that other cases exist, and the sample of this study is not truly reflective of all relevant Supreme Court decisions. This study was delimited by its interpretation of the facts of each case. There is no one popular or common approach to analyzing case law in educational research. Methods of analysis vary widely. Likewise, the researcher has a background in educational leadership not law and legal studies. It is therefore possible that errors were made in the interpretation of the court opinions. The interpretation of the findings for this study take the form of a legal brief. The following section presents the finding of the analysis.

Findings

This section presents a summary of the facts of each case that was included in the study along with the remedy and previous cases that were cited, if any. It is broken into two sub-sections. The first sub-section addresses cases that involved the Fifth and/or Fourteenth Amendment in K-12 schools. The second sub-section discusses the findings from cases dealing with both amendments in higher education. The data are organized in chronological order to show the historical development and precedence of previous cases.

K-12 schools

One of the earliest and most important cases in educational law and specifically in relation to due process is *Brown et al v. Board of Education of Topeka et al*, (1954). This was a class-action lawsuit that argued against the validity of separate but equal educational facilities. The plaintiffs sought the racial integration of schools throughout the country. The courts were deciding the question of does the separate but equal clause, as applied in *Plessy V. Ferguson* (1896), also apply to public schools and public-school students? The issue of racial segregation was so widespread

across America that *Brown* was declared a class action lawsuit that comprised four separate but similar cases from Delaware, Kansas, South Carolina, and Virginia.

In the Delaware case, *Gebhart v. Belton* (1952), the plaintiff challenged Del. Const., Art. X, § 2; Del. Rev. Code § 2631 (1935) which enforced segregation in Delaware public schools. The courts ruled the statute to be unconstitutional on the grounds that predominately African American schools were inferior with respect to teacher training, pupil-teacher ratio, extracurricular activities, physical plant, and time and distance involved in travel. The court also ruled that segregation itself results in an inferior education for African American students, but this was not included in the court's decision. The defendants applied for certiorari (an order given by a higher court) from the U.S. Supreme Court.

In the Kansas case (*Brown, v Board of Education of Topeka, Kansas*), the plaintiffs argued against the enforcement of Kansas General Statute § 72-1724 (1949) which permitted cities with more than 15,000 residents to maintain separate but equal schools. Some schools in Kansas did as so, while others did not. The plaintiffs argued that the denial of equal schooling has a detrimental effect on African American students. The Kansas court felt that if the schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers then separate but equal facilities were acceptable.

In the South Carolina case, *Briggs v. Elliot* (1952), the plaintiff challenged the enforcement of the state constitution and statutory code S. C. Const., Art. XI, § 7; S. C. Code § 5377 (1942). The court ruled that separate facilities were not equal and thus must be made as such. However, they ruled against the integration of races in schools. The decision was later vacated because the defendants felt that they were not receiving equal facilities per the court's ruling. The appellate court ultimately ruled that there was substantial equality and ruled against the defendants.

In the Virginia case, *Davis v. Country School Board* (1951), African American students residing in Prince Edward County, Virginia challenged the Virginia state constitution and statute code (Va. Const., § 140; Va. Code § 22-221 (1950) which required the segregation of white and African American students. The court denied the request of the plaintiff. The court decided that schools for African American children were inferior in physical plant, curricula, and transportation as well. The judge ordered that the defendants provide substantially equal curricula and transportation and to "proceed with all reasonable diligence and dispatch to remove" the inequality in physical plant.

The Supreme Court's final ruling was that segregation in education was unconstitutional and violated the Fourteenth Amendment. They felt that separate but equal had no place in education because it has a detrimental effect on African American students and denied them the right of life, liberty, and property. This caused the later integration of all schools throughout the United States of America. The decision of this case relied on *Bolling et al. v Sharpe* (1954) which was going through the courts at the exact same time.

It was in the *Bolling* (1954) case that the courts were questioning the constitutional validity of segregation in the District of Columbia. Unlike the other fifty states, Washington D.C. must handle its educational affairs on a federal level. Just as in *Brown*, the plaintiffs were looking for a judgement that would cause the racial integration of Washington D.C. schools. The courts were looking to figure out if students' race should be chosen for them or if they have the right to choose in order to enroll in schools?

In this case, the defendants were African American students attending various public schools throughout the District of Columbia. They were refused admission to the all-white schools only because of their race. They petitioned the district court for the District of Columbia for admission. The court denied their claim. The courts decreed that the Equal Protection Clause of the Fourteenth Amendment does not cover the District of Columbia.

Although the claim was dismissed by the trial courts, the finding of the appellate court was a Writ of Certiorari. In other words, the appellate court ordered the lower, or trial court in this case, to certify the record and send it to them. This means that the appellate court chose to hear this case because of its issues. In the end, the case went to the United States Supreme Court. The final ruling was that racial segregation is a denial of the due process of law guaranteed by the Fifth Amendment of the Constitution. The Supreme Court felt that the constitution prohibited the states from maintaining racially segregated public schools.

Of further interest is also the *Julius W. Hobson v. Carl F. Hansen, Superintendent of Schools of District of Columbia, the Board of Education of the District of Columbia* (1967) case which was also related to racial segregation in schools. The plaintiffs sought the integration of white and African American schools as well. In this case, the courts were debating the issue of if the District of Columbia School System complied with the desegregation order as detailed in *Bolling v. Sharpe* (1954) which ruled that black students were deprived of their Fifth Amendment rights.

Per *Bolling v. Sharpe* (1954), the District of Columbia public schools were supposed to integrate. However, there was still defacto segregation based on various factors such as tracking systems, teacher segregation, and aptitude tests. The courts ruled that the District of Columbia did not do a good enough job following the desegregation order. An injunction against racial and economic discrimination was filed. The tracking system and optional zoning was abolished. Transportation for overcrowded schools was provided. A pupil assignment plan was to be created. Faculty were to be integrated and a teacher assignment plan was to be created. The belief was and still is that racial segregation was detrimental to all students. This was decided in *Brown v. Board* (1954), and *Bolling v. Sharpe* (1954).

Another example of the Fifth Amendment usage of due process can be seen in the policies of the Individuals with Disabilities Education Act (IDEA) (*A short guide*, 2004; Bateman, 2010; Hoagland-Hanson, 2015) which stems from *Peter Mills et al v. Board of Education of the District of Columbia et al.* (1972). This case was pertinent to the due process rights of black students in the District of Columbia that were classified as having exceptionalities related to mental disability. The relief sought was the integration of schools and the admission of the defendants to certain schools as declared in *Brown* (1954) and *Bolling* (1954). However, this time the courts were debating the question of if the plaintiffs were denied their due process rights because they were classified as mentally disabled and/or black rather than self-identifying.

In this case, Peter Mills, Duane Blacksheare, George Liddell, Jr, Steven Gaston, Micheal Williams, Janice King, and Jerome James were all black students living in the District of Columbia. Each student was labeled as having a mental disability which resulted in them being denied admission to a public school. Each student's family was poor and could not afford to send them to a private school. In the trial court, the school board agreed that school administrators were wrong for denying the students an education in the public-school system. The administrators agreed to make adequate changes, but the changes were not satisfactory from the court's perspective.

The court found that per *Brown v. Board* (1954), *Bolling v. Sharpe* (1954), and *Hobson v. Hansen* (1967) no student shall be excluded from a regular public education assignment because of a rule, policy, or practice of the Board of Education of the District of Columbia. Everyone involved with the case had to ensure the enforcement of the court's decision.

The District of Columbia was ordered to provide all school aged children with a free and suitable publicly supported education regardless of the degree of the students' mental, physical or

emotional exceptionalism. Additionally, they could not exclude a student because of a lack of resources. Students could not have been suspended for disciplinary reasons for longer than two days. The defendants were to provide publicly supported schooling that suited the needs of the plaintiffs within 30 days and 20 days for any students that were discovered afterward. Various other provisions in relation to staffing and procedures were also given. The courts felt that the plaintiffs were entitled to their reliefs per the constitution.

In *Beilan v. Board of Public Education, School District of Philadelphia* (1958) teacher protection under the Fourteenth Amendment was the focus. The relief sought was the reinstatement of Mr. Beilan. The courts were debating the issue of did the Board of Public Education for the District of Philadelphia, Pennsylvania violate Mr. Beilan's due process rights as awarded under the Fourteenth Amendment.

The facts of the case center around Herman Beilan who was a teacher in Philadelphia Public School System. He was called to meet with the superintendent. At this meeting, the superintendent asked Beilan if he was the Press Director of the Professional Section of the Communist Political Association in 1944. Beilan agreed to answer the question only after speaking to an attorney. Months later, the superintendent asked to speak with Beilan again and asked the same question. Beilan responded by declining to answer the question and stating that he would decline any similar questions of this type or any others related to his political and religious beliefs. The superintendent told Beilan that his response would put his job in jeopardy. The superintendent also made it clear that his real question was about Beilan's "fitness" as a teacher and his ability to continue teaching.

Under statute §1127 of the Pennsylvania Public School Code of 1949, Beilan was fired. Specifically, he was fired for his refusal to answer the superintendent's questions and thus constituted incompetency under statute § 1122 of the code. Beilan was given a board hearing where he did not testify. The board formally dismissed him at this meeting. Beilan appealed to the County Court of Common Pleas. However, at this point he was arguing that he was dismissed under the Pennsylvania Loyalty Act which deals with the dismissal of public employees on grounds of disloyal or subversive conduct. Beilan argued that the proper procedures were not followed. The Pennsylvania Supreme Court felt that the board could have proceeded under more than the Pennsylvania Loyalty Act to lawfully dismiss Beilan. The court held that, because Beilan met with the superintendent multiple times, he was asked more questions than those related to his 1944

activities. For this reason, the board was justified in their reasoning because they based their decision on relevant activities not just his past.

The trial and appellate courts ruled that Beilan's dismissal was justified. However, in citing *Slochower v. Board* (1956) and *Koingsberg v. State Bar of California* (1960), the Supreme Court ruled that Beilan's dismissal was only justified because he was dealing with the school not an outside entity. Their reasoning was that the superintendent asked the necessary questions for the board to find him incompetent to teach. Unlike previous cases, he was under the jurisdiction of the state not the federal government therefore his invoking of his Fifth Amendment rights against self-incrimination was the equivalent to resigning.

Moreover, *Plyler v. Doe*, 457 U.S. 202, (1982) explored that educational rights of undocumented immigrant students. The courts were petitioned to answer the question of does state statute §21.031 violate the Equal Protection Clause of the Fourteenth Amendment by denying undocumented children access to public schools? In this case, a class action lawsuit was filed on behalf of school-age children of Mexican origin that lived in Smith County, Texas. The parents of the children could not establish that they had been legally admitted to the United States. Thus, the children were excluded from attending Tyler Independent School District.

The district court found that the policy nor the district had the intent of keeping "illegal aliens" out of the state of Texas. The courts felt that the statute was more of a financial measure to aid the state. Although the state had seen an increase in the number of undocumented students, they did not feel that this statute would help to improve education.

The trial court ruled that "illegal aliens" were entitled to protection under the Equal Protection Clause of the Fourteenth Amendment and statute §21.031 violated that clause. However, the appellate court ruled that district court erred in finding that the Texas statute overreached its authority and it was truly a matter for the federal government. The ruling was overturned. Ultimately, the Supreme Court ruled that the state can only deny children free public education when it is of substantial interest of the state. The state did not prove this. The ruling of the court of appeals was affirmed. It reasoned that denial of education is a matter of the federal government not the state. This case afforded undocumented students' free public education.

Another case related to teachers is *Rendell-Baker v. Kohn*, 1982, the topic of debate was freedom of speech and due process rights. The courts had to answer the question of did Principal Kohn violate Mrs. Rendell-Baker's First, Fifth, and Fourteenth Amendment rights by terminating

her for supporting the idea of a student-staff council that would direct a decision-making process in the school and not providing her a due process hearing?

The events of the case were that Rendell-Baker worked at New Perspectives School as a vocational counselor. Her position was funded by the Committee on Criminal Justice. She supported a petition for a student-staff council that would make hiring decisions at the school. Principal Kohn did not approve and fired her after notifying the Committee on Criminal Justice. Rendell-Baker asked for a hearing or reinstatement because she was fired for invoking her First Amendment right. The school agreed to put together a grievance committee. But, Rendell-Baker did not agree with its member composition and the hearing never convened. Additionally, the committee informed her that she did not have the authority to order a hearing. She then filed suit.

The court of appeals and Supreme Court ruled that her claim was rejected because the committee had the power to ensure the qualifications of faculty and staff, but not over school personnel decisions. In other words, her issues were with the school and the committee, regardless of the committee makeup, could not do anything to help her. She was offered her due process hearing and she did not take it. Her First Amendment rights were therefore not violated because she was dealing with the school not giving her due process which falls under the Fourteenth Amendment.

Higher Education

As it pertains to higher education, a very imperative Fifth Amendment case is *Slochower v. Board of Higher Education of New York City* (1956). This case was related to Professor Slochower's protection under the Fifth Amendment. The court was responding to the question of if the firing of Professor Slochower under the New York Charter Statute § 903 and Brooklyn College was a violation of his Fifth Amendment rights against self-incrimination.

Professor Slochower was an associate professor at Brooklyn College. He was called to testify in front of the Internal Security Subcommittee of the Committee on the Judiciary of the United States Senate. He was to answer questions related to subversive influences in the American educational system. Professor Slochower was once a member of the Communist Party. Thus, he agreed to answer questions about his political beliefs, but only after 1941. He refused to answer questions about his actions between 1940 and 1941 because his answers might incriminate him. The committee felt that his reasoning was fair.

In a previous hearing before the Rapp-Coudent Committee of the New York Legislature, he testified that he was a member of the Communist party during 1940-1941. After the interview with the Security Subcommittee, Professor Slochower was notified that he was suspended from his position. Three days later his position was considered vacant. Brooklyn College interpreted statute 903 to mean that he resigned once he asserted his privilege against self-incrimination per the Fifth Amendment. Professor Slochower felt that he was not given his due process rights of notification, a fair hearing, and the possibility to appeal per the Fifth Amendment.

The trial court found that the statute does violate the Fifth Amendment's due process clause. However, education is a matter of the state and this violation was more related to the Fourteenth Amendment. The appellate court ruled that Professor Slochower's testimony before the subcommittee had no direct relation to his position as a college professor. His dismissal violated due process as awarded by the federal government. The appellate court's decision thus reversed the trial court's decision.

This ultimately went to the Supreme Court where it was ruled that education was a matter of the state. Professor Slochower was not dealing with the state nor Brooklyn College at the time of his interview. The issues argued in this case fell under the Privileges and Immunities Clause of the Fourteenth Amendment. The decision of the appeals court was upheld. The reasoning was that Professor Slochower's interview was not in relation to Brooklyn College therefore he did not violate statute 903 and did not warrant termination.

One of the oldest, but more relevant cases of the Fifth and Fourteenth Amendments in higher education is *Dixon v. Alabama State Board of Education* (1961). In this case, the issue of concern was the due process rights of students at tax-supported colleges. The legal question of debate was does Alabama State Board of Education have the right to expel students without following proper due process procedures per the Fourteenth and Fifth amendments?

On February 25, 1960 the plaintiffs along with twenty-nine other students from Alabama State College for Negroes (now known as Alabama State University) staged a sit-in at a publicly owned lunch counter located in the basement of the county courthouse in Montgomery, Alabama. The students asked to be served food and were denied and told to leave in which they refused to do so. The police were called, and the students were required to sit in the corridor for an hour. John Patterson, the chairman of the State Board of Education had a discussion with Dr. Trenholm, the president of Alabama State College about the incident. Patterson told Dr. Trenholm that the

students should be expelled from the university or some other appropriate form of action. The next day, the students en masse attended the trial of a fellow student at the Montgomery Court House. After the trial, they marched back to campus.

On February 27th, the students staged a mass demonstration in Montgomery and Tuskegee, Alabama. Dr. Trenholm informed the students along with the plaintiffs to return to class. On March 1st, about 600 students engaged in hymn singing and speech making on the steps of the state capital. At the event, one of the plaintiffs told those in attendance to strike and boycott the college if students were to be expelled. On March 4th, the plaintiffs received notification that they had been expelled from the university as of the end of the 1960 winter quarter.

The trial court ruled that the right to attend college was not guaranteed by the constitution. It was known that only private institutions had the right to obtain a waiver of notice and hearing before depriving a member of valuable rights. Precedence also stated that courts had upheld valid regulations that allowed colleges to dismiss students without letting them know the reason.

The appellate court felt that the district court misinterpreted precedence. Private colleges have a different relationship with students than public colleges and universities thus the private schools had the authority to dismiss students freely. Precedence (*Slochower v. Board of Education* (1956), along with other cases) also holds the fundamental constitutional principle that due process requires notice and an opportunity before a tax-supported college can expel students. These students were not awarded those rights and the decision was reversed. The appellate court maintained that the students were not given their full due process rights as guaranteed by the Fifth and Fourteenth Amendments.

In the *Vlandis v. Kline*, (1973) decision, the issue of interest was due process rights under the Fourteenth Amendment as well. The relief sought was the classification of the plaintiffs as in-state students. Additionally, a process to allow students that were non-residents at the time of application to prove current in-state residency was to be created. The question for the court was did the University of Connecticut violate the plaintiffs' due process rights by not allowing them to prove their residency status?

In this case, Margaret Marsh Kline and Patricia Catapano applied to the University of Connecticut while living in different states. Upon starting courses at the university, they were legal residents of the state of Connecticut. They had driver's licenses and registered vehicles. Per Section 126 (a) (2) of Public Act No 5. Amending §10-329 which went into effect in June of 1971,

“an unmarried student shall be classified as a nonresident or out of state student if his or her legal address is outside of Connecticut at least one full year prior to the application date. If such a student is living with a spouse but applied using an out-of -state address, then they are still classified as an out-of-state student. The Connecticut address must be given at the time of application to receive in-state tuition”. Both students applied for admission prior to June of 1971 and were later irreversibly classified as out-of-state students which caused an increase in their tuition rates.

The courts held the decision of the university to be unconstitutional. It violated the Fourteenth Amendment. The defendant was required to issue the plaintiffs a refund for overpayment of tuition and fees, but the students were still classified as non-residents. The Supreme Court also upheld the decision of the appellate court and stated that the state cannot classify students as out-of-state if they indeed have taken up residency in the state. Per their due process rights of the Fifth and Fourteenth Amendment, the university had to create reasonable criteria and a clear policy on the classification of non-resident for students that take up residency in a new state.

Another case of interest is *University of California Regents v. Bakke* (1978). This case argued the Equal Protection Clause. The question before the court was if the Medical School of the University of California at Davis’ special admission program was discriminatory?

This case came about because Allan Bakke was a white student who applied twice to the UC Davis School of Medicine. He was denied both times. He felt that his denial was because of his race and the fact that they have a special admissions program for minority and disadvantaged students. The courts found that the special admission program was unconstitutional under the Title VI of the Civil Rights Act of 1964 because they discriminated against him and denied him entry partially because of his race. Their reasoning was that Title VI acknowledged that racial classifications violate the Equal Protection Clause of the Fourteenth Amendment.

In total, the findings of this study further assert that knowledge and understanding of the Fifth and Fourteenth Amendments is very important for educational leaders. There is not an exhaustive list of legal cases related to these amendments, but 11 are known to have made it to the Supreme Court of the United States. The topics for each case have varied and likewise so have the rulings. The following section will discuss the findings of this study.

Discussion

As evidenced in the findings, issues related to due process and the Fifth and Fourteenth Amendments in education are very far-reaching. Generally, for educational leaders, the findings of this study suggest that decisions made along the lines of these amendments should consider what is a state decision and what is a federal decision. Likewise, best practices warrant clarity and fairness as they relate to both employees and students and how they interact with policies and procedures.

As the findings are organized based on K-12 and higher education, this section is divided by teachers and students. While conducting this research, it was discovered that issues with the due process rights are less related to the institution itself and the more common trend is among teachers and students. Thus, this section will discuss the findings of this study in relation to the students, both K-12 and higher education and then in relation to K-12 teachers and higher education faculty.

Students

The most obvious and recurrent theme that emerged from this study was related to student classification versus self-identification. In multiple cases (*Boiling, Brown, Hobson, Mills, Plyer, and Vlandis*), a school administrator denied students the right to an education based on an attribute that the administrator decided was a problem or hinderance to their learning or that of others. In these cases, race, immigration status, exceptionality, and state residency status were all declared for the students rather than the students being given the opportunity to declare them for themselves.

Public institutions do not have the power to deny students access to schools without giving them a due process. For students, the ability to classify themselves is therefore of the utmost importance. Specifically, the *Hobson* case made a clear example of the necessity of clear policies for enacting laws and decrees handed down by the federal government. Educational leaders can provide students and staff with due process, but still not be enacting policies that are likewise just and fair.

Beyond racial equality, the *Mills* case gave all parents the right to request a quasi-judicial trial to question the legitimacy of the accommodations given to their child by the school. These now take the form of Individual Education Plans (IEP) and 504 Plans. This case, though virtually unknown, is important because it upheld constitutional rights as awarded via the First, Fourth, Fifth, and Fourteenth Amendment for black and/or students with exceptionalities related to mental

disability. In terms of policymaking, this court decision paved the way for the handling of students with all types of exceptionalities. This later branched off into the field of Special Education Law, the Rehabilitation Act of 1973 and ultimately, the creation of the Individual's with Disabilities in Education Act (IDEA).

As it relates to higher education, as a result of the *Dixon* case, the best practice of tax-supported colleges and universities giving full due process rights before expulsion, including notification, hearing, and legal counsel was developed. This usually takes the form of a student conduct hearing board. This can also be seen in K-12 with disciplinary conferencing and the possibility of going before the school board before expulsion.

Likewise, *Vlandis* established due process rights for students that wished to attend college in a different state and that planned to move to the state and take up residency. This case created the need for an itemized classification system for resident versus non-resident students. It also helped to establish the precedence that university policy always be clear and distinct. Lastly, from the *Bakke* case it was determined that discrimination can happen to all students regardless of race and that all students regardless of being in the minority or majority must receive equal protection.

Teachers

As it concerns faculty and staff, the recurring theme was associated with the hiring and firing process. Whether it be a K-12 teacher, university faculty member, or outside personnel, everyone is subject to the policies and procedures of the school. While each case is unique, due process is always needed.

In the *Beilan* case, by not testifying at his board hearing, Mr. Beilan never officially declared his competency to teach. Likewise, the decision fell under Pennsylvania law not the Fifth Amendment because the questions were from the superintendent and directly related to his job. This case is extremely significant because it established precedence that when being questioned by school personnel, teachers cannot invoke their Fourteenth Amendment nor Fifth Amendment right of self-incrimination if the questions are directly related to their job and/or ability to do it. Controversially, in the *Slochower* case, it was declared that educators' Fifth Amendment rights are still protected when they are not dealing with their institution regardless of state policies.

Both the *Beilan* and *Slochower* cases demonstrate that no universal policy can be applied when dealing with hiring and firing based on teachers' actions outside of school. Their actions outside of the school may not be considerable when deciding termination unless defined by policy.

Teachers can freely engage in their personal affairs as they wish; however, if they are deemed incompetent to teach, they may be dismissed. This policy is currently gaining more interest among educational leaders as social media becomes more popular.

Cases similar to Professor Slochower's warrant the establishment of clear policies for teachers and staff about what is and is not permissible when dealing with outside agencies and not representing the school or university in an official capacity. These two cases are a key piece of knowledge for educational leaders who have teachers with various outside influences that can affect their performance in the classroom and/or the safety of students. Educational leaders cannot fire anyone in the school without a valid reason and the policies to support it. Additionally, even if there is valid cause and supporting policies, all school employees are required by law to be given a due process hearing to prove their innocence. Further the *Rendell-Baker* decision suggests that the power to hire and fire all personnel regardless of the source of funding for their position does lie in the leader's hands. This case made evident for administrators the need for a clear policy on what is deemed proper conduct of all school employees not just teachers.

Implications for Educational Leaders

Good leaders are aware of the need to have a sound understanding of the past and how that affects present thinking and behaviors (Vinovskis, 1999). A significant part of any leader's conceptual orientation and outlook is influenced by unspoken and unstated interpretations of past events. For educational leaders, understanding case law related to the Fifth and Fourteenth Amendments is key to protecting everyone associated with the school and their rights as citizens. It is unlawful for educational leaders to make decisions that deny any student the right to a free, public education. Likewise, it is also unlawful to deny employment to any teacher, staff member, or other personnel without have a justified reasoning.

To fully enact the intention of the Fifth and Fourteenth Amendments, administrators must be aware of the language of their policies. They must be cautious to not create policies that violate due process rights, among others. Policies that deny students, faculty, and staff their rights based on race, gender, religion, exceptionality, socioeconomical level, and anything else that is beyond their control must be re-written to be fairer and provide better equity.

Only students and their parents can label themselves. Although the administrators and teachers act in *loco parentis* while students are at school, it is still the student and his/her family's responsibility to provide vital information related to the student along with any accommodations

needed for him/her to receive the best education possible. In contemporary education, issues related to gender and sexuality, for example, are becoming more and more popular. Specifically, how educational leaders accommodate the learning needs of students who identify as gay, lesbian, transgender, transitioning, two-spirit, or gender non-binary conforming can warrant legal action if it is not done in a fair and just way. Leaders must be sure to allow these students to firstly identify themselves as such.

When drafting policy, educational leaders in both K-12 and higher education should know the necessity and validity of what can be classified as due process under the Fifth and Fourteenth Amendments. Although policy can be written to guarantee a students', teachers', and staff members' Fourteenth Amendment rights, there is still the possibility of violating their Fifth Amendment rights as well which must be considered and constantly revisited. Knowledge of due process related cases and amendments helps leaders to build a stronger relationship with all faculty and staff members by providing them an opportunity to advocate for themselves instead. With the knowledge of the cases included in this study, educational leaders can save themselves from various lawsuits and uncomfortable, unnecessary, and unwarranted disciplinary proceedings. More importantly, with knowledge of due process rights, the Fifth Amendment, and Fourteenth Amendment, educational leaders can save themselves and their reputations from violating the trust given to them by students, faculty, staff, and stakeholders by drafting policies and procedures that are equitable, equal, and inclusive to all individuals, not just the majority.

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Appendix

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who,

having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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