

COMMENTARY: LAW AND EDUCATION RESOURCES

While many databases and caselaw sites are accessible only through universities or legal firms, there are free access internet sites that provide information on law and education across many jurisdictions. We use these frequently to find updates on law and policy. Further resources are available on some sites on a subscription basis.

Below are some sources and comments on internet law site content as a starting point. The Internet has brought world law to every computer. We invite readers from other jurisdictions to provide more links to share with readers.

Australia

<http://www.austlii.edu.au>

Austlii is the Australasian Legal Information Institute website which provides free access to a range of material online. It is the joint work of UTS and UNSW Faculties of Law, with funding contributions from over 201 organisations and individuals. Austlii provides legislation databases for the Australian Commonwealth and all states and territories. It is the most comprehensive freely accessible case law and legislation source for Australia. It provides a search function on a range of law journals and topics. It provides links to world law sites. We are pleased that our journal is now part of the Austlii database.

While Austlii provides links to legislation in most states and territories, it is useful to go directly to individual state and territory websites in Australia for the most up-to-date information. Court judgments can also be found at court sites in each state and territory. Details of these state by state legislation and case law sites are provided, below.

Similar databases to Austlii are found across the world, some of which are noted below.

<http://www.comlaw.gov.au>

Comlaw is the Australian Government website that provides information on Commonwealth legislative material.

<http://www.comlaw.gov.au/Home/Othersources>

This site provides links to legal materials including parliamentary resources, legislation, case law and more, for all Australia's states and territories. Following the parliament links leads to publications such as Hansard that show speeches introducing bills to parliament, and statements of intent.

<http://www.legislation.act.gov.au/>

Legislative material in the Australian Capital Territory, Australia

<http://www.courts.act.gov.au/supreme/default.asp>

<http://www.courts.act.gov.au/magistrates/index.html>

Case law material in the Australian Capital Territory, Australia

<http://www.legislation.nsw.gov.au/>

Legislative material in New South Wales, Australia

<http://www.caselaw.nsw.gov.au/>

Case law material in New South Wales, Australia

http://www.dcm.nt.gov.au/strong_service_delivery/supporting_government/current_northern_territory_legislation_database

Legislative material in the Northern Territory, Australia

<http://www.courts.nt.gov.au/justice/decisions.shtml>

Case law material in the Northern Territory, Australia

<http://www.legislation.qld.gov.au/OQPChome.htm>

Legislative material in Queensland, Australia

<http://www.sclqld.org.au/qjudgment/>

Case law material in Queensland, Australia

<http://www.legislation.sa.gov.au/index.aspx>

Legislative material in South Australia, Australia

<http://www.courts.sa.gov.au/judgments/index.html>

Case law material in South Australia, Australia

<http://www.thelaw.tas.gov.au/index.w3p>

Legislative material in Tasmania, Australia

<http://www.courts.tas.gov.au/decisions>

Case law material in Tasmania, Australia

<http://www.legislation.vic.gov.au/>

Legislative material in Victoria, Australia

<http://www.courts.vic.gov.au/judgments>

Case law material in Victoria, Australia

<http://www.slp.wa.gov.au/legislation/statutes.nsf/default.html>

Legislative material in Western Australia, Australia

<http://decisions.justice.wa.gov.au/supreme/supdcns.nsf>

<http://www.districtcourt.wa.gov.au/C/courtsDecisions.aspx?uid=5794-1860-4634-3256>

New Zealand

<http://www.nzlii.org/databases.html>

This site provides access to New Zealand case law in a range of courts and tribunals, acts and bills, and law journals.

Canada

<http://www.canlii.org/>

The Canadian Legal Institute site provides Canadian federal and provincial legislative and case law materials, in French and English.

United Kingdom

<http://www.bailii.org/>

The British and Irish Legal Information Institute provides access to legislative matters and case law for the United Kingdom and its constituent elements. The site also provides links to a large number of World Law Resources in Africa, Europe and Indian and Pacific areas.

United States of America

<http://www.law.cornell.edu/>

A Legal Information Institute provided through Cornell University Law School. Access is provided to a range of US law material including Federal law materials and judicial opinions including decisions from Courts of Appeals for all circuits from the mid-1990s on.

Other databases with more complete case law in the US are available through universities or subscriptions. Full pleadings of a case (for plaintiff and defendant or respondent) are also available online, a very informative resource.

<http://legalclips.nsba.org/>

The US National School Boards Association provides a legal clip service which provides brief synopses of school law cases on a regular basis. It is possible to subscribe free to the list service through the feed 'eNewsletter'. The legal challenges and range of issues raised in US school law are a source of wonderment for the rest of the world where education caselaw is limited in number.

World Law

<http://www.worldlii.org/>

This site brings together material from a wide range of databases and jurisdictions.

EDUCATION LAW PROFESSIONAL ORGANISATIONS

There are several education law associations world wide, most of which hold regular conferences and publish journals or newsletters. They generally welcome international members who then gain access to a new range of education law materials including newsletters with updates on legislation, policy and case law. Some of the main organisations follow.

Australia and New Zealand Education Law Association (ANZELA)

www.anzela.edu.au

Canadian Association for the Practical Study of Law in Education (CAPSLE)

<http://www.capsle.ca/index.php?lang=1&menid=01&mty=3>

Education Law Association, United States of America (ELA)

<http://educationlaw.org/index.php>

Education Law Association (England) (ELAS)

<http://www.educationlawassociation.org.uk/>

European Association for Education Law and Policy (ELA)

<http://www.lawandeducation.com/>

South African Education Law Association (SAELA)

<http://saela-org.webs.com/>

A RECENT BLOG CONVERSATION FROM ELA (US)

The Executive Director of the US Education Law Association has commenced a School Law Blog sent by email to ELA members. Several members of ELA with great experience have recently been commenting on a special education case, *Compton Unified School District v Addison*,¹ based on the *Individuals with Disabilities Education Act of 2004* (IDEA). IDEA requires schools to undertake appropriate assessment for identification of and educational planning for children with disabilities, known as the ‘child find’ requirement. In this case, a school allegedly failed to identify a high school student’s disabilities. While the school was advised to seek an evaluation of the girl for learning disabilities, the school did not do so. Many cases under IDEA seek payment of private school special education fees for students for whom a state’s public school cannot provide an appropriate program. In these cases, the learning needs have been identified, an appropriate program has been identified, the issue is where provision can occur. This case differed as the learning needs were not identified and appropriate provision did not occur at any point.

The initial finding was for the family, with compensatory tutoring, but not special schooling costs, awarded to assist the girl. An appeal by the school district in the 9th Circuit was unsuccessful. For readers from England and Australia, this appears a relatively straightforward case that would satisfy the elements of negligence or malpractice, in this case educational negligence.² The school owed a duty of care, the school appears to have breached the duty, there has been loss of learning opportunity for the student (damage) as a result (causation), and a remedy relatively low in financial terms can be identified (additional tutoring). A key component would be that the advice to the school that such an assessment should be undertaken was ignored. English cases on failure to diagnose dyslexia have been found for plaintiffs with some damages awarded.³ It is generally held in English law that there is no reason an educational negligence or malpractice case could not be found if a school fails to meet its educational duty to a child. In Australia, while out of court settlements have occurred, an educational negligence case has not yet been through

the courts. There is no reason to believe that if the conditions of negligence can be demonstrated, a case would not be heard.

However, educational malpractice has long been denied in US case law, seen as government interference in state and school policy matters, and for fear of opening the ‘floodgates’.⁴ An exception was the case *Snow v State of NY*,⁵ when a child’s hearing impairment was not diagnosed and he was institutionalised as ‘mentally retarded’ for 10 years. This case was treated as medical negligence and hence allowed by the US courts.⁶

The focus of the ELA blog discussion is due to a further appeal by the School District to the US Supreme Court. The Supreme Court has asked the Obama administration for an opinion on whether a parent can bring an educational malpractice claim for failure of a school to diagnose a child’s disability under IDEA. A core question is whether this is available as a private cause of action under IDEA statute law, presumably on the unwritten expectation that a general claim in tort for educational negligence outside IDEA would not be heard. Normally, statute-based challenges must be based on specific IDEA provisions. IDEA appears to be silent on the consequences of breach by omission. The majority in the 9th Circuit appeal found the ‘child find’ requirement was not met and ‘read the statute as a whole ... [to] avoid statutory interpretations that would produce absurd results’.⁷ The original award of the tutoring remedy is consistent with IDEA provision expectations, although it would also be consistent in other jurisdictions with a tort (negligence) claim for damages. Generally, breach of a statute in any nation will have identified consequences within the act such as a fine, enforced performance of an action, or possibly imprisonment where a criminal breach is identified.

The ELA blog participants have identified differing aspects of the legal principles involved in the action of the Supreme Court, the outcomes of the case, and where it could go from here. It will be very interesting to see whether the US does find that a claim of educational negligence can be found, whether under statute or not, or works to amend the act to address the apparent gap.

The discussion that has revolved around this matter proves the value of watching international education law developments as reminders of the legal assumptions and actions in our own jurisdictions. It serves also as a reminder that education law is not a static area but everchanging.

ENDNOTES

- 1 Case No. 07-55751/56013 (9th Circuit, Mar. 22, 2010).
- 2 See, eg, Ralph Mawdsley and Joy Cumming, ‘Educational Malpractice and Setting Damages for Ineffective Teaching: A Comparison of Legal Principles in the USA, England and Australia’ (2010) 20(1) *Education and the Law* 25.
- 3 Ibid.
- 4 Ibid 26-9.
- 5 98 A D 2d 442, (1983), aff’d 475 N E 2d 454, (NY, 1984).
- 6 See Joy Cumming, ‘Assessment Challenges, the Law and the Future’ in Claire Wyatt-Smith and Joy Cumming (eds), *Educational Assessment in the 21st Century: Connecting Theory and Practice* (Springer, 2009), 157, 169.
- 7 *Compton Unified School District v Addison*, Case No. 07-55751/56013 (9th Circuit, Mar. 22, 2010), 4671.

Joy Cumming