

A BRIEF HISTORY OF PARENTAL RIGHTS • IN AMERICA •





A Brief History of Parental Rights in America

This “Brief History of Parental Rights in America” booklet provides insight into the timeline and framework documenting the intersection of parental rights and education in the United States. It highlights landmark litigation and laws that have shaped the field of education in America today.

Preface

This “Brief History of Parental Rights in Education” booklet provides a timeline of the recognition and development of parental rights throughout our nation’s history. It highlights events in American history, including court decisions, that shaped the rights of parents to direct and guide the upbringing of their children.

Over the past 200 years, numerous cases have reinforced the vital role of parents as pillars of society. The right of “parents in the care, custody, and control of their children ... is perhaps the oldest of the fundamental liberty interests recognized” by the Supreme Court. *Meyer v. Nebraska* (1923), for example, recognized the right of parents to raise their children according to their morals and values. And *Pierce v. Society of Sisters* (1925) reinforced that “[t]he child is not the mere creature of the state”—but rather, that their parents have the right to oversee their well-being.

The 1950s and 1960s saw fundamental changes in education. The U.S. Supreme Court in *Brown v. Board of Education* (1954) held that legal segregation in public schools was unconstitutional. The right to a public education, the Court concluded, “must be made available to all on equal terms.” With respect to free speech, the Court in *Tinker v. Des Moines Independent Community School District* (1969) concluded that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

Around the same time, Congress began to pass laws to create more structure to education on the federal level (for example, the 1964 Civil Rights Act further bolstered the Court’s decision by codifying non-discrimination language into federal law). Passage of the 1972 Education Amendments, 1974 Family Educational Rights Act, and 1978 Pupil Protection Rights Amendment were intended to provide all students the same uniform protections. Enactment of these laws—while necessary—led to a call for further federal involvement in education, which led to the creation of the Department of Education in 1979.

The Department of Education centralized aspects of education that previously had been handled at the state level. In 2023, the department handles federal funding, which they leverage to advance their policy priorities for K-12 institutions. It also oversees complaints relating to discrimination, education records, and privacy.

In the years following the federalization of education, the Supreme Court has continued to focus on parental rights and students' free speech rights. In *Parham v. J.R.* (1979), for example, the Court made it clear that parents should be the chief decision makers when it comes to medical decisions about their children. In *Troxel v. Granville* (2000), the Court reasserted the role of parents in the care, custody, and control of their children and reaffirmed "the traditional presumption that a fit parent will act in the best interest of his or her child." And in *Mahanoy Area School District v. B. L.* (2021), the Court concluded that public

schools generally lack authority over schoolchildren outside school and school-sponsored activities, particularly as to free speech.

Although the Court protected parental rights (and student's free speech rights) in many of these cases, parents continue to face barriers vis-à-vis their child's education. There are many competing interests at play—including but not limited to the aforementioned funding streams. In recent years, parents' eyes have been opened to the fact that parental rights can never be taken for granted.



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MEYER V. NEBRASKA (1923)

The Court recognized that parents have the right to “establish a home and bring up children” and “to control the education of their own.”

PIERCE V. SOCIETY OF SISTERS (1925)

The Court explained that “[t]he child is not the mere creature of the state” and that parents have the right “to direct the upbringing and education of” their children.

PRINCE V. MASSACHUSETTS (1944)

The Court declared that it is “cardinal” that “the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”

BROWN V. BOARD OF EDUCATION (1954)

Racial segregation of students is unconstitutional

CIVIL RIGHTS ACT (1964)

Title VI of the Civil Rights Act of 1964:

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

TINKER V. DES MOINES (1969)

The Court made clear that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gates.” It also explained: the “The classroom is peculiarly the ‘market-place of ideas.’ The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, (rather) than through any kind of authoritative selection.”

EDUCATION AMENDMENTS OF 1972

Title IX of the Education Amendments of 1972:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

WISCONSIN V. YODER (1972)

The Court held that parental right to direct the religious upbringing and education of their children outweighed the State’s interest in universal education.

“This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”

STANLEY V. ILLINOIS (1972)

The “right[] ... to raise one’s children ha[s] been deemed ““essential”” and one of the ““basic civil rights of man.””

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) (1974)

Federal law enacted to protect the privacy of students’ educational records.

PROTECTION OF PUPIL RIGHTS AMENDMENT (PPRA) (1978)

Amendment passed requiring parental consent to share student data through surveys, analyses, and evaluations.-The Department of Education was created.

DEPARTMENT OF EDUCATION (1979)

The Department of Education was created.

PARHAM V. J.R. (1979)

The Court reaffirmed parents have the right to make medical and treatment decisions of their children.

“Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments.”

TROXEL V. GRANVILLE (2000)

The Court concluded that “it cannot now be doubted” that parents have the fundamental right “to make decisions concerning the care, custody, and control of their children.”

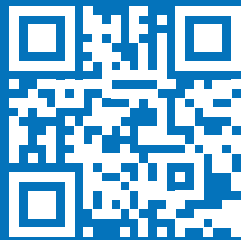
“[T]he custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”

GRUENKE V. SEIP (3D CIR. 2000)

“Public Schools must not forget that ‘in loco parentis’ does not mean ‘displace parents.’ It is not educators, but parents who have primary rights in the upbringing of children. School officials have only a secondary responsibility and must respect these rights.”

MAHANAY AREA SCH. DIST. V. B. L. (2021)

“[T]he school itself has an interest in protecting a student’s unpopular expression [S]chools have a strong interest in ensuring that future generations understand the workings in practice of the well-known aphorism, ‘I disapprove of what you say, but I will defend to the death your right to say it.’”



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