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Book Review

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BOOK REVIEW

EDUCATION LAW: PUBLIC AND PRIVATE. By *William D. Valente*. St. Paul: West Publishing Co. 1985. Pp. (vol. I) xliii, 570; (vol. II) xxix, 672. \$140.00.

*Reviewed by Fernand N. Dutile**

The law of education covers a great variety of legal topics. The school, after all, is a scale model of our society, and therefore hosts, often in a highly-charged context, almost every interesting—and controversial—issue. Thus, matters of race, religion, gender, free speech, search and seizure, and taxation, among others, are the daily concerns of those who deal with the law of education. Moreover, at least indirectly, education law involves issues of standing, equitable remedies, and appellate review, as well as a swarm of other questions, all of which constitute sublayers of the law of education.¹

Accordingly, undertaking a comprehensive treatise on the law of education constitutes an ambitious and challenging project in at least two respects: First, the author must deal with an enormous font of cases and other materials in a meaningful way, while restricting the work to a manageable length. Second, and related to the first, the author must discern how deeply into the sublayers of education law it is appropriate to venture. Let this be clearly understood from the start: William D. Valente, Professor of Law at Villanova University and author of *Law in the Schools*,² has succeeded admirably on both scores in *Education Law: Public and Private*.³

This two-volume work covers well both public and private education. After an overview of elementary and secondary education (chapter 1), Volume I treats the legal and administrative structure of public education (chapters 2 and 3), school property (chapter 4), public admission and attendance (chapter 5), tuition, fees, and

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1 This paragraph and the two volumes reviewed herein implicitly but firmly point out the pervasive impact which present-day law has on both public and private education. That impact becomes especially troublesome in the context of small private schools which may not have the financial ability to secure the legal advice or financial protection advisable, given the complexity of today's laws, regulations, and policies.

2 W. VALENTE, *LAW IN THE SCHOOLS* (1980).

3 W. VALENTE, *EDUCATION LAW: PUBLIC AND PRIVATE* (1985) (in two volumes) [herein-after cited as 1 or 2 VALENTE].

other charges (chapter 6), student transportation (chapter 7), the school calendar (chapter 8), school assignments, transfers, and closings (chapter 9), general education programs (chapter 10), religion in public schools (chapter 11), personnel issues, including qualifications, substantive due process, collective bargaining, and retention (chapters 12-15), and student rights and discipline (chapter 16). Volume II covers equal opportunity (chapter 17), tort liability under federal and state law (chapters 18 and 19), and school finance (chapter 20). The final chapter of Volume II deals essentially with issues peculiar to private education, including its structure, the rights of its teachers and students, and first amendment problems in governmental aid to private education (chapter 21).

Of the twenty-one chapters, therefore, only one deals with private education. This numerical fact, however, dramatically understates the work's usefulness to those interested primarily in the law of private education. Much of the law applicable to public schools, from tax codes to federal anti-discrimination statutes, applies to private education as well. When the author has already discussed issues relevant to both public and private education in the earlier chapters dealing with public education, the author alludes to that fact, does not repeat the discussion, and points out aspects of those issues which are of special concern to private education. Moreover, the chapter on private education fills over a hundred pages.⁴

As even this succinct account of the topics covered reflects, Valente's work is marvelously comprehensive. This reviewer, a teacher in the area of school law for over ten years, cannot think of a significant item that Professor Valente has omitted. Moreover, each subject is dealt with in considerable depth. The careful reader gains at least a solid foundation in, and in many cases, a thorough understanding of, any matter discussed. Although on occasion the author includes without a footnote a statement that could stand a citation, the documentation is generally ample and often rich. Indeed, many footnotes provide a very helpful survey of the states for their respective treatment of the textual issues.⁵

Also, the author provides (at the end of Volume II) over 200 pages of tables brimming with information on the educational system.⁶ Here, for example, are charts listing state standards for attendance and graduation,⁷ extracurricular activities,⁸ school libraries,⁹ textbooks,¹⁰ pupil-teacher ratios,¹¹ student transporta-

4 2 VALENTE at 335-455.

5 See, e.g., 1 VALENTE at 334 n.46.

6 2 VALENTE at 457-664.

7 *Id.* at 464-66, 477-78.

8 *Id.* at 470-71.

9 *Id.* at 483-84.

tion and health,¹² and teacher certification.¹³ Valente also includes an extensive state-by-state "summary" of laws on public sector labor relations,¹⁴ a state-by-state bibliography,¹⁵ and the text of several statutes¹⁶ affecting education. As a bonus (and of immense importance to those involved in this fast-changing area of the law), the structure of the text and the physical make-up of the volumes promise periodic updates in the form of pocket-parts.

Several parts of Professor Valente's work are especially well-organized and thorough. The section dealing with the financing of the religiously-affiliated school is excellent.¹⁷ The author carefully guides us through federal and state constitutional limitations on government assistance, direct and indirect. The discussion touches upon virtually every form of state assistance possible, including scholarships, property maintenance, instructional materials, testing and grading, remedial programs, student transportation, and tax credits and deductions. All important United States Supreme Court cases, including even the recent *Grand Rapids School District v. Ball*¹⁸ and *Aguilar v. Felton*¹⁹ decisions, are mentioned. The same thoroughness is manifested in Valente's discussion of the law concerning the handicapped or gifted student²⁰ and regarding age discrimination in school employment,²¹ where Professor Valente carefully treats each of the concepts most prominent in legislation or litigation.

In the section on public school finance,²² Valente not only covers the "must" cases, such as *San Antonio Independent School District v. Rodriguez*,²³ dealing with equal protection issues in school expenditures, but he also explores in detail various revenue sources and equalization devices, other legal challenges to local school taxation, legal aspects of short-term and long-term expenditure controls, and the fiscal aspects of school district contracting. Moreover, the author throws a fairly complete treatment of general public contracting into the bargain.

In fact, some might suggest that, for the purposes of this treat-

10 *Id.* at 501-02.

11 *Id.* at 489-90.

12 *Id.* at 491-92, 494-95.

13 *Id.* at 503-06.

14 *Id.* at 543-602.

15 *Id.* at 515-40.

16 *Id.* at 603-23, 628-35.

17 *Id.* at 419-55.

18 105 S. Ct. 3216 (1985).

19 105 S. Ct. 3232 (1985).

20 2 VALENTE at 87-129.

21 *Id.* at 130-34.

22 *Id.* at 278-334.

23 411 U.S. 1 (1973).

tise, Professor Valente has gone too deeply into the sublayers of the law of education both in his section on public contracting and in others. Some, especially those who read the work from beginning to end, for instance readers who seek a relatively quick and *general* exposure to the breadth of the law of education, may find the above suggestion persuasive. This treatise, however, is intended to serve, and will find its best use, as a reference work for people seeking enlightenment with regard to a *specific* issue. In that light, erring on the side of thoroughness becomes a virtue. Moreover, some "sub-layer" discussions are largely confined to the footnotes. In discussing judicial review,²⁴ for example, the author alludes to standing to sue, then includes an extensive footnote²⁵ on that tangential concept. This approach, it can be argued, should have been used on other occasions as well.

To the author's great credit, he deals with matters of considerable controversy fairly, with no ideological bias. Although not hesitant to venture an opinion from time to time, Professor Valente has consistently adhered to his mission of producing a treatise—not a thesis—on the law of education. Therefore, even in addressing such volatile areas as state aid to religiously-affiliated schools and school-library book selection, the author exposes no axe to grind.

The best of books, of course, have shortcomings. Professor Valente could have averted the principal shortcoming of *Education Law: Public and Private* by doing one additional, careful draft focused on tightening a too-loosely written text. Often he treats concepts out of order, or alludes to them more times than necessary. Additionally, many paragraphs could be considerably shortened (and thereby often clarified) by a more economic use of language. We law professors, lawyers, and law students often expend so much effort on gathering, organizing, and analyzing the material—as obviously Professor Valente did in connection with his huge undertaking—that we neglect to go that extra mile to review our text from the perspective of the *writing itself*. We find it difficult to abstract from the legal *substance* in order to focus upon the *methodology* of expression.

Related to this problem is Professor Valente's extensive use of quotations which merely restate points already made in the text or which he could have paraphrased more succinctly. On occasion, a quote from a case is more than a page long, alludes to case facts out of context, or treats concepts not immediately relevant to the topic under discussion. Many such quotes, after being heavily edited, could be better placed in the footnotes.

24 I VALENTE at 24-26.

25 *Id.* at 24 n.46.

Less serious are the recurring lapses in grammar, such as subject-verb disagreement; the overuse of foreign phrases such as "nonconstat" (for "notwithstanding"), "qua," and "vis-à-vis" (often used in the text to mean "as opposed to" rather than "in regard to"); and a puzzling use of commas and semi-colons. A work of such general high quality will presumably gain a second edition, and at that point, Professor Valente will surely want to deal with these relatively minor concerns. As a result, the second edition should prove to be a leaner, more readable product.

I make these suggestions reluctantly, however, for fear they will be misunderstood. These two volumes are important and valuable additions to the libraries of all lawyers, law teachers, education teachers, school administrators, and everyone else who deals with school law. I have already learned much from this fine resource; I expect to return to Valente's *Education Law* often.

